

Syllabus

IN THE MATTER OF
POND'S EXTRACT COMPANYCOMPLAINT, FINDINGS, AND ORDER, IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3427. Complaint, May 18, 1938—Decision, Sept. 10, 1941*

Where a corporation engaged in manufacture, and in competitive interstate sale and distribution, of a line of cosmetics, including its liquefying cream, cold cream, vanishing cream, and "Danya Lotion," each ounce of which contained, since sometime in 1938, 3100 units of vitamin A and 165 units of vitamin D; in numerous advertisements in magazines of general circulation, and in radio programs—

- (a) Represented that its creams were deep-reaching, going right to the user's underskin, which was thereby stirred to vigorous action and kept active, and that effect of use of one of its creams was to soften and loosen impurities within the skin, lifting them from the pores and thereby liberating the underskin and leaving it free to function actively again; and
- (b) Represented that use of its said creams appeared to wipe away lines and blemishes, giving the skin a fresh, smooth appearance, and not only cleansing it but keeping away lines and blackheads;

Facts being the only effect of the use of said creams would be an emollient smoothing and cleansing action on the surface of the skin, the massaging of cold cream into the skin affecting the so-called under- or true skin to an extremely small degree only, and above statement as to the softening, loosening and lifting of dirt, etc., from within the skin, and liberating of the user's underskin, was incorrect; skin blemishes may be due to faulty diet or other causes in which use of cold creams is of no benefit, and lines and blemishes cannot be wiped away by use of the creams, and while use of cold cream may postpone time when wrinkles will be quite noticeable, such use alone will not retard appearance thereof; and

- (c) Made representations and claims, since about July 1938, to the effect that the vitamin content of its creams, which it then described as "New Skin Vitamin Creams," nourished the skin of the user, that when it found a way to put this "skin vitamin" in its cream it gave to women an important new scientific aid to skin care, and that through use of its said lotion, the skin vitamin was put into and stored up in the hands of the user;

Facts being that, while vitamin A, when included in a suitable vehicle, may be absorbed by the skin of a human being in physiologically significant quantities, to accomplish such result enormous quantities of the vitamin must be added to the vehicle and applied to the skin for several hours, accompanied by considerable massaging, due to the relatively small absorption compared with oral administration, proper treatment for a deficiency; only in very small proportion of cases is a harsh, dry condition of the skin due to vitamin A deficiency, in which event a physician is needed; the most its creams could accomplish would be to postpone the day when lines and wrinkles would be quite noticeable; while application of its creams might be helpful in keeping the skin smooth and preventing excessive dryness, the vitamin A content would not increase said creams' emollient

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properties, and it was not warranted in claiming that such content constituted an important new aid to skin care, or that vitamin A was the skin vitamin, since its activity was not limited to the skin, and its effect thereon was of minor consequence;

With effect of misleading and deceiving a substantial portion of the purchasing public, and of inducing them to purchase substantial quantities of such cosmetics in the mistaken belief that its representations were true, and with result, through use of such representations, of diverting trade unfairly to it from its competitors:

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

As respects claim by seller of its so-called "New Skin Vitamin Creams," that their vitamin content nourished the skin of the user, that when seller found a way to put said "skin vitamin" in its creams it gave to women an important new scientific aid to skin care, and that through use of its said lotion the skin vitamin was put into and stored up in the hands of the user, (1) an experiment on a number of students, in which the vitamin was applied to the skin in enormous quantities and for several hours, was not acceptable evidence in support of seller's aforesaid advertising claims, since the conditions and treatment were too remote from customary method of use of its products to permit comparison, absorption, in any event, being of no consequence, since its action would be systemic and not local; (2) various case histories offered to support its contention would not permit conclusion that results there obtained justified claim made for its products, due to difference between the pathological conditions of the individuals concerned and their treatment, on the one hand, and the purpose for which its cosmetic products were offered to adult women of normal health, on the other; and (3) animal experiments submitted in support of its claims were equally inconclusive as approximating neither conditions under which cosmetics are offered to purchasing public, nor method of use by public.

