

Complaint

IN THE MATTER OF
D. J. MAHLER COMPANY, INC.

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

Docket 4228. Complaint, Aug. 7, 1940—Decision, June 11, 1941

Where a corporation engaged in interstate sale and distribution of its "Mahler Electrolysis Apparatus" for electrolytic removal of superfluous hair by individual self-application in the home; by advertisements disseminated through the mails, newspapers, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented that said device was an efficient, effective and safe method for the permanent removal of hair by individual self-application in the home, and that its operation required only ordinary care and skill, when in fact its operation required the services of a skilled operator who must be acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as the properties of the machine used, proper use whereof by lay person is extremely difficult, while improper use may cause scarring, pitting or infection, with particular danger where used on certain areas and possibility of infection leading to abscess of the brain; use to remove hairs from some pigmented moles may stimulate quiescent cells to growth terminating in cancer, treatment of cancerous mole may cause dissemination of cancer cells all over the body; and use thereof to remove hairs from syphilitic lesions or other areas showing local pathological conditions may produce serious injury; and
- (b) Failed to reveal facts material in the light of aforesaid representations, and that use of said device under prescribed or usual conditions might result in permanent disfigurement or cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing local pathological conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing a portion of it, because of such belief, to purchase its said device:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Hugh F. O'Donnell, of New York City, for respondent.

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 D. J. Mahler Co., Inc., a corporation, hereinafter referred to as respondent, has violated

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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. D. J. Mahler Co., Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business at 3124 Pawtucket Avenue, East Providence, R. I.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain device or apparatus designated as the Mahler Electrolysis Apparatus, advertised and recommended for use in the electrolytic removal of superfluous hair from the human body by individual self application in the home.

In the course and conduct of its business, the respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device or apparatus in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the 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 device or apparatus by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device or apparatus, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said device or apparatus in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

KILL THE HAIR ROOT

Remove superfluous hair privately at home, following directions with ordinary care and skill. The Mahler Method positively prevents the hair from

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growing again by killing the hair root. The delightful relief will bring happiness, freedom of mind and greater success. Backed by 45 years of successful use all over the world. Send 6¢ in stamps today for illustrated booklet "How to remove superfluous hair forever."

D. J. MAHLER CO., INC.,
Dept. 56F,
Providence, R. I.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto, not specifically set out herein, the respondent represents that its device designated as the Mahler Electrolysis Apparatus or the Mahler Method is an efficient, effective, and safe device and method for the permanent removal of superfluous hair from the human body and that said device or apparatus can be successfully operated by an unskilled layman with ordinary care and skill.

PAR. 5. In truth and in fact, the device or apparatus sold and distributed by the respondent, as aforesaid, designated as the Mahler Electrolysis Apparatus, is composed principally of an electric battery to which is attached a cord terminated by a needle. Said device is used by inserting the needle into the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious injury to health. The said device or method is not an effective, efficient device or method for the permanent removal of superfluous hair from the human body by individual self application in the home. Said device cannot be successfully operated by an unskilled layman with ordinary care and skill, and its use by individual self application in the home is not safe.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said device or apparatus under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious physical injury, permanent disfigurement and in serious irreparable danger to health.

Such use, as aforesaid, may result in local infections, erysipelas, skin burns, scars, metallic tattoo marks, pitting and permanent disfigurement. When infection occurs as a result of the use of said device in the area about the nose, on the upper lip or over the glabella, it may be so serious as to cause serious injury to health, and in instances where the device and method are applied to cancerous or syphilitic lesions which are not recognizable as such by the layman, fatal consequences may result from infection.

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PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its device or apparatus, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device or apparatus.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 7, 1940, issued and subsequently served its complaint upon the respondent, D. J. Mahler Co., 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 and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Hugh F. O'Donnell, attorney for the respondent, before Robert S. Hall, 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, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, 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. The respondent, D. J. Mahler Co., Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business at 3124 Pawtucket Avenue, East Providence, R. I.

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PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain device or apparatus designated as the Mahler Electrolysis Apparatus, advertised and recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of its business, the respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device or apparatus in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the 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 device or apparatus by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device or apparatus, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said device or apparatus in commerce; as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

KILL THE HAIR ROOT

Remove superfluous hair privately at home, following directions with ordinary care and skill. The Mahler Method positively prevents the hair from growing again by killing the hair root. The delightful relief will bring happiness, freedom of mind and greater success. Backed by 45 years of successful use all over the world. Send 6¢ in stamps today for illustrated booklet "How to remove superfluous hair forever."

D. J. Mahler Co., Inc.,

Dept. 56F,

Providence, R. I.

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PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that its device designated as the Mahler Electrolysis Apparatus or the Mahler Method is an efficient, effective, and safe device and method for the permanent removal of superfluous hair from the human body by individual self-application in the home, and that the operation of said device requires only ordinary care and skill.

