

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.

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COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Rex Merchandise Corporation of America, and Peter Meyer and Wyette Meyer, individuals and officers of Rex Merchandise Corporation of America, Crown Laboratories, Inc., and Arthur A. J. Weglein, Alexander Hirshbein, and Francis Chorba, individuals and officers of Crown Laboratories, Inc., Sheray, Inc., and William Sher and Anna Sher, individuals and officers of Sheray, Inc., Wilshire Sales Corporation and William Sher, individually and as an officer of Wilshire Sales Corporation, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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 Rex Merchandise Corporation of America is a New York Corporation having its principal office and place of business located at 48 East Twenty-first Street, city of New York, State of New York.

Respondents Peter Meyer and Wyette Meyer are respectively president and secretary of Rex Merchandise Corporation. They have their principal place of business at the above-mentioned address of the Rex Merchandise Corporation of America. They both participate in the management and direction of the Rex Merchandise Corporation of America and its sales policies and general business operations.

Crown Laboratories, Inc., is a New York corporation having its principal office and place of business at 48 East Twenty-first Street, city of New York, State of New York.

Respondents Arthur A. J. Weglein, Alexander Hirshbein, and Francis Chorba are respectively president, vice president, and secretary-treasurer of respondent Crown Laboratories, Inc. They have their principal place of business at the above-mentioned address of the Crown Laboratories, Inc. They all participate in the management and the direction of Crown Laboratories, Inc., and its sales policies and general operations.

Respondent Sheray, Incorporated, is a New York corporation having its principal office and place of business located at 33 Union Square, city of New York, State of New York.

William Sher and Anna Sher are, respectively, treasurer and president of Sheray, Inc. They have their principal place of business at the above-mentioned address of Sheray, Inc. They both participate in the management and the direction of Sheray, Inc., and its sales policies and general business operations.

Wilshire Sales Corporation is a New York corporation having its principal office and place of business at 33 Union Square, city of New York, State of New York.

William Sher is president of the Wilshire Sales Corporation. He has his principal place of business at the above-mentioned address of the Wilshire Sales Corporation. He participates in the management and direction of the Wilshire Sales Corporation and its sales policies and general business operations.

PAR. 2. The corporate respondents have been for more than 1 year last past engaged in the sale and distribution of cosmetics, perfumes, and drug notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of their respective businesses they offer said products for sale and sell the same in commerce between the State of New York and the several other States of the United States and in the District of Columbia.

PAR. 3. When said products are sold, corporate respondents and their officers transport or cause the same to be transported from their respective places of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia.

There has been for more than 1 year last past, and still is, a constant current of trade and commerce in said products so sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents are now, and for more than 1 year last past have been, engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution, or in the sale and distribution, of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondents, in soliciting the sale and in the selling of their commodities and for the purpose of creating a demand on the part of the consuming public for said commodities, have advertised their commodities through the media of price lists and other printed matter published, issued, and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia. In the aforesaid ways

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and by the aforesaid means respondents make and have made to the general public false and misleading statements with reference to the commodities offered for sale by them.

PAR. 6. Many articles and items of merchandise listed in said price lists and other printed matter are described as possessing retail values or prices greatly in excess of the actual selling price of respondents to the retailers or other purchasers and greatly in excess of the actual retail value or price thereof. A number of said items and articles of merchandise described in the aforesaid price lists and other printed matter have fictitious retail prices stamped or printed thereon or on the labels attached thereto or on the containers in which they are offered for sale and sold to the public.

PAR. 7. Representative of such fictitious price markings made by respondents regarding the selling price and value of the commodities thus offered for sale by them are the following:

"Stage and Screen Wave Set, Price \$1.00;" "Lucky Strike Toilet Soap, Price \$1.00;" "Banner Baby Castile Soap, Price 50¢;" "Favorite Baby Castile Soap, Price 75¢;" "Favorite Lavender Bath Soap, Price 75¢;" "Favorite Medicated Skin Soap, Price 75¢;" "Dr. Dade's Medicated Skin Soap, Price 75¢;" "Superfine Shaving Soap, Price 10¢;" "Hay-po Hair Straightener, Price 25¢;" "Atlas Foot Soap, Price 35¢;" "Quinoid's Bay Rum, Price 75¢;" "Lady Lee Powder, Price \$1.00;" "Milady Combination Powder Set, Price \$1.00;" "Arnoldi Bouquet Talcum, Price 35¢;" "Economy First Aid Kit, Price 25¢;" "Her Majesty Perfume, Price \$12.50;" "Dango, the Advanced Scalp Conditioner, Price \$2.00;" "Camelskin Latex, Price \$4.00;" "Phantom Eye Lash Grower, Price 50¢;" and "Parker's Hair Dressing, Price 25¢."

