

Syllabus

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.

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As respects claim of a seller of cold creams and facial soaps that the appearance and beauty of the skin would be enhanced and improved and the skin's respiration would be increased by reason of the skin's absorption of their Vitamin D content, evidence offered by it in support of such claims, including (1) animal experiments, (2) treatment by a physician of a large number of premature rachitic infants, and (3) half-face experiments performed by a dermatologist at the request of an advertising firm, did not warrant the conclusion that use of seller's products by the average healthy woman would have any effect on the appearance of the skin.

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

Mr. William L. Pencke for the Commission.

Mr. Jerome L. Isaacs of Rogers, Hoge & Hill, 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 Jergens-Woodbury Sales 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. Respondent, Jergens-Woodbury Sales Corporation, is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business at Spring Grove Avenue and Alfred Street in the city of Cincinnati, State of Ohio. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a line of cosmetic products and soaps manufactured by John H. Woodbury, Inc., and Andrew Jergens Co., in commerce between and among the various States of the United States and the District of Columbia. It causes said products, when sold, to be shipped from its place of business in the State of Ohio to purchasers thereof located in a State or States of the United States other than the State of Ohio and in the District of Columbia.

There is now, and has been at all times herein mentioned, a course of trade in said cosmetic products and soaps so sold and distributed by the respondent 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 its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals,

partnerships, and firms engaged in the sale and distribution of other cosmetic preparations and soaps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Jergens-Woodbury Sales Corporation, in connection with the sale and distribution of said cosmetic products, and for the purpose of inducing the purchase of said products, makes certain representations as to the chemical properties and bacteriological effects thereof in newspaper advertisements, radio broadcasts, pamphlets, and otherwise, of which the following are typical, but not all inclusive, examples:

As to its facial powder—

You'll look your loveliest with Woodbury's Germ-Free Powder.

And here's an exclusive advantage of using Woodbury's Facial Powder. It actually helps guard your skin against the most dreaded skin defect of all—blemishes! The kind of blemishes that germs from dust in the air or from a soiled powder puff so often cause. Woodbury's Facial Powder is the one and only face powder that stays germ-free to the very last time you fluff it on.

It's germ-free * * * the only powder that gives you hygienic protection against the surface germs that cause blemishes.

Proof that Woodbury's does not clog the pores.

Spread a pinch of Woodbury's on your wrist and smooth it upwards along your arm. Beside it a pinch of the face powder you've been using. You'll see at once how far Woodbury's spreads. Why is this? Because Woodbury's lies on the surface of your skin—does not cram down into the pores and clog them. The pores are free when you're wearing Woodbury's. They can breathe, stay fine, active, elastic.

But Woodbury's Facial Powder will keep your beauty serene. It clings—right through the day—until you wash it off. It spreads farther than other popular-priced face powders. Goes on smoothly, stays on evenly without risk of clogging your pores. Shine will not come through. Warmth will not make it mat. It keeps your skin alluring.

It is free from germ-growth both before and after use.

As to its cold cream—

Clear, Fresh Loveliness for Skins that have the GERM-FREE care—
Contains Exclusive Germ-Destroying Element.

Why, you may ask, does Woodbury's Cold Cream fulfill its beauty task more quickly, more surely than others? First, because of its germ-free quality. An exclusive ingredient keeps it free from germs to the very bottom of the jar.

Germs—a common cause of infection and blemish—are banished, even as you leave the jar uncovered. The last fingertipful of Woodbury's Germ-Free Cold Cream is as sterile and free from germ growth as the first.

Scientific Ingredient keeps these Beauty Creams GERM-FREE.

WHAT CAUSES BLEMISHES?

A blemish on the skin may be caused by impurities in the blood. No external treatment can prevent blemishes of this type. Many blemishes, however, occur from a surface bacterial infection * * * when germs invade some tiny

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crack in the skin. Try to avoid this danger by using beauty creams that stay germ-free to the last.

Now a second important element in Woodbury's Cold Cream, will help you fulfill, quickly, your fondest hopes for beauty. Sunshine is vital to a good complexion. Certain rays, which produce Sunshine Vitamin D, keep the skin healthy and alive, functioning as it should because they help the skin to breathe!

As to its soap—

Bathe all your skin for Beauty in the "FILTERED SUNSHINE" of Woodbury's Gentle Lather.

Vitamin D is closely related to skin health. Certain rays of the sun produce this element in the skin, itself. And now, after long and costly research by Woodbury skin scientists and a leading American university, a way has been found to incorporate Sunshine Vitamin D in Woodbury's Facial Soap. This is done by the patented, "Filtered Sunshine" process, by which one of Woodbury's ingredients is now irradiated with gentle, non-burning rays.

Your skin, eager for its benefits, soaks up this "Filtered Sunshine" element from Woodbury's lather as you wash and bathe. This has positive proof in the records of important scientific tests.

Ingredient of the famous Woodbury's Facial Soap now irradiated with the kindly, skin-beautifying qualities of Sunshine.

At last a way has been found to irradiate the gