

Syllabus

IN THE MATTER OF
F. W. JOHNSON, TRADING AS KEMICO

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

Docket 4505. Complaint, May 17, 1941—Decision, Aug. 6, 1941

Where an individual engaged in interstate sale and distribution of formulas for various medicinal and cosmetic preparations; in describing the therapeutic properties and value of the preparations or products compounded from such formulas; by means of circulars, leaflets, and other advertising literature, directly or by implication—

- (a) Falsely represented that the "Greaseless Massage Cream" and "Lemon Greaseless Cream" products of such formulas, respectively (1) constituted a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections, and (2) was of substantial therapeutic value as a skin treatment, and helped to promote a clear, healthy skin;
- (b) Falsely represented that the "Catarrhal Cream," "Vapor Inhalant," and "Nasal Jelly" products of such formulas, respectively, constituted competent and effective treatments for (1) nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores, (2) croup, head colds, headaches and catarrh, and (3) head colds, catarrh, and similar conditions;
- (c) Represented that the "Hair-Lay Cream" product promoted the growth of hair, relieved itching scalp and helped to prevent dandruff and falling hair, that "Dandruff Remedy" for dandruff and the "Beauty Balm" was of substantial therapeutic value in improving the complexion, helped to eliminate wrinkles, and had a tonic effect upon the skin, and his "Debest Skin Treatment" constituted a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin;

Facts being said "Hair-Lay" formula contained no active therapeutic agent; use of word "Remedy" for said dandruff formula was false and misleading, it having no therapeutic value in excess of affording temporary relief from itching symptom associated with said condition and of assisting in temporary removal of dandruff scales; and said formulas or preparations made therefrom would not accomplish the results, and did not possess the properties, claimed therefor;

- (d) Represented that "Teeth Whitener Formula A" and "Teeth Whitener Formula B" products would remove tartar, stains, and other discolorations from the teeth, and were entirely safe for use;

Facts being products from said formulas would not accomplish such results, and preparation made from the former was not entirely safe for use, in that it contained precipitated chalk which might severely scratch the enamel of the teeth;

- (e) Falsely represented that the "Pine Oil Nasal Spray" and "Menthol and Camphor Nasal Spray" products were competent and effective treatments for head colds, catarrh, and similar conditions; and that they were entirely safe for continued use, notwithstanding they contained sufficient light

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mineral oil to cause oil pneumonia, particularly in children, if used over long periods; and

- (f) Falsely represented that "Nose Inhalant" product was safe for use, when in fact it contained sufficient chloroform to cause anesthesia and, in some instances, complete circulatory failure, and continued use thereof might also cause degenerative changes in the liver;

With tendency and capacity, through use of such misrepresentations and failure to disclose possible harmful effects of said preparations, to mislead and deceive a substantial number of prospective purchasers of said formulas and cause them to buy substantial quantities of his formulas, and with effect of placing in the hands of uninformed or unscrupulous purchasers means of misleading and deceiving members of the purchasing public:

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. Joseph C. Fehr for the Commission.

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 F. W. Johnson, individually and trading under the name Kemico, 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, F. W. Johnson, is an individual trading under the name Kemico and having his principal office and place of business located in the city of Park Ridge, in the State of Illinois. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain formulas for various medicinal and cosmetic preparations.

Respondent causes his said formulas, when sold, to be sent through the United States mails and by other means 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 his said formulas in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said formulas, the respondent has made many false and misleading representations with respect to his said formulas and with respect to the therapeutic properties and values of the preparations compounded from said formulas,

such representations being made by means of circulars, leaflets, and other advertising literature circulated and distributed among prospective purchasers of said formulas. Through said false and misleading representations, distributed and circulated as aforesaid, the respondent represents and has represented, directly or by implication:

(a) That respondent's preparation *Greaseless Massage Cream* is a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections.

(b) That respondent's preparation *Lemon Greaseless Cream* is of substantial therapeutic value as a skin treatment, and that it helps to promote a clear, healthy skin.

(c) That respondent's preparation *Catarrhal Cream* is a competent and effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores.

(d) That respondent's preparation *Hair-Lay Cream* promotes the growth of hair, relieves itching scalp, and helps to prevent dandruff and falling hair.

(e) That respondent's preparation *Dandruff Remedy* is a cure or remedy for dandruff.

(f) That respondent's preparation *Vapor Inhalant* is a competent and effective treatment for croup, head colds, headaches, and catarrh.