PAR. 5. The device or apparatus sold and distributed by the respondent as aforesaid designated as "Mahler Electrolysis Apparatus" or "Mahler Method" is composed principally of an electric battery to which is attached a cord terminated by a needle. The needle is inserted into the hair follicle, usually from $\frac{1}{16}$ to $\frac{3}{16}$ of an inch beneath the surface of the skin. The current produced by the device brings about a chemical action which destroys the root of the hair.

The operation of this device requires the services of a skilled operator who must be acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as the properties of the machine used. The skin must be properly examined and prepared before the use of electrolysis and the operator must be able to determine when enough current has been used, as the amount of current necessary depends upon differences in response of the hair follicle treated.

It is extremely difficult for a lay person to properly use this device and to insert the needle naturally so as to reach the hair follicle without injury to the surrounding tissue. Improper use of this device might cause scarring, pitting or infection. There is particular danger in the use of this device on the areas of the upper lip or around the nose by reason of the nature of the blood supply and the lymphatic system in that area, enabling an infection to easily spread up through the nose to the sinuses or the brain, causing abscess of the brain, with very serious results.

The use of this device to remove hairs from some pigmented moles may have very serious consequences, as it might stimulate the pigmented cells to growth terminating in cancer which ordinarily would remain in the quiescent state, and the insertion of this needle into a cancerous mole might cause dissemination of the cancer cells all over the body. The use of this device to remove hairs from syphilitic lesions or other areas showing local pathological conditions might produce serious injury.

PAR. 6. In addition to the representations hereinabove set forth, respondent is also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so dis-

seminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said device or apparatus under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in permanent disfigurement or cause infections or other irreparable injury to health and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing local pathological conditions.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its device or apparatus, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device or apparatus.

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, answer of the respondent, testimony and other evidence taken before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed herein and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, D. J. Mahler Co., 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 or distribution of its device or apparatus designated as "Mahler Electrolysis Apparatus" or "Mahler Method," or of any other device or apparatus of substantially similar composition or construction or possessing substantially similar properties, whether

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sold under the same name or under any other name, 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, that respondent's device "Mahler Electrolysis Apparatus" or "Mahler Method" is a safe device for the electrolytic removal of superfluous hair from the human body by individual self-application in the home or that said device can be operated with ordinary care and skill, or which advertisement fails to reveal that the use of said device or apparatus by persons not trained in the technique of removing superfluous hair from the human body by electrolysis may result in permanent disfigurement, cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles or other areas showing local pathological conditions.

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 said device or apparatus designated "Mahler Electrolysis Apparatus" or "Mahler Method," which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to reveal that the use of said device or apparatus by persons not trained in the technique of removing superfluous hair from the human body by electrolysis may result in permanent disfigurement, cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles or other areas showing local pathological conditions.

It is further ordered, That the respondent shall, within 10 days after service upon it of this order, file with the Commission an interim report in writing, stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply, and that within 60 days after service upon it of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

BURRY BISCUIT CORPORATION AND TASTY BUD
BISCUIT COMPANY, INC.

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

Docket 4374. Complaint, Nov. 9, 1940—Decision, June 11, 1941

Where two corporations engaged in manufacture of bakery products, including crackers, and in interstate sale and distribution thereof to purchasers, including retail stores—

- (a) Caused certain of their cracker products, called "Bisc-O-Bits," to be packaged, offered for sale and sold in cardboard containers bearing in conspicuous type, visible to shoppers, the statement "Average 90 Crackers," when in fact said packages did not contain or average 90 crackers, but contained substantially less; and
- (b) Made use of practice of slack filling, in that aforesaid containers were substantially larger than reasonably required to package the 10 ounces of crackers actually placed therein, and, when offered and sold to purchasing public, were not filled to capacity, but, as aforesaid, contained substantially less;

With effect of misleading and deceiving a substantial portion of the buying public into the false belief that aforesaid packages contained 90 crackers, or more, and that they were filled to capacity, and into purchase of such crackers in reliance upon such erroneous belief, and with further effect of placing in the hands of retail sellers the means of deceiving members of the buying public;

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

Mr. Jay L. Jackson for the Commission.

COMPLAINT¹

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 Burry Biscuit Co.,

¹ The Commission on April 30, 1941 granted request of respondents to substitute parties and amend complaint and granted leave to file substitute answer by the following order:

This matter coming on to be heard upon the request of Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., that they be substituted as parties respondent in lieu and instead of Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and that the complaint be considered and taken as amended by the substitution of the names of said petitioners in lieu of the names appearing in said complaint, and requesting leave to withdraw their answer filed herein on November 27, 1940, and to substitute in lieu thereof their answer dated January 22, 1941, and annexed to said request; and it appearing to the Commission that said petitioners Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, have heretofore been duly served in this proceeding, that they are proper parties respondent, having been erroneously named in the complaint as Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and the Commission having duly considered the matter and being now fully advised in the premises.