Before *Mr. William C. Reeves* and *Mr. John J. Keenan*, trial examiners.

Mr. William L. Pencke for the Commission.

Blake & Voorhees, 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 Pond's Extract Co., 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 interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Pond's Extract Co. is a corporation created by and existing under the laws of the State of Delaware, with its principal

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offices and places of business located at 60 Hudson Street, New York, N. Y. and in Clinton, Conn.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of distributing and selling a line of cosmetics. Respondent causes said products when sold to be transported from its place of business in the State of New York or in the State of Connecticut to its customers located in 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 cosmetics sold and distributed by it 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 its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondent has made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, many representations concerning the character and nature of said cosmetics, and concerning the results obtained from their use. Among said representations made by respondent are the following:

See smooth glowing cheeks return as deep-reaching cream stirs under skin back to vigorous action.

A cream that goes deep and keeps your under skin alive.

Pond's Cold Cream goes right to the underskin.

As you pat it into your skin, you feel the circulation freshened, stimulated. Dirt, make-up, all sorts of impurities from within the skin itself are softened, loosened, lifted from the pores. Your underskin is liberated, free to function actively again.

Take a look in your mirror, after a thorough, deep-skin cleansing and stimulation with this cream. How much fresher and clearer your skin is! With just one treatment!

Pond's Cold Cream is pure, germ-free. Use it daily. Every night before retiring to flush impurities away, free the skin, stimulate its under layers.

Remember, the healthy, vigorous underskin Pond's Cold Cream gives you is a sure means to the lovely, satiny outer skin every woman wants.

Pond's Cold Cream seems to wipe away lines and blemishes—gives the skin a fresh, smooth look.

Pond's not only cleans. It keeps away lines, blackheads and such.

The same way with practically all common skin faults. Blemishes, blackheads, sagging tissues—all start deep in your underskin where tiny glands, blood vessels, nerves, fibres begin to fail. Skin faults go—new ones can't

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start. What your skin needs is a cream that does more than cleanse—a “deep skin” cream that goes right down to the roots of those lines and blemishes—and fights them where they start. That’s exactly what Pond’s Cold Cream does.

Now you can get this wonderful “skin vitamin” in every jar of Pond’s Cold Cream. Every time you pat in the new Pond’s Cold Cream you’re patting in some of the active “skin-vitamin” nourishing your skin.

Pond’s new “skin-vitamin” Cold Cream is a great advance—a really scientific beauty care. It smooths out lines marvelously—makes texture seem finer. I’ll never be afraid of sports or travel drying my skin, with this new cream to put the “skin-vitamin” back into it.

So when Pond’s found a way to put this “skin-vitamin” in Pond’s Creams, they certainly gave women an important new scientific aid to skin care.

When you eat foods containing this vitamin, one of its special functions is to help keep skin tissue healthy. But when this vitamin is applied right to the skin, it aids the skin more directly.

But there’s an easy way to get rid of these little powder catchers. Just melt them away. You can do this instantly with a Keratolytic cream, Pond’s Vanishing Cream. The moment it touches your skin, those rough dead cells on top melt off. And that uncovers the new young cells underneath.

DANYA—Pond’s Cream Lotion

HANDS STORE UP ITS ACTIVE “SKIN-VITAMIN”

Latest research on vitamins as they affect the skin has brought about a new kind of skin care! A new type of preparation has been developed that will increase the stores of “skin-vitamin” in hands * * *

It brings to your hands the precious “skin-vitamin” which helps to renew skin tissue * * *