(g) That respondent's preparation *Beauty Balm* is of substantial therapeutic value in improving the complexion, that it helps to eliminate wrinkles, and that it has a tonic effect upon the skin.

(h) That respondent's preparation *Debest Skin Treatment* is a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin.

(i) That respondent's preparation *Nasal Jelly* is a competent and effective treatment for head colds, catarrh, and similar conditions.

(j) That respondent's preparations *Teeth Whitener Formula A* and *Teeth Whitener Formula B* will remove tartar, stains, and other discolorations from the teeth, and that said preparations are entirely safe for use.

(k) That respondent's preparations *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* are competent and effective treatments for head colds, catarrh, and similar conditions, and that said preparations are entirely safe for continued use.

(l) That respondent's preparation *Nose Inhalant* is safe for use.

PAR. 3. The aforesaid representations, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, false, and misleading. In truth and in fact:

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(a) Respondent's preparation *Greaseless Massage Cream* is not a cure or remedy, or a competent or effective treatment, for sallowness or roughness of the skin, or for pimples or other skin imperfections.

(b) Respondent's preparation *Lemon Greaseless Cream* does not possess any therapeutic value as a skin treatment, nor does it help to promote a clear or healthy skin.

(c) Respondent's preparation *Catarrhal Cream* does not constitute a competent or effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, or throat troubles generally, nor is it a competent or effective treatment for burns, cuts, or sores.

(d) Respondent's preparation *Hair-Lay Cream* contains no active therapeutic agent. It is wholly incapable of promoting the growth of hair or relieving itching scalp, and is of no assistance in preventing dandruff or falling hair.

(e) Respondent's preparation *Dandruff Remedy* is not a cure or remedy for dandruff, and the use of the word "Remedy" to designate said preparation is false and misleading. Said preparation is of no therapeutic value in the treatment of dandruff in excess of affording temporary relief from the itching symptom associated with dandruff and assisting in the temporary removal of dandruff scales.

(f) Respondent's preparation *Vapor Inhalant* is not a competent or effective treatment for croup, head colds, headaches, or catarrh.

(g) Respondent's preparation *Beauty Balm* is wholly incapable of improving the complexion. It does not help to eliminate wrinkles, nor does it have any tonic effect upon the skin.

(h) Respondent's preparation *Debest Skin Treatment* is not a competent or effective treatment for eczema or for redness, roughness, or scaling of the skin.

(i) Respondent's preparation *Nasal Jelly* is not a competent or effective treatment for head colds, catarrh, or any similar conditions.

(j) Respondent's preparations *Teeth Whitener Formula A* and *Teeth Whitener Formula B* will not remove tartar, stains, or other discolorations from the teeth.

Moreover, said preparation *Teeth Whitener Formula A* is not entirely safe for use, as it contains precipitated chalk which may severely scratch the enamel of the teeth.

(k) Respondent's preparations *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* are not competent or effective treatments for head colds, catarrh, or similar conditions.

Moreover, said preparations are not entirely safe for continued use, as they contain light mineral oil in a quantity sufficient to

cause oil pneumonia, particularly in the case of children, if said preparations are used over long periods of time.

(7) Respondent's preparation *Nose Inhalant* is not safe for use, as it contains chloroform in a quantity sufficient to cause anesthesia, and in some instances complete circulatory failure. The continued use of said preparation may also cause degenerative changes in the liver.

PAR. 4. The use by the respondent of said false and misleading representations, and the failure of respondent to disclose the harmful effects which may result from the use of certain of said preparations, have the tendency and capacity to cause a substantial number of prospective purchasers of said formulas to believe that the preparations represented by said formulas possess therapeutic properties and values which they do not in fact possess, and that certain of said preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such prospective purchasers to purchase substantial quantities of respondent's said formulas as a result of such erroneous and mistaken belief.

The acts and practices of the respondent serve also to place in the hands of uninformed or unscrupulous purchasers of said formulas means and instrumentalities whereby such parties are enabled to mislead and deceive members of the purchasing public.

PAR. 5. The 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 May 17, 1941, issued and on May 21, 1941, served its complaint in this proceeding upon respondent, F. W. Johnson, individually and trading under the name Kemico, charging him 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said

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complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. W. Johnson, is an individual trading under the name Kemico and having his principal office and place of business located in the city of Park Ridge, in the State of Illinois. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain formulas for various medicinal and cosmetic preparations.