PAR. 8. In truth and in fact the Stage and Screen Wave set is sold to the retail trade for 4½ cents per unit; Lucky Strike Toilet Soap is sold to the retail trade for 5 cents; Banner Baby Castile Soap is sold to the retail trade for 5 cents per unit; Favorite Baby Castile Soap is sold to the retail trade for 6 cents per unit; Favorite Lavender Bath Soap is sold to the retail trade for 6 cents per box; Favorite Medicated Skin Soap is sold to the retail trade for 6 cents per box; Dr. Dade's Medicated Skin Soap is sold to the retail trade for 7 cents per box; Superfine Shaving Soap is sold to the retail trade for 2 cents per box; Hay-po Hair Straightener is sold to the retail trade for 10 cents per can; Atlas Foot Soap is sold to the retail trade for 5 cents per cake; Quinoid's Bay Rum is sold to the retail trade for 7 cents per unit; Lady Lee Powder is sold to the retail trade for 4 cents per box; Milady Combination Powder Set is sold to the retail trade for 5 cents per unit; Arnoldi Bouquet Talcum is sold to the retail trade

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for 7 cents per can; Economy First Aid Kit is sold to the retail trade for 5 cents per kit; Her Majesty Perfume is sold to the retail trade for 50 cents; Dango, the Advanced Scalp Conditioner is sold to the retail trade for 10 cents per unit; Camelskin Latex is sold to the retail trade for \$1.00 per gross; Phantom Eye Lash Grower is sold to the retail trade for 5 cents per unit, and Parker's Hair Dressing is sold to the retail trade for 5 cents per unit.

PAR. 9. The said price lists and other printed matter of respondents contain other instances where fictitious retail prices are imprinted upon the labels or containers thereof.

PAR. 10. Over a period of many years manufacturers in many trades have adopted and followed the custom of marking or stamping on the item or article of manufacture, or on the container thereof, the retail price at which the said manufacturers suggest that the retailer should sell the item or article to the ultimate consumer purchaser.

PAR. 11. The suggested retail price so stamped or marked is intended to represent the cost to the manufacturer of the article plus a reasonable profit for the manufacturer and the retailer and, consequently, to represent the approximate retail sale value of the item. The public generally understands this custom and has been led to and does place its confidence in the price-marking so stamped and the representations so made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 12. For many years a substantial part of the consuming public has had and has expressed a marked preference for dental creams, shaving creams, and toilet articles and other similar household notions which are composed of superior ingredients and which are produced by the manufacturers thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products or for products made of inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the product and its higher value.

PAR. 13. Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is led to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail prices thereof over ordinary

products sold for their regular price which is lower than the normal retail value of the superior products in the customary course of trade.

PAR. 14. The retail prices so stamped or printed as aforesaid upon respondents' products are greatly in excess of the actual selling price of the said items or articles of merchandise by the retailer to the consuming public and are in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 15. Said price lists and other printed matter published and distributed by respondents also contain other instances of misleading descriptions and representations of their products. For example, certain of their perfumes are labeled with the phrase "Perfumes of France."

PAR. 16. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes and toiletries which are manufactured or compounded in foreign countries, and especially in France, and then imported into the United States.

PAR. 17. The aforementioned representations and descriptions appearing on the aforesaid articles by labels with "Perfumes of France" printed thereon serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so described and referred to are manufactured in France.

PAR. 18. In truth and in fact, the aforesaid articles are not manufactured in France or in any other foreign country, but are domestic products made or compounded in the United States.

PAR. 19. The aforesaid price lists and other printed matter published and distributed by the respondents, as well as the labels and other printed representations appearing on the cartons or containers of respondents' products contain other false and misleading representations. For example, certain of their tooth pastes are labeled with the phrases "Dr. Sachs Dental Cream," "Dr. Ross' Dental Cream," "Dr. Sachs Milk of Magnesia Tooth Paste," and "D. D. S. Perborated Tooth Powder."

PAR. 20. Over a period of many years the universally used professional designations for a Doctor of Dental Surgery have been and now are the abbreviations "Dr." and "D. D. S." When these abbreviations of the universally used professional designations for a doctor of dental surgery are used on the labels appearing on respondents' products and the cartons in which same are sold and offered for sale, these abbreviations serve as representations to purchasers and pros-

pective purchasers of respondents' dental creams that a doctor of dental surgery derived the formula from which said dental creams were compounded, and further, that a doctor of dental surgery was and is engaged in the compounding and manufacturing of said dental creams.

PAR. 21. In truth and in fact the use of the abbreviations for the professional designation of doctor of dental surgery by the respondents is false and misleading. No doctor of dental surgery derived the formula from which the respondents' dental creams were and are compounded. The said respondents' dental creams are not manufactured and compounded under the supervision and direction of a doctor of dental surgery.

PAR. 22. All of the respondents in soliciting the sale of and selling their commodities and for the purpose of creating a demand on the part of the consuming public for said commodities now and for more than one year last past have caused themselves to be represented through their letterheads and circulars, order blanks and general business stationery as manufacturers of toiletries, drug sundries, and notions, and importers of perfumes.

PAR. 23. In truth and in fact the above set out representations of the respondents are false and misleading. None of the respondents are importers of perfumes. None of the respondents are manufacturers of toiletries, drug sundries, and other notions, except Crown Laboratories, Inc.

PAR. 24. The aforesaid false and misleading advertising and representations, together with the aforesaid false and fictitious price markings, on the part of the respondents, serve as representations to a substantial part of the purchasing public that said respondents' shaving creams and other toiletries are generally superior or imported products produced and sold by the manufacturer thereof, with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for approximately the retail price stamped on said products or on their containers.

PAR. 25. There are among the competitors of the respondents manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, value, and origin of their respective products and their business status. There are also among the competitors of respondents manufacturers and distributors of like and similar products who refrain from advertising or representing through their price lists and other printed matter and through fictitious price markings that the merchandise offered for sale by them has a nature, merit, value, or origin that it does not have.

PAR. 26. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe:

1. That the various items of merchandise described in respondents' price lists and other printed matter were and are of superior value, and were, and are, sold and distributed by respondents with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks fixed or stamped thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. That all of the respondents are manufacturers of toiletries, drug sundries, and notions.

4. That the perfumes described in paragraph 15 are manufactured in and imported from France, or some other foreign country.

5. That a doctor of dental surgery derived the formula from which certain of the respondents' tooth pastes and tooth powders were compounded, and, further, that a doctor of dental surgery supervises the manufacture of the same.

PAR. 27. The aforesaid false and misleading statements and representations on the part of the respondents have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondents, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been diverted from those competitors of respondents engaged in similar businesses and as herein referred to in paragraph 25. As a consequence thereof, substantial injury has been and is being done by respondents to competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 28. The respondents, for more than 1 year last past, have entered into, among and between themselves and have since carried out and are still carrying out, an agreement, combination, understanding, and conspiracy, hereinafter more particularly described, by which agreement, combination, understanding, and conspiracy they have compounded, advertised, sold, and distributed in interstate commerce as herein set out tooth paste, shaving creams, and other toiletries and notions marked and branded with fictitious prices.

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Further, as a result of said agreement, combination, understanding, and conspiracy the said respondents have caused and still cause the said tooth paste, shaving creams, and other toiletries and notions to be advertised in a false and misleading manner.

PAR. 29. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy entered into, the said respondents, their officers and directors, have done the following things:

Respondent Crown Laboratories, Inc., and its officers, compound, sell and distribute to Sheray, Inc., Wilshire Sales Corporation, and Rex Merchandise Corporation of America the following toiletries: Dr. Ross' Dental Cream, Vogue Dental Cream, Chester Shaving Cream, Camel Shaving Cream, Palm and Olive Oil Shaving Cream, Dent Pure Milk of Magnesia Dental Cream, Gold Seal Dental Cream, Bay Rum Shaving Cream, D. D. S. Tooth Paste, Milky Way Dental Cream, Biltmore Tooth Paste, Clay Seal Dental Cream, Dr. Sachs Dental Cream, Crown Laboratories Dental Cream, Tallyho Shaving Cream, My Pal Shaving Cream, Sportsman Shaving Cream, and Royal Crown Dental Cream.

