

IN THE MATTER OF
HELENA RUBINSTEIN, INC.

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

Docket 4254. Complaint, Aug. 21, 1940—Decision, July 14, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Town and Country Face Powder," "Eye Lash Grower Cream," "Eye Lash Cream and Darkener," and "Egg Complexion Soap" cosmetic preparations; by means of advertisements disseminated through the mails, newspapers, and periodicals and other advertising literature—

- (a) Represented, directly and by implication, that face powder generally tends to draw out and absorb the natural moisture of the skin, making it dry, parched, and susceptible to lines and premature aging, and that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads, and blemishes; that its said powder was moisture-proof and did not absorb natural moisture of the skin or clog the pores, and that use thereof would prevent the skin from becoming dry and parched, prevent lines and premature aging, and prevent or remove enlarged pores, blackheads, and blemishes;

Facts being that the primary purpose of face powder is to absorb excess moisture and cover shiny skin, such absorption resulting from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in the bulk thereof; face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as the result of any swelling of particles within the pores; its said representations with respect to the pre-expanded quality of its face powder and its moisture-proof qualities had no scientific basis, and use thereof would not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or "balsamizing process," by which said face powder was, purportedly, pre-expanded and saturated with moisture before reaching the consumer;

- (b) Represented, further, that its "Eye Lash Grower Cream" had special properties which would be effective in causing eyelashes to grow, and that its "Eye Lash Cream and Darkener" had special properties which would prevent eyelashes from breaking; when in fact such products had no value in promoting growth of eyelashes or preventing their breaking, respectively; and
- (c) Represented that its "Egg Complexion Soap" would benefit the complexion through the presence of eggs therein and purified the skin;

Facts being the egg content of said soap was of no value to the complexion, and would not purify the skin in excess of cleansing the surface thereof; With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of such representations were true, and to induce it to purchase said cosmetic preparations because of such belief, thus engendered:

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. Lewis C. Russell*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. Henry M. Flateau, 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 Helena Rubinstein, 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, Helena Rubinstein, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 715 Fifth Avenue in the city of New York, in said State.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the manufacture and in the sale and distribution of certain cosmetic preparations. Respondent sells its said products to purchasers situated in various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the State of New York to the 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 its said products in commerce among and between the various States of the United States and in the District of Columbia.

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 the United States mails and by various 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 said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or

Complaint

33 F. T. C.

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, 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 periodicals, and other advertising literature, are the following:

1. Representations made with reference to "Town and Country Face Powder";

HELENA RUBINSTEIN'S NEW
TOWN & COUNTRY FACE POWDER
A Really Different Powder

* * * Mme. Rubinstein * * * realized the risks that women take with face powder * * * These risks * * * are: (1) Face Powder tends to draw out and absorb the natural moisture of the skin—leaving the skin dry and parched, susceptible to lines and premature aging. (2) When a powder particle absorbs precious skin moisture, it swells—as a grain of wheat swells in contact with water. Particles resting in the opening of a pore will press, as they swell against the walls of the pore—eventually causing enlarged pores, blackheads—even blemishes.

Mme. Rubinstein has felt * * * the only way to eliminate these dangers completely was to create a powder on an entirely new principle—a moisture-resisting principle. * * *

Mme. Rubinstein conceived a second brilliant process. Town and Country Face Powder, before it is balsamized, is pre-expanded! It is exposed to compressed moisture so that every particle absorbs all the moisture it can hold. In other words, it is expanded fully before it touches your skin. Next it is reduced to exquisite fineness—and then balsamized. The result is a powder that is proof against drying the skin * * * enlarging the pores, * * * the onslaughts of weather—and permanent * * *.

Face Powder * * * the balsamizing and pre-expanding processes to make it moisture proof.

Helena Rubinstein announces * * * all of her face powders are made moisture proof.

2. Representations made with reference to "Eye Lash Grower Cream:"

Eye Lash Grower * * * for lovely long lashes.

3. Representations made with reference to "Eye Lash Cream and Darkener";

Eye Lash Cream and Darkener, * * * Makes the lashes dark, silky, luxuriant looking.

Eye Lash Cream and Darkener—makes the lashes dark and silky. Prevents them from breaking.