All of said statements, together with similar statements appearing in respondent’s advertising literature purport to be descriptive of respondent’s products and of their effectiveness in use. In all of its advertising literature and through other means respondent, directly or by inference, through statements and representations herein set out and other statements of similar import and effect, represents: that its cold cream is deep-reaching and stirs the underskin to vigorous action; that it goes deep and keeps the underskin alive and healthy; that the patting of Pond’s Cold Cream on the skin will cause dirt, make-up and all kinds of impurities within the skin itself to be softened, loosened and lifted from the pores; that it is a sure means to a lovely, satiny outer skin; that it is germ-free; that it will wipe away and keep away facial lines, blemishes and skin faults and will prevent new ones from starting; that it nourishes the skin, smooths out lines and gives the skin a finer texture; that respondent, in finding a way to put the so-called skin-vitamin in its creams, has given women an important new scientific aid to skin care; that when vitamins are applied right to the skin, they aid the skin more directly than when vitamins are taken by way of the mouth; that Pond’s Vanishing Cream melts away rough dead cells on the surface of the skin and uncovers the new young skin cells underneath; that “Danya,” Pond’s

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Cream Lotion, enables hands to store up its so-called active skin-vitamin, and that this product has brought about a new kind of skin care.

PAR. 5. The representations made by respondent with respect to the nature and effect of its products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, Pond's Cold Cream is not a deep-reaching cream, nor does it stir the underskin back to vigorous action; it does not go deep and keep the underskin alive and healthy. The patting of Pond's Cold Cream on the skin will not cause dirt, make-up, and all sorts of impurities within the skin itself to become softened, loosened, and lifted from the pores. It will not give one a healthy vigorous underskin, or provide a sure means to a lovely, satiny outer skin. It is not germ-free. Pond's Cold Cream will not wipe away and keep away facial lines, blemishes, and skin faults nor prevent new ones from starting. Pond's Cold Cream does not nourish the skin, nor does it smooth out lines or make texture finer. Respondent, in finding a way to put the so-called skin-vitamin in its creams, did not give women an important new scientific aid to skin care, nor does the application of any vitamin to the skin in this way help the skin more directly than when such vitamin is taken by way of the mouth.

Pond's Vanishing Cream does not melt away rough dead cells on the surface of the skin, nor does it uncover the new young skin cells underneath.

"Danya," Pond's Cream Lotion, does not enable hands to store up its so-called active skin-vitamin, nor has this product brought about a new kind of skin care.

The true facts are that the ingredients of Pond's Cold Cream are not absorbed by or through the skin. While scientific literature contains no reference to a skin vitamin, it is possible that some types of vitamins may be absorbed through the skin. However, if vitamins are absorbed through the skin, they will not beneficially affect the local condition of the skin where applied. Any vitamin deficiency can be more scientifically treated by way of diet and by the introduction of vitamins and vitamin concentrates by way of the mouth.

PAR. 6. There are, among respondent's competitors, many who manufacture, distribute, and sell cosmetics, who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designing or describing its products, and their effectiveness when used, as hereinabove set out, was and is calculated to, and has had and now has, a tendency and

capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling cosmetics, and who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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 18, 1938, issued its complaint in this proceeding and subsequently caused it to be served upon the respondent, Pond's Extract Co., charging respondent with the use of unfair methods of competition in commerce and 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 an answer thereto by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of said complaint, by Blake and Voorhees, attorneys for the respondent, before William C. Reeves and John J. Keenan, examiners of the Commission theretofore duly designated by it. Also, stipulations as to certain of the material facts were entered into by and between counsel for the Commission and counsel for the respondent, which stipulations were set out in the record. The testimony was also reduced to writing and filed in the office of the Commission, together with numerous pieces of documentary evidence received as exhibits. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and answer thereto, the stipulations as to certain of the facts, the testimony and other evidence, briefs by counsel for the Commission and counsel for the respondent and the oral argument of the respective counsel, and the Commission, hav-

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ing duly considered the matter and being 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, Pond's Extract Co., is a corporation organized under the laws of the State of Delaware, with principal places of business at 60 Hudson Street, New York, N. Y., and at Clinton, Conn. For a number of years respondent has been engaged in the business of the manufacture, sale and distribution of a line of cosmetics. Respondent has caused the cosmetics manufactured by it to be transported, when sold, from its places of business in the States of New York and Connecticut through and into various other States of the United States to the respective purchasers thereof. In the course and conduct of its business respondent has been and is now in substantial competition with various persons and partnerships and with other corporations also engaged in the manufacture, sale, and distribution, or the sale and distribution in commerce between and among various States of the United States and in the District of Columbia of cosmetics intended to be used, and used, for the same general purposes.