PAR. 30. All of the toiletries referred to in paragraph 29 above are marked and branded with fictitious price marks by the said respondent Crown Laboratories, Inc. The said respondent so marks and brands the said toiletries with the knowledge and understanding that when they are sold to the Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., they will be offered for sale, sold, and distributed by the said respondents Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., in interstate commerce, as herein set out.

PAR. 31. Respondents Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., purchased from said Crown Laboratories, Inc., the aforesaid toiletries with the knowledge that they were fictitiously price marked and falsely branded and labeled. It was understood between the Crown Laboratories, Inc., and Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., that said toiletries would be, and were, sold in interstate commerce.

PAR. 32. The Wilshire Sales Corporation owns the following trade names: "D. D. S. Dental Cream," "Sheray Dental Cream," "Royal Crown Dental Cream," "Dr. Sachs Dental Cream," "Royal Blue Dental Cream," "Dent Pure Dental Cream," "His Majesty's Dental Cream," "Sportsman Dental Cream," "My Pal Dental Cream," and "Clay Seal Dental Cream." The said respondent Wilshire Sales Cor-

poration licenses the respondent Crown Laboratories, Inc., to manufacture the aforesaid toiletries with the knowledge and understanding that the cartons and containers of these toiletries were, would be, and are marked with fictitious prices and were, would be, and are falsely labeled, and with the further knowledge that said products referred to would bear said fictitious price markings when sold by respondents Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Incorporated, in commerce, as herein set out.

PAR. 33. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 3, A. D., 1937, issued its complaint in this proceeding against respondents Rex Merchandise Corporation of America, Peter Meyer, and Wyette Meyer, individually and as officers of Rex Merchandise Corporation of America; Crown Laboratories, Inc., and trading under various names, and Arthur A. J. Weglein, Alexander Hirshbein and Francis Chorba, individually and as officers of Crown Laboratories, Inc.; Sheray, Inc., and William Sher and Anna Sher, individually and as officers of Sheray, Inc.; Wilshire Sales Corporation and William Sher, individually and as an officer of Wilshire Sales Corporation, and thereafter caused said complaint to be served upon all of said respondents except Wyette Meyer, charging them with using unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of a joint answer by respondents Sheray, Inc., Wilshire Sales Corporation, William Scher and Anna Scher (named in the complaint as Sher), testimony and other evidence in support of the allegations of the complaint were introduced by S. B. Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by Nathaniel Katz, attorney for respondents Sheray, Inc., Wilshire Sales Corporation, William Scher and Anna Scher, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, and

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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 the said complaint, the answers thereto, testimony and other evidence, the report of the trial examiner thereon and brief in support of the complaint; 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. Respondents Rex Merchandise Corporation of America and Crown Laboratories, Inc., are corporations, having been incorporated under the laws of the State of New York in, or before, A. D., 1934, and having their places of business in the same premises, at 48 East Twenty-first Street, in the city and State of New York.

Respondents Sheray, Inc., and Wilshire Sales Corporation are corporations, having been incorporated under the laws of the State of New York in A. D. 1932 and A. D. 1935, respectively, and having their places of business in the city and State of New York.

Respondent Peter Meyer is president and treasurer of respondent Rex Merchandise Corporation of America, and also manager of its business.

Respondent Alexander Hirschbein (named in complaint as Hirshbein) is vice president of respondent Crown Laboratories, Inc., was the originator and moving spirit in the organization of said corporation and is in charge of its business.

Respondent Frances Chorba (named in complaint as Francis) is the sister of respondent Alexander Hirschbein, owns most of the stock of respondent Crown Laboratories, Inc., and was formerly president of said corporation, being succeeded in said office by respondent Arthur A. J. Weglein, the latter, in turn supervising and directing the affairs of the corporation for the purpose of protecting Frances Chorba's interests therein.

Respondent William Scher (named in complaint as Sher) is the president and manager of respondent Wilshire Sales Corporation, and also treasurer and manager of the business of Sheray, Inc., of which respondent Anna Scher (named in complaint as Sher) is the president. Respondents Anna Scher and William Scher are the owners

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of the capital stock of Sheray, Inc., and of Wilshire Sales Corporation.

PAR. 2. Respondents Rex Merchandise Corporation of America, Crown Laboratories, Inc., Sheray, Inc., and Wilshire Sales Corporation, are and have been engaged, in cooperation with each other, in the business of selling shaving creams, tooth pastes and other toilet articles, in commerce, to retail dealers located in States other than the State of New York, and have caused their said products, when so sold by them, to be transported from New York to the purchasers thereof located in such other States.

