

IN THE MATTER OF
PETALSKIN TOILETRIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4128. Complaint, May 7, 1940—Decision, May 15, 1941

Where a corporation engaged in interstate sale and distribution of its "Petal-skin" line of cosmetics; by means of advertisements disseminated in various ways—

(a) Represented that its "Petal-skin Face Cream" penetrated deeply into the pores and cleaned them out to an unusual degree, that it contained vitamin F, application whereof furnished nourishment to the skin and supplemented and restored the skin's supply of essential oils which, designated as vitamin F, diminished with age;

Facts being that such cream does not function as aforesaid or accomplish any such results, the skin not being capable of nourishment through external application, but only through systemic circulation, and while there are certain fatty acids sometimes erroneously referred to as vitamin F, no deficiency thereof occurs with aging and such a deficiency, if existent, could not be overcome by any external application of such acids; and

(b) Represented that its "Face Tonic" would not dry the skin and would close and refine the pores and that its "Cream Pastelle" worked its way into the pores and refined them;

Facts being said "Face Tonic" would not close and refine but would stretch the pores, and said "Cream Pastelle" would not have any effect on enlarged pores other than possible removal of superficial accumulation of dirt, so possibly helping nature to refine the pore openings; and

(c) Represented that its "Face Powder" does not clog the pores, nor interfere with skin's function of breathing and that its hand cream counteracts aging and penetrates the skin;

Facts being the skin does not breathe and said face powder does not have any of the effects claimed therefor;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were true, and with effect of causing it, because of such belief, to purchase said preparations:

Held, That such acts and practices, under the circumstances set forth herein, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II, for the Commission.

Mr. Leonard E. Lisner, of New York City, for respondent.

1478

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Petalskin Toiletries, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Petalskin Toiletries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 67 West 44th Street in the city of New York in the State of New York.

PAR. 2. Respondent, Petalskin Toiletries, Inc., is now, and for more than 1 year last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States of certain toilet preparations designated and described, respectively, as "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream." Respondent, in the course and conduct of its said business during the time aforesaid, caused and does now cause its said preparations, when sold by it, to be transported from its said place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products, by United States mails, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among

and typical of the false statements and representations contained in said false advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Petalskin * * * Face Cream

Rich in Vitamin F, this emulsified, deep pore cleanser and tissue cream has unusual penetrating as well as nourishing qualities * * *

Now, science serves beauty in a truly marvelously new way. It has discovered that the skin's normal supply of the oil essential * * * VITAMIN F * * * which diminishes as we grow older * * * and is vitally necessary for a young, glowing skin * * * can be supplemented by external application! Petalskin Face Cream, rich in Vitamin F, is a scientific cream, compounded to restore to the skin some of this precious vitamin.

Petalskin * * * Face Tonic

* * * does not dry even the most delicate skin. It will close and refine the pores * * *

Petalskin * * * Cream Pastelle

* * * It refines the pores * * *

Petalskin * * * Face Powder

Let your face breathe fresh air! So minute are the particles Petalskin Face Powder is made of * * * does not clog the pores. Those that remain * * * are so fine they do not interfere with the normal breathing of the skin!

Petalskin Hand Cream

* * * counteracts aging * * * is penetrating * * *.

PAR. 4. Through the use of the advertising statements hereinabove set forth, which pertain to the qualities, properties, and effects of its said preparations, as well as matters connected with their application and use, respondent has represented and does now represent (1) as to its product Petalskin Face Cream—that said product penetrates deeply into the pores of the skin and cleans out the pores to an unusual degree; that its application furnishes nourishment to the skin; that it contains vitamin F; that the skin's supply of the essential oils, designated as vitamin F, diminishes with age and that such supply is supplemented and restored to the skin by the external application of said cream; (2) as to its product Petalskin Face Tonic—that said product will not dry the skin and that it will close and refine the pores; (3) as to its product Petalskin Cream Pastelle—that said product works its way into the pores of the skin and refines the same; (4) as to its product Petalskin Face Powder—that said product does not clog the pores of the skin; that the skin breathes

1478

Findings

and that said powder does not interfere with such function; (5) as to its product Petalskin Hand Cream—that said product counteracts aging and will penetrate the skin.