PAR. 2. Respondent in the course of its business manufactures and sells what it describes as a liquefying cream, a cold cream, a vanishing cream and a lotion, which it labels and describes as "Danya Lotion." Each ounce of these creams and the lotion, since some time in the year 1938, has contained 3,100 units of vitamin A and 165 units of vitamin D. One ounce of the cream when used as directed will last the average user approximately 1 week. Prior to the date in 1938 the creams and the lotion contained no vitamins, and since the vitamins have been added advertisements of the respondent have contained the statement that the formula for Pond's Cold Cream has not been changed in any way apart from the addition of these vitamins. No claims are made in the advertisements which respondent has caused to be published concerning the efficacy of the vitamin D content of the creams and lotion.

PAR. 3. In the course of its business and for the purpose of enhancing the sale of the cosmetics manufactured by it, respondent in the years 1935, 1936, 1937, and 1938, caused numerous advertisements to be published in various magazines and other periodicals having general circulation throughout the United States. Respondent also caused various radio programs to be broadcast advertising its products. In these advertisements and radio programs numerous claims

and representations were made concerning the nature of such cosmetics and the benefits that might be derived by their use, among which were claims and representations to the effect: That each of the creams was deep-reaching and when applied went right to the underskin of the user, and as a result the underskin was stirred to vigorous action and kept active; that when one of the creams was patted into the skin of a user she felt the circulation freshened and stimulated, and dirt, makeup and all sorts of impurities within the skin were softened, loosened, and lifted from the pores, and as a result the underskin was liberated and left free to function actively again; that the use of such creams seemed to wipe away lines and blemishes and give to the skin a fresh, smooth appearance; that by the use of such creams the skin was not only cleansed but lines and blackheads were kept away; that as a result of the use of such creams skin faults go and new faults cannot start. Since about July 1938, attention has been called in such advertisements to the fact that the creams manufactured by respondent contained what was described as a skin vitamin, and such creams were described as Pond's New Skin Vitamin Creams, and claims and representations were made to the effect that the vitamin content of such creams had the effect of nourishing the skin of the user; that when respondent found a way to put this skin vitamin in its cream, it gave to women an important new scientific aid to skin care. Reference was made in some of such advertisements to the lotion manufactured and sold by respondent and described as Danya, for which the claim was made that by its use the skin vitamin was put into and stored up in the hands of the user. Other claims and representations of like import concerning said creams and lotion were contained in such advertisements and radio broadcasts.

PAR. 4. Respondent concedes that certain advertisements published in 1935 contained claims and representations which were unwarranted, including the statements that respondent's cold cream is deep reaching, goes right to the underskin, seems to wipe away lines and blemishes, and keeps away lines. With respect to the skin lotion containing vitamin A, the statements that the hands will store up active "skin" vitamins and that the lotion will increase the store of "skin" vitamins in the hands are also conceded to be unwarranted.

PAR. 5. The several experts introduced as witnesses by the Commission include a practicing physician who for over ten years has specialized in dermatology. He is a Diplomate of the Board of Dermatology and Syphilology and a member of other medical and dermatological societies. Another physician has been practicing medicine for 23 years, is specializing in venereal and skin diseases, has taught der-

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matology and cosmetics at Columbia University and other schools. He is the author of numerous papers and books, including works on cosmetic dermatology. A third witness is Chief Pharmacologist of the United States Public Health Service. He is the author of numerous scientific papers, and a specialist in vitamins, having written a number of papers on the subject of vitamins. Finally, there was introduced a physician who is a pathologist, clinical consultant and teacher at Harvard Medical School. He has been practicing medicine for over thirty years, is a member of all leading societies, has an international reputation, and is considered the leading authority in vitamin investigation. He has written and published hundreds of papers and books, including a number of papers on vitamin A. At least one of respondent's experts refers to him as being undoubtedly the leading figure in the vitamin field, and all of respondent's experts consider him an authority and greatly respect his opinions.