PAR. 3. In the course and conduct of their said business, respondents have been and are in substantial competition with other corporations, individuals, and firms engaged in the sale in commerce between and among the several States of the United States and in the District of Columbia, of shaving creams, tooth pastes and other toilet articles.

PAR. 4. In connection with the operation of their business involving the sale of various shaving creams, dental pastes and toilet articles as aforesaid, respondents have employed and have permitted, and do employ and do permit, each other to use and employ various trade names owned by them. Respondent Sheray, Inc., owns and employs, among others, such trade names as D. D. S., Royal Blue, Dr. Sachs, Sheray, Paramount, Scientific, Royal Crown, Tally Ho, Her Majesty and His Majesty. Respondent Crown Laboratories, Inc., has the right to use and employ and has used and employed, among the aforesaid trade names, the trade names Royal Crown Dental Cream, Dr. Sachs Dental Cream and Sheray Dental Cream, and in addition, the further trade names of Pine Tree Dental Cream, Dr. Ross' Dental Cream, and Sportsman's Shaving Cream. Respondent Rex Merchandise Corporation of America is a selling organization and sells various products, including shaving and dental creams supplied to it by Crown Laboratories, Inc., under the trade names referred to above.

Crown Laboratories, Inc., under an agreement entered into between it and Sheray, Inc., manufactures on a royalty basis, among others, the shaving creams and tooth pastes sold under the trade names D. D. S., Sheray, Royal Blue, Dr. Sachs, Tally Ho, Scientific, Paramount, Royal Crown, and Her Majesty. The agreement between Crown Laboratories, Inc., and Sheray, Inc., among other things, provided that Crown Laboratories, Inc., was to furnish Sheray, Inc., all of the requirements of the latter in such products for the State of New York and that Crown Laboratories would sell only outside of New York State. Shaving creams and dental pastes, however, other than those mentioned above, have been and are sold and delivered by Sheray,

Inc., and Wilshire Sales Corporation to purchasers located in States other than New York.

The tubes and cartons in which the products above mentioned manufactured by Crown Laboratories, Inc., have been and are packed, prepared for sale and sold by Crown Laboratories, Inc., Sheray, Inc., and Wilshire Sales Corporation, were and are delivered or caused to be delivered, by Sheray, Inc., to Crown Laboratories, Inc.

PAR. 5. The various shaving creams and dental pastes above mentioned, among others sold by respondents, respectively, were and are sold in tubes enclosed in cartons, on which cartons and tubes, among other things, suggested retail sales prices of from 25 cents to \$1 per unit package are printed. Said prices so printed were and are fictitious. For such products so price-marked, the usual and customary retail prices obtained by retail stores or sellers at retail are actually anywhere from 10 to 29 cents, and all of the respondents knew that the prices so marked upon the individual packages of the respondents' products were not the prices at which they would be, and at which they are usually and customarily, sold to the public by the respondents or by those who purchase them from the respondents for resale.

Respondent Crown Laboratories, Inc., employing Rex Merchandise Corporation of America as its selling agent, sold Pine Tree Shaving Cream with a resale retail price of 75 cents marked on the individual tubes and cartons of the product. Sportsman Brushless Shaving Cream, manufactured from substantially the same formula as the Pine Tree Shaving Cream, also bore a resale retail price of 75 cents marked on its tubes and cartons. Crown Laboratories charged Rex Merchandise Corporation of America, its selling agent, \$8 or \$9 a gross for each of said products, or packages were and are regularly and customarily resold by retailers to the members of the purchasing public variously at from 10 to 29 cents each.