PAR. 5. In truth and in fact respondent's preparation Petalskin Face Cream does not penetrate deeply into the pores of the skin or to an unusual degree and does not cleanse out the pores any deeper than the external openings thereof. This preparation does not furnish nourishment to the skin since the skin cannot be nourished by external application but only through systemic circulation. There is no recognized vitamin now designated as vitamin F. There are certain unsaturated fatty acids that have been sometimes erroneously referred to as vitamin F but there is no deficiency of these factors in persons as they grow older. If the human body should be deficient in these factors, such deficiency could not be overcome by any external application of such fatty acids. The use of respondent's preparations Petalskin Face Tonic and Petalskin Cream Pastelle will not refine the pores of the skin or correct or remove the cause of enlarged pores, or close the pores of the skin, or have any effect thereon except that their use may remove superficial accumulation of dirt from the pore openings and may help nature to refine the pores. Respondent's Petalskin Face Powder does not have the property of not clogging the openings of the pores of the skin nor does it have the effect of not interfering with the breathing of the skin since the skin does not breathe. Respondent's preparation Petalskin Hand Cream does not penetrate the skin as that term is usually understood nor does it counteract aging of the skin since aging is a natural physiological process that is not affected by external applications.

PAR. 6. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of its said preparations have had, and now have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and to induce them to purchase said preparations on account thereof.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 7, 1940, issued and subse-

Findings

32 F. T. C.

quently served its complaint in this proceeding upon the respondent Petalskin Toiletries, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (no answer having been filed by the respondent), testimony and other evidence in support of the allegations of the complaint, including a stipulation of the facts upon the record, were introduced before John W. Addison, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by the respondent or oral argument requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Petalskin Toiletries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 67 West 44th Street in the City of New York, State of New York. On April 26, 1939 said corporation was adjudged a bankrupt by voluntary petition, and on January 18, 1940, was discharged from bankruptcy.

PAR. 2. Respondent, Petalskin Toiletries, Inc., was for more than 1 year prior to April 26, 1939, engaged in the sale and distribution in commerce among and between the various States of the United States of certain toilet preparations designated and described, respectively, as "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream." Respondent caused said preparations, when sold by it, to be transported from its place of business in the State of New York to purchasers therefrom located in various other States of the United States.

PAR. 3. In the course and conduct of its aforesaid business the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said products by United States mails and also in circulars and other printed or written matter which

were distributed in commerce among and between the various States of the United States, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said products. Respondent has also disseminated and has caused the dissemination of false advertisements concerning its said products by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of its products in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said false advertisements disseminated and caused to be disseminated as aforesaid are the following:

Petalskin * * * Face Cream

Rich in Vitamin F, this emulsified, deep pore cleanser and tissue cream has unusual penetrating as well as nourishing qualities * * *

Now, science serves beauty in a truly marvelously new way. It has discovered that the skin's normal supply of the oil essential * * * VITAMIN F * * * which diminishes as we grow older * * * and is vitally necessary for a young, glowing skin * * * can be supplemented by external application! Petalskin Face Cream, rich in Vitamin F, is a scientific cream, compounded to restore to the skin some of this precious vitamin.

Petalskin * * * Face tonic

* * * does not dry even the most delicate skin. It will close and refine the pores * * *

Petalskin * * * Cream Pastelle * * * It refines the pores * * *

Petalskin * * * Face Powder

Let your face breathe fresh air! So minute are the particles Petalskin Face Powder is made of * * * does not clog the pores. Those that remain * * * are so fine they do not interfere with the normal breathing of the skin!

Petalskin Hand Cream

* * * Counteracts aging * * *
is penetrating * * *

PAR. 4. Through the use of the statements, representations, and advertisements hereinabove set forth, all of which pertain to the qualities, properties, and effects of its said preparations, respondent has represented (1) that its product Petalskin Face Cream penetrates deeply into the pores of the skin and cleans out the pores to an unusual degree; that its application furnishes nourishment to the skin; that it contains vitamin F; and that said preparation, by external application thereof, supplements and restores the skin supply of essential oils designated as vitamin F, which diminish with age; (2) that its product Petalskin Face Tonic will not dry the skin and

will close and refine the pores; (3) that its product Petalskin Cream Pastelle works its way into the pores of the skin and refines such pores; (4) that its product Petalskin Face Powder does not clog the pores of the skin, that the skin breathes, and that said powder does not interfere with such function; and (5) that its product Petalskin Hand Cream counteracts aging and will penetrate the skin.