The respondent introduced as expert witnesses a research chemist who has been in this profession for 20 years and is a professor and director of the Department of Bio-chemistry of the New York Post Graduate Medical School. He performed a series of experiments on the absorption of vitamin A through the unbroken skin of rats. Another witness is an ophthalmologist who is devoted largely to research work and who performed on a number of students a test designed to support the claims made by respondent. There were also introduced three practicing dermatologists, all of whom are well known in their profession, members of leading societies and authors of numerous papers and books devoted mostly to skin diseases. Another witness is a pathologist, at present head of the laboratories at Grassland Hospital, who for 10 years investigated vitamin deficiencies, mainly among the Eastern races. Finally, a physician employed by a large manufacturer testified with respect to a certain form of dermatitis, an industrial disease prevalent among the employees of such company.

PAR. 6. The testimony shows, and the Commission finds, that certain of the claims and representations contained in respondent's advertisements and radio broadcasts are false and misleading and that others of such claims and representations are grossly exaggerated.

Cold cream massaged into the skin can affect the so-called under-skin or true skin only to an extremely small amount; and the cream alone would have no effect on the underskin, because whatever action it may have can only be a surface action. It is, therefore, incorrect to say that dirt, makeup and other impurities from within the skin are softened, loosened, and lifted from the pores, or that the under-skin of users will be liberated and left free to function. The only

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effect of the use of such creams will be an emollient, smoothing and cleansing action on the surface of the skin. Lines and blemishes cannot be wiped away by the use of the creams. Skin blemishes may be due to faulty diets or other causes in which the use of cold creams is not indicated and is of no beneficial effect. In fact, the use of cold cream in cases of blemishes and comedones may add to the clogging of the pores and may make such conditions worse. The age at which lines and wrinkles appear varies with different individuals, depending entirely upon the kind of skin they were born with, its texture and elastic tissue, and the use of cold cream alone will not retard the appearance of wrinkles but may postpone the time when they will be quite noticeable.

PAR. 7. The testimony shows, and the Commission finds, that while the authorities are not entirely in agreement as to the exact daily requirement of vitamin A for the average normal adult, it is conceded by all the experts testifying in the case to be approximately 3,000 international units. Only a gross deficiency of vitamin A will manifest itself in the appearance of the skin. There are other more specific symptoms of vitamin A deficiency. All of the witnesses are in agreement that if a deficiency exists, the proper treatment is to give large doses of vitamin A by mouth.

PAR. 8. The evidence shows, and the Commission finds, that vitamin A, when included in a suitable vehicle, may be absorbed by the skin of a human being in physiologically significant quantities. To accomplish this enormous quantities of the vitamin must be added to the vehicle and applied to the skin for several hours, accompanied by considerable massaging, for the reason that absorption is relatively small compared with oral administration. This was shown in an experiment on human subjects performed by the ophthalmologist called by the respondent. For the purpose of this experiment, a number of students were used. They were almost completely depleted of vitamin A, only about 150 units being given per day in the diet. The reason why they were not totally depleted was that total depletion might seriously affect their health. After carefully recorded dark adaptation tests had established definite deficiency, one group continued as a control, while the other group was given daily applications of 6 grams of ointment of petrolatum and lanoline fortified with 10,000 units of vitamin A per gram. This material was massaged into the skin of the abdomen for a period of 10 minutes, and thereafter covered and left in place for 6 hours. After the treatment had been continued for some length of time, the dark adaptation tests proved that vitamin A had been absorbed through the skin in substantial

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quantities. No changes in the appearance of the skin were noted by the observer.