PAR. 6. All of the respondents, acting together with a common understanding, are engaged in the sale and distribution of the various shaving creams, tooth pastes and other toilet articles with the full knowledge that the above referred to prices, so marked on the tubes and cartons thereof, were and are false and fictitious and did not and do not truthfully represent the prices at which said products are regularly and customarily sold to the consuming public. The aforesaid false and misleading representations on the part of respondents, acting together in a common understanding as aforesaid, have had and now have the tendency and capacity to mislead and deceive the purchasing public, and have misled and do mislead them into the

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erroneous belief that said representations are true, and into the belief that the said fictitious prices were and are the regular and usual retail prices at which said products are customarily sold. Acting under the mistaken and erroneous belief induced by the false and misleading representations herein referred to, the public has purchased a substantial volume of respondents' products, with the result that trade in commerce between and among the several States of the United States and in the District of Columbia has been and is unfairly diverted to respondents from their competitors who truthfully represent their products.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition 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, the joint answer of respondents Sheray, Inc., Wilshire Sales Corporation, William Scher and Anna Scher, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, the report of the trial examiner thereon and brief filed on behalf of the Commission, and the Commission having made its findings as to the facts and its conclusion that all of the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents Rex Merchandise Corporation of America, Crown Laboratories, Inc., Sheray, Inc., and Wilshire Sales Corporation, corporations, their officers, directors, representatives, agents, and employees; Peter Meyer, individually and as an officer of Rex Merchandise Corporation of America; Arthur A. J. Weglein, Alexander Hirschbein and Frances Chorba, individually and as officers of Crown Laboratories, Inc.; William Scher and Anna Scher, individually and as officers of Sheray, Inc., and Wilshire Sales Corporation, their representatives, agents, and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale and distribution of shaving creams, tooth pastes and other toiletries or cosmetics, or other merchandise, in commerce

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as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through fictitious prices marked or stamped on, or affixed to, said products, or on the containers thereof, or through any other means or device, or in any manner, that said prices so marked, stamped or affixed are the regular or customary retail prices for such products.

2. Representing as the customary or regular retail prices for such products prices which are in fact fictitious and greatly in excess of the prices at which said products are regularly offered for sale and sold at retail.

It is further ordered, That this proceeding, insofar as it relates to respondent Wvette Meyer, be and the same is hereby closed.

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

IN THE MATTER OF
GORDON-GORDON, LTD., AND PRINCESS PAT, LTD.

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

Docket 3793. Complaint, May 22, 1939—Decision, May 16, 1941

Where two corporations, owned, managed, operated, and controlled by husband and wife, and respectively engaged as a manufacturer and selling agent, in competitive interstate sale and distribution of their "Princess Pat" line of cosmetics; by means of circulars, labels, and other printed and written matter distributed among prospective customers, and by radio broadcasts;

- (a) Represented that face powders containing orris root clogged the pores of the skin and irritated and roughened it, and that use of their "Princess Pat Powder" smoothed the skin, prevented coarse pores and blackheads, made and kept the skin smooth, soft, and pliant, and that their said powder was nonallergic to all persons; facts being that orris root, as an ingredient in face powder, has no clogging effect upon the pores, face powder containing it does not generally cause irritation or skin roughness, though having a tendency to do so in a small proportion of persons allergic to said root (employed by only about 10 percent of face powder manufacturers); their said "Princess Pat Powder" would not accomplish the results claimed therefor for reasons below set forth with respect to their other products; almond base thereof would have no beneficial effect upon the skin other than that of a mild astringent in the case of an oily skin; and their said powder was not nonallergic to all persons;
- (b) Represented that use of their "Muscle Oil" would prevent crow's feet, wrinkles, and sagging facial muscles, and that it would penetrate beneath the surface of the skin and beneficially affect underlying facial muscles; facts being it would not accomplish said results, nor penetrate the skin sufficiently to benefit the underlying muscles, since types of oils used in said product are not absorbed through the skin to any appreciable extent and facial muscles are nourished by the blood, and wrinkles and sagging facial muscles are due, among other things, to shrinking of the skin, and diminution in muscular vigor and later life and to occupational concentration, under which conditions said preparation would have no beneficial effect;
- (c) Represented that their "Skin Cleanser" would penetrate the skin and prevent coarse pores, pimples, blackheads, bad complexions, rough skin texture, and skin eruptions; facts being that it would not thus penetrate, or prevent coarse pores, pimples, etc.; cleansers, greases, and soaps will not penetrate the skin, although to the extent of aiding in removal of dead cells on surfaces thereof they will possibly prevent roughness; and a skin cleanser has no beneficial effect upon a rough skin produced by faulty nutrition or disease; and
- (d) Represented that their "Skin Food Cream" or "Anti-Wrinkle Cream" would nourish the skin, was a tonic for the underlying nerves, and smoothed out and prevented lines and wrinkles; facts being nutrition for the skin is taken from the blood that circulates through it, and not from substances that may be rubbed thereon; said preparation had no effect whatsoever upon the