4. Representations made with reference to "Egg Complexion Soap";

Egg Complexion Soap. * * * Purifies the skin. Made of eggs and soothing oils.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of respondent's said cosmetic preparations and their effectiveness when used, respondent directly and by implication represents that face powder generally tends to draw out and absorb the natural moisture of the skin, making the skin dry, parched, and susceptible to lines and premature aging; that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads, and blemishes; that respondent's cosmetic preparation Town and Country Face Powder does not absorb natural moisture of the skin and is moisture proof, and does not clog the pores; that the use of this preparation will prevent the skin from becoming dry and parched, prevent lines and premature aging and prevent or remove enlarged pores, blackheads, and blemishes. Respondent further represents that its cosmetic preparation Eye Lash Grower Cream has special properties which will be effective in causing eye lashes to grow, and that its Eye Lash Cream and Darkener makes the lashes dark, silky, and luxuriant looking and has special properties which will be effective in preventing eye lashes from breaking. Respondent further represents that its Egg Complexion Soap will benefit the complexion through the presence of eggs therein and that such product purifies the skin.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact the primary purpose of the use of face powder is to absorb excess moisture and to cover shiny skin. Such absorption of excess moisture results from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in bulk of such powder. Face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as a result of any swelling of particles within the pores. The representations made by the respondent with reference to the pre-expanded quality of its face powder and its moisture-proof qualities has no scientific basis and the use of said product will not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or balsamizing process. Respondent's preparation Eye Lash Grower Cream has no properties which would be of any value in promoting the growth of eye lashes and has no effect upon the growth of eye lashes, and its Eye Lash Cream and Darkener will not make the lashes dark, silky, or luxuriant looking, or prevent them from breaking. The egg content of Egg Complexion Soap is of no value to and will not benefit

Findings

33 F. T. C.

the complexion. Said soap will not purify the skin in excess of cleansing the surface thereof.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, 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 all of such statements and representations are true, and to induce a substantial portion of the purchasing public to purchase respondent's cosmetic preparations because of such erroneous and mistaken belief engendered as above set forth.

PAR. 7. The aforesaid acts and practices of 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 the 21st day of August 1940, issued, and on the 22d day of August 1940, served its complaint in this proceeding upon said respondent herein, Helena Rubinstein, Inc., a corporation, charging it with using unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On the 9th day of November 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondent and Richard P. Whiteley, Assistant Chief Counsel for the Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the filing of a report upon the evidence by the trial examiner, the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same 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 Helena Rubinstein, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 715 Fifth Avenue in the city of New York, in said State.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture and in the sale and distribution of certain cosmetic preparations, to wit, "Town and Country Face Powder," "Eye Lash Grower Cream," "Eye Lash Cream and Darkener," and "Egg Complexion Soap." Respondent sells its said products to purchasers situated in various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the State of New York to the 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 its said products in commerce among and between the various States of the United States and in the District of Columbia.

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 the United States mails and by various 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 said products; and 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 said products 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 periodicals, and other advertising literature, are the following.

HELENA RUBINSTEIN'S NEW
TOWN & COUNTRY FACE POWDER
A Really Different Powder

* * * Mme. Rubinstein * * * realized the risks that women take with face powder * * * These risks * * * are: (1) Face Powder tends to draw out and absorb the natural moisture of the skin—leaving the skin

Findings

33 F. T. C.

dry and parched, susceptible to lines and premature aging. (2) When a powder particle, absorbs precious skin moisture, it swells—as a grain of wheat swells in contact with water. Particles resting in the opening of a pore will press, as they swell against the walls of the pore—eventually causing enlarged pores, blackheads—even blemishes.

Mme. Rubinstein has felt * * * the only way to eliminate these dangers completely was to create a powder on an entirely new principle—a moisture-resisting principle. * * *

Mme. Rubinstein conceived a second brilliant process. Town and Country Face Powder, before it is balsamized, is pre-expanded! It is exposed to compressed moisture so that every particle absorbs all the moisture it can hold. In other words, it is expanded fully before it touches your skin. Next, it is reduced to exquisite fineness—and then balsamized. The result is a powder that is proof against drying the skin * * * enlarging the pores, * * * the onslaughts of weather—and permanent * * *.

Face Powder * * * the balsamizing and pre-expanding processes to make it moisture-proof.

Helena Rubinstein announces * * * all of her face powders are made moisture-proof. * * * “Balsamized” and “Pre-expanded”.

Eye Lash Grower * * * for lovely long lashes.

Eye Lash Cream and Darkener—makes the lashes dark and silky. Prevents them from breaking.