The Commission finds that this experiment cannot be accepted in support of respondent's advertising claims, for the reason that the conditions and treatment are too remote from the customary method of use of respondent's products, to permit of comparison. The small amount of vitamin A in respondent's creams is in contact with the skin for such a short time that no effective absorption by the skin can take place, and even if the entire vitamin A content of the cream applied should be absorbed by the skin and then carried into the blood stream, the effect would be of no consequence for the reason that its action would be systemic and not local. The use of the creams as directed will not prevent lines, wrinkles, or blemishes, and will not cause existing lines or wrinkles to disappear. The most that could be accomplished by the use of such creams would be to postpone the day when lines and wrinkles would be quite noticeable. Only in a very small proportion of cases is a harsh, dry condition of the skin of a human being due to a vitamin A deficiency, and whenever a definite deficiency exists the case is one for a physician and not a cosmetician. Nor will the vitamin content of the lotion Danya, when used as directed, be absorbed by the skin and stored up in the hands of users.

Many case histories were described to support the contention of the respondent not only that vitamin A deficiency will manifest itself in a rough, dry and scaly appearance of the skin, but also that vitamin A applied locally will be effective in pathological conditions caused by wounds, burns, and industrial dermatitis. The evidence shows that the skin symptoms of gross vitamin A deficiency occurred among the Hindus and Chinese and other oriental races whose diet was deficient in vitamin A, and that such cases were treated by administering vitamin A orally in doses many hundred times larger than the quantity contained in respondent's cream. Respondent adduced reports on the treatment of occupational dermatitis. The cases deal exclusively with industrial diseases, and it appears from the illustrations accompanying the reports that the skin lesions of the hands were unusually severe, and that the treatment was by intramuscular injections containing large quantities of vitamin A. Other histories deal with radiodermatitis usually caused by excessive exposure to X-rays. The treatment in these cases was with vitamin D rather than A, the latter being added merely as a supplemental treatment. The Commission finds that the difference between the various pathological conditions of these individuals and their treatment on the one hand, and the purpose for which respondent's cosmetic products are offered to adult women of normal health on the other hand, is too great to

permit the conclusion that the results obtained in the former conditions justify the claims made for the products in the latter instance.

The evidence further shows, and the Commission finds, that the various other scientific reports of cases of vitamin deficiency do not support the advertising claims made by the respondent with respect to cosmetic improvements. One of the investigators reported that Avitaminosis A is considered rare in this country, particularly among adults; that geographic location, economic status, age, sex, and occupation are of the greatest importance in the study of deficiency diseases; that a slight vitamin A deficiency was manifested in a somewhat lowered dark adaptation long before any other symptoms were apparent; and that in those cases where a deficiency was manifested by the skin, such manifestation was in the skin on the thighs, arms, and shoulders only.

The animal experiments which were submitted in support of the respondent's claims are equally inconclusive, because they approximate neither the conditions under which the cosmetics are offered to the purchasing public nor the method of use by the public. All of the animals used were depleted of vitamin A until a severe deficiency set in, and varying quantities of vitamin A were massaged into the skin. The animals improved according to the quantity of vitamin A contained in each application and the length of time of the massage. The disappearance of the deficiency symptoms shows that the action of vitamin A was systemic and not local. While respondent has shown that there may be a topical effect indicated by the increased metabolism of the tissue cells, such effect is demonstrable only under the microscope and there is evidence that an increased metabolism was shown in rats which were not deficient. The animal experiments further show that the addition of 110 units of Vitamin A to the gram of ointment had no effect on the growth curve, substantially larger doses being required for demonstrable results, and it is further shown that the feedings of minute quantities of vitamin A were more effective than the large quantities used in the local application. In fact, one International Unit given by mouth produced a therapeutic effect.