Respondent causes his said formulas, when sold, to be sent through the United States mails and by other means 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 his said formulas in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said formulas, the respondent has made many false and misleading representations with respect to his said formulas and with respect to the therapeutic properties and values of the preparations compounded from said formulas, such representations being made by means of circulars, leaflets, and other advertising literature circulated and distributed among prospective purchasers of said formulas. Through said false and misleading representations, distributed and circulated as aforesaid, the respondent represents and has represented, directly or by implication:

(a) That the preparation compounded from respondent's *Greaseless Massage Cream* formula is a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections.

(b) That the preparation compounded from respondent's *Lemon Greaseless Cream* formula is of substantial therapeutic value as a skin treatment, and that it helps to promote a clear, healthy skin.

(c) That the preparation compounded from respondent's *Catarrhal Cream* formula is a competent and effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores.

(d) That the preparation compounded from respondent's *Hair-Lay Cream* formula promotes the growth of hair, relieves itching scalp, and helps to prevent dandruff and falling hair.

(e) That the preparation compounded from respondent's *Dandruff Remedy* formula is a cure or remedy for dandruff.

(f) That the preparation compounded from respondent's *Vapor Inhalant* formula is a competent and effective treatment for croup, head colds, headaches, and catarrh.

(g) That the preparation compounded from respondent's *Beauty Balm* formula is of substantial therapeutic value in improving the complexion, that it helps to eliminate wrinkles, and that it has a tonic effect upon the skin.

(h) That the preparation compounded from respondent's *Debest Skin Treatment* formula is a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin.

(i) That the preparation compounded from respondent's *Nasal Jelly* formula is a competent and effective treatment for head colds, catarrh, and similar conditions.

(j) That the preparations compounded from respondent's *Teeth Whitener Formula A* and *Teeth Whitener Formula B* formulas will remove tartar, stains, and other discolorations from the teeth, and that said preparations are entirely safe for use.

(k) That the preparations compounded from respondent's *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* formulas are competent and effective treatments for head colds, catarrh, and similar conditions, and that said preparations are entirely safe for continued use.

(l) That the preparation compounded from respondent's *Nose Inhalant* formula is safe for use.

PAR. 3. The aforesaid representations, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, false, and misleading. In truth and in fact:

(a) The preparation compounded from respondent's *Greaseless Massage Cream* formula is not a cure or remedy, or a competent or effective treatment, for sallowness or roughness of the skin, or for pimples or other skin imperfections.

(b) The preparation compounded from respondent's *Lemon Greaseless Cream* formula does not possess any therapeutic value as a skin treatment, nor does it help to promote a clear or healthy skin.

(c) The preparation compounded from respondent's *Catarrhal Cream* formula does not constitute a competent or effective treat-

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ment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, or throat troubles generally, nor is it a competent or effective treatment for burns, cuts, or sores.

(d) The preparation compounded from respondent's *Hair-Lay Cream* formula contains no active therapeutic agent. It is wholly incapable of promoting the growth of hair or relieving itching scalp, and is of no assistance in preventing dandruff or falling hair.

(e) The preparation compounded from respondent's *Dandruff Remedy* formula is not a cure or remedy for dandruff, and the use of the word "Remedy" to designate said preparation is false and misleading. Said preparation is of no therapeutic value in the treatment of dandruff in excess of affording temporary relief from the itching symptoms associated with dandruff and assisting in the temporary removal of dandruff scales.

(f) The preparation compounded from respondent's *Vapor Inhalant* formula is not a competent or effective treatment for croup, head colds, headaches, or catarrh.

(g) The preparation compounded from respondent's *Beauty Balm* formula is wholly incapable of improving the complexion. It does not help to eliminate wrinkles, nor does it have any tonic effect upon the skin.

(h) The preparation compounded from respondent's *Debest Skin Treatment* formula is not a competent or effective treatment for eczema or for redness, roughness, or scaling of the skin.

(i) The preparation compounded from respondent's *Nasal Jelly* formula is not a competent or effective treatment for head colds, catarrh, or any similar conditions.

(j) The preparations compounded from respondent's *Teeth Whitener Formula A* and *Teeth Whitener Formula B* formulas will not remove tartar, stains, or other discolorations from the teeth.

Moreover, said preparation *Teeth Whitener Formula A* is not entirely safe for use, as it contains precipitated chalk which may severely scratch the enamel of the teeth.