Egg Complexion Soap. * * * Purifies the skin. Made of eggs and soothing oils.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of respondent's said cosmetic preparations and their effectiveness when used, respondent directly and by implication represented that face powder generally tends to draw out and absorb the natural moisture of the skin, making the skin dry, parched, and susceptible to lines and premature aging; that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads and blemishes; that respondent's cosmetic preparation “Town and Country Face Powder” is moistureproof and does not absorb natural moisture of the skin, or clog the pores; that the use of this preparation will prevent the skin from becoming dry and parched, prevent lines and premature aging and prevent or remove enlarged pores, blackheads, and blemishes. Respondent further represented that its cosmetic preparation Eye Lash Grower Cream has special properties which will be effective in causing eyelashes to grow, and that its Eye Lash Cream and Darkener has special properties which will be effective in preventing eyelashes from breaking. Respondent further represented that its Egg Complexion Soap will benefit the complexion through the presence of eggs therein and that such product purifies the skin.

646

Order

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the primary purpose of the use of face powder is to absorb excess moisture and to cover shiny skin. Such absorption of excess moisture results from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in bulk of such powder. Face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as a result of any swelling of particles within the pores. The representations made by the respondent with reference to the pre-expanded quality of its face powder and its moisture-proof qualities have no scientific basis and the use of said product will not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or balsamizing process. Respondent's preparation Eye Lash Grower Cream has no properties which would be of any value in promoting the growth of eyelashes, and has no effect upon the growth of eyelashes, and its Eye Lash Cream and Darkener will not prevent them from breaking. The egg content of Egg Complexion Soap is of no value to and will not benefit the complexion. Said soap will not purify the skin in excess of cleansing the surface thereof.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public to purchase respondent's cosmetic preparations because of such erroneous and mistaken belief engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of 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, the answer of respondent, and a stipulation as to the facts entered into between respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve

upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Helena Rubinstein, 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 cosmetic preparations designated Town and Country Face Powder, Eye Lash Grower Cream, and Eye Lash Cream and Darkener, or any preparations of substantially similar composition 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:

(a) Represents, directly or through inference, that said preparation Town and Country Face Powder does not absorb natural moisture of the skin, or that it is moisture-proof; that it will prevent lines or premature aging, or that it will prevent or remove enlarged pores, blackheads, or blemishes;

(b) Uses the word "Grower," or any other word of similar import, to designate or describe said preparation Eye Lash Grower Cream, or otherwise represents that said preparation has any effect upon the growth of eyelashes;

(c) Represents, directly or through inference, that said preparation Eye Lash Cream and Darkener will prevent eyelashes from breaking;

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, its officers, representatives, agents, and employees, as aforesaid, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's soap product designated Egg Complexion Soap, or any product of substantially similar composition or possessing substantially similar properties, whether

646

Order

sold under the same name or under any other name, do forthwith cease and desist from:

Representing that the egg content of said soap has any beneficial effect upon the skin, or that said soap purifies the skin in excess of cleansing the surface 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.

Complaint

33 F. T. C.

IN THE MATTER OF
STETSON CHINA 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 4477. Complaint, Mar. 26, 1941—Decision, July 14, 1941

Where a corporation engaged in the interstate sale and distribution of dinnerware, including chinaware and glassware; by means of cards, letters, circulars, and other printed and written matter circulated generally among dealers and supplied to them for distribution to the purchasing public; directly or by implication—

- (a) Represented that certain of its said products were a reproduction of expensive imported chinaware; and
- (b) Represented that the prices at which such products were offered for sale represented special or reduced prices which were much less than those at which they were customarily offered and sold, through such statements as "Lady Evette Set. You may have one of these test sets at only \$9.95 for the entire 54 pieces, service for 8. This set was made to retail regularly at \$16.75. The complete 100-piece service is being specially priced at \$19.95 which is \$10 less than the regular retail price";

The facts being said chinaware was not a reproduction of imported or expensive chinaware, but was of ordinary grade and quality, and the prices at which they were offered for sale were the regular retail prices at which they were customarily offered and sold; \$9.95 was the customary retail price of the set in question which never sold for \$16.75, and the price of \$19.95 on the larger set did not represent any saving, but was the customary retail price;

With the effect of misleading and deceiving a substantial portion of purchasing public with respect to its products, and of placing in the hands of uninformed or unscrupulous dealers a means whereby they were enabled to mislead and deceive such public, and of causing substantial portion thereof to purchase substantial quantities of said products because of the erroneous belief thus engendered:

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.

Mr. B. G. Wilson for the Commission.

Mr. J. L. Kaufmann, of Chicago, Ill., 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 Stetson China Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public