While the application of respondent's creams may be helpful in keeping the skin smooth and may prevent excessive dryness of the skin, the vitamin A content will not increase the emollient properties of such creams. The experts testifying at the instance of the Commission are in agreement in holding that the use of cold creams fortified with vitamin A in the quantities contained in respondent's creams will have no effect whatever upon the skin. The respondent's experts, while giving it as their opinion that the skin

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should be benefited by the use of respondent's creams, were unable to testify that such effects are demonstrable or that the appearance of the skin is improved. The Commission, therefore, finds that respondent is not warranted in claiming that the vitamin content of the creams sold by it constitutes an important new aid to skin care. Nor is respondent warranted in claiming that vitamin A is the "skin" vitamin, for the reason that its activity is not limited to the skin, and its effects upon the skin in comparison with two other vitamins is of minor consequence.

PAR. 9. The claims and representations made by respondent concerning its cosmetics as set out herein, have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public, and as a result, such members of the public have been induced to purchase substantial quantities of such cosmetics in the mistaken belief that the claims and representations made by respondent are true. The use by respondent of such representations has, therefore, diverted trade unfairly to the respondent from its competitors.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of competitors of respondent, and constitute unfair methods of competition in commerce and 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, testimony and other evidence taken before William C. Reeves and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission and by Blake and Voorhees, counsel for the respondent, 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, Pond's Extract Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of its cosmetic creams and lotions,

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or any products of substantially similar composition or possessing substantially similar properties do forthwith cease and desist from:

1. Representing in any manner whatever that respondent's creams or lotions have any added beneficial value by reason of their vitamin A content.

2. Representing that respondent's cold cream causes lines, wrinkles or blemishes to disappear from the skin, or that it prevents the formation of lines, wrinkles or blemishes in the skin.

3. Representing that respondent's cold cream has any appreciable effect upon the underskin, that it liberates the underskin, or leaves the underskin free to function.

4. Representing that dirt, makeup, or other impurities below the surface of the skin may be softened, loosened, or lifted from the underskin through the use of respondent's cold cream.

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.

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IN THE MATTER OF

JERGENS-WOODBURY SALES CORPORATION

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

Docket 3438. Complaint, May 21, 1938—Decision, Sept. 10, 1941

Where a corporation engaged in competitive interstate sale and distribution of cosmetics and soaps, including its "Facial Soap" which contained 1453 International Units of Vitamin D per cake, and including among its cosmetics a facial powder, "Cleansing Cream," "Facial Cream," "Tissue Cream," and "Cold Cream," each ounce of which contained 150 International Units of said vitamin; by means of advertisements in newspapers and periodicals of general circulation, and radio broadcasts—

- (a) Represented that said facial powder and creams were sterile and germ-free, both before and during use, and guarded the skin against blemishes and infections from germs, which they killed under conditions of normal use; facts being no aseptic agent will guard against an infection of the skin, and representations to such effect and that such products would remain germ-free during use, and inhibit germ growth were, as shown by evidence, unwarranted and misleading;
- (b) Represented that the powder would spread farther than competitive powders, facts being that at least one competitive powder spread farther, and a number of others were equal to it in such respect; and
- (c) Represented that the appearance and beauty of the skin would be enhanced and improved by reason of its absorption of Vitamin D contained in the cold cream and facial soap, and that its respiration would be increased thereby; the facts being that in event of deficiency of vitamin D, large doses thereof are given by mouth, and its said cosmetic products, offered for purchase to the average healthy American woman, who obtains, presumably, a sufficient amount of vitamin D in her diet and through sunshine, would not accomplish such results; any slight vitamin D deficiency in an individual is not manifest in the appearance of the skin, which does not breathe, as commonly understood; while vitamin D, in large quantities in a suitable vehicle, may be massaged into and absorbed by the skin, its effect in such event will be systemic and not local, and its said products did not contain sufficient quantities nor did they constitute a good vehicle for such purpose; and its advertising claims with respect to benefits to be derived from the use of its products were unwarranted, exaggerated and misleading;

With effect of misleading and deceiving a substantial portion of the purchasing public, with the result that such members of the public were induced to purchase quantities of cosmetics and soap in the mistaken belief that such advertisements were true, and of thereby unfairly diverting trade to it from its competitors:

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