PAR. 5. Respondent's preparation Petalskin Face Cream does not penetrate deeply into the pores of the skin or to an unusual degree, and does not cleanse the pores any deeper than the external openings thereof. This preparation does not furnish nourishment to the skin since the skin cannot be nourished by external application but only through systemic circulation. There are certain unsaturated fatty acids that have been sometimes erroneously referred to as vitamin F, but there is no deficiency of these factors in persons as they grow older. If the human body should be deficient in these factors, such deficiency could not be overcome by any external application of such fatty acids.

The use of respondent's preparation Petalskin Face Tonic will not close or refine the pores of the skin.

Respondent's preparation Petalskin Cream Pastelle will not correct or remove the cause of enlarged pores or close the pores of the skin or have any effect thereon, except that its use might remove superficial accumulation of dirt from the pore openings and may help nature to refine the pores.

Respondent's preparation Petalskin Face Powder does not have the property of not clogging the openings of the pores of the skin nor does it have the effect of not interfering with the so-called breathing of the skin, since the skin does not breathe.

Respondent's preparation Petalskin Hand Cream does not penetrate the skin as that term is usually understood nor does it counteract aging of the skin, since aging is a natural physiological process that is not affected by external applications.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the properties and effectiveness of its cosmetic products, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and has caused a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's cosmetic preparations.

1478

Order

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and report of the trial examiner thereon, brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Petalskin Toiletries, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its cosmetic preparations designated "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream," or any products of substantially similar compositions or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That respondent's preparation Petalskin Face Cream penetrates deeply into the pores of the skin or that it cleanses the pores any deeper than the external openings thereof, or that the use of said preparation furnishes nourishment to the skin or supplies vitamin F or has any value in restoring the skin.

(b) That respondent's preparation Petalskin Face Tonic will close or refine the pores of the skin.

(c) That respondent's preparation Petalskin Cream Pastelle will refine or close the pores of the skin, correct or remove the cause of enlarged pores, or have any effect thereon in excess of removing the superficial accumulation of dirt from the pore openings.

Order

32 F. T. C.

(d) That respondent's preparation Petalskin Face Powder will not clog the openings of the pores of the skin.

(e) That its product Petalskin Hand Cream will penetrate the skin or counteract aging of the skin.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of respondent's cosmetic preparations "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream," which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

REX MERCHANDISE CORPORATION OF AMERICA ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3142. Complaint, June 3, 1937—Decision, May 16, 1941

Where four corporations and various individuals, moving spirits, officers, managers, or stockholders therein; cooperatively engaged in the competitive interstate sale and distribution to retailers of shaving creams and tooth pastes manufactured by one of said corporations, in the course of which they employed various trade names in common;

Acting together and with full knowledge that the prices marked on tubes and cartons as below set forth were false and fictitious and did not truthfully represent those at which such products were regularly and customarily sold to the consuming public—

(a) Sold various shaving creams and dental pastes under such names, among others, as "D. D. S.," "Sheray," "Royal Blue," "Dr. Sachs," in tubes and cartons ranging from 25 cents to \$1 per unit, facts being said prices were fictitious, and usual and customary prices obtained by retail sellers of such products were actually from 10 to 29 cents; and

(b) Sold shaving creams under trade designations "Pine Tree" and "Sportsman Brushless Shaving Cream," manufactured from substantially similar formulas, with resale retail price of 75 cents marked on individual cartons thereof; facts being products in question customarily and regularly sold by retailers to members of the purchasing public at from 10 to 29 cents each;

With effect of misleading and deceiving purchasing public into the erroneous belief that such fictitious prices were the regular and usual retail selling prices of such products, with result that it purchased a substantial volume of said products, and trade was unfairly diverted to them from their competitors who truthfully represent their products:

Held, That such acts and practices were all to the injury and prejudice of the public, and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. S. Brogdyne Tew, II, for the Commission.

Mr. Arthur A. J. Weglin, of New York City, in his own behalf, and for Rex Merchandise Corp. of America, Peter Meyer and Alexander Hirshbein.

Mr. Nathaniel Katz, of New York City, for Sheray, Inc., William Sher, and Anna Sher, and Wilshire Sales Corp.