(k) The preparations compounded from respondent's *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* formulas are not competent or effective treatments for head colds, catarrh, or similar conditions.

Moreover, said preparations are not entirely safe for continued use, as they contain light mineral oil in a quantity sufficient to cause oil pneumonia, particularly in the case of children, if said preparations are used over long periods of time.

(1) The preparation compounded from respondent's *Nose Inhalant* formula is not safe for use, as it contains chloroform in a quantity sufficient to cause anesthesia, and in some instances complete circulatory failure. The continued use of said preparations may also cause degenerative changes in the liver.

PAR. 4. The use by the respondent of said and false misleading representations, and the failure of respondent to disclose the harmful effects which may result from the use of certain of said preparations, have the tendency and capacity to cause a substantial number of prospective purchasers of said formulas to believe that the preparations represented by said formulas possess therapeutic properties and values which they do not in fact possess, and that certain of said preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such prospective purchasers to purchase substantial quantities of respondent's said formulas as a result of such erroneous and mistaken belief.

The acts and practices of the respondent serve also to place in the hands of uninformed or unscrupulous purchasers of said formulas means and instrumentalities whereby such parties are enabled to mislead and deceive members of the purchasing public.

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 and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the fact and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, F. W. Johnson, individually and trading under the name Kemico, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his said formulas for medicinal and cosmetic preparations, or any other formulas for the compounding of medicinal

or cosmetic preparations in which are listed substantially similar ingredients, or which possess substantially similar properties, whether sold under the name now employed by respondent or under any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) That the preparation compounded from respondent's *Greaseless Massage Cream* formula is a cure or remedy, or a competent or effective treatment for sallowness or roughness of the skin or for pimples or other skin imperfections.

(b) That the preparation compounded from respondent's *Lemon Greaseless Cream* formula possesses therapeutic value as a skin treatment or that it helps to promote a clear or healthy skin.

(c) That the preparation compounded from respondent's *Catarrhal Cream* formula constitutes a competent or effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, or throat troubles generally, or that it is a competent or effective treatment for burns, cuts, or sores.

(d) That the preparation compounded from respondent's *Hair-Lay Cream* formula will promote the growth of hair or relieve itching scalp, or that it has any value in preventing dandruff or falling hair.

(e) Through the use of the word "Remedy" or any other word of similar import or meaning in the trade name of respondent's formula or in any other manner that the preparation compounded from respondent's *Dandruff Remedy* formula is a cure or remedy for dandruff, or that it has any therapeutic value in the treatment of dandruff in excess of affording temporary relief from the symptom of itching associated with dandruff and assisting in the temporary removal of dandruff scales.

(f) That the preparation compounded from respondent's *Vapor Inhalant* formula is a competent or effective treatment for croup, head colds, headaches, or catarrh.

(g) That the preparation compounded from respondent's *Beauty Balm* formula will help to eliminate wrinkles, improve the complexion, or have any tonic effect upon the skin.

(h) That the preparation compounded from respondent's *Debest Skin Treatment* formula is a competent or effective treatment for eczema, or for redness, roughness, or scaling of the skin.

(i) That the preparation compounded from respondent's *Nasal Jelly* formula is a competent or effective treatment for head colds, catarrh, or any similar conditions.

(j) That the preparations compounded from respondent's *Teeth Whitener Formula A* or *Teeth Whitener Formula B* formulas will remove tartar stains or other discolorations from the teeth, or that the preparation compounded from *Teeth Whitener Formula A* is safe for use.

(k) That the preparations compounded from respondent's *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* formulas are competent or effective treatments for head colds, catarrh, or similar conditions, or that said preparations are entirely safe for continued use.

(l) That the preparation compounded from respondent's *Nose Inhalant* formula is safe for continued use.

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

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IN THE MATTER OF
UCO FOOD CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4277. Complaint, Aug. 28, 1940—Decision, Aug. 7, 1941

Where a corporation engaged in the purchase, sale, and distribution of food products at wholesale—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts in connection with the purchase of its requirements in interstate commerce, through, usually, purchasing commodities at prices lower than those at which they were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers:

Held, That such acts and practices were in violation of the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Einhorn & Schachtel, of Philadelphia, Pa., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Uco Food Corporation, is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business located at 506-510 Frelinghuysen Avenue, Newark, N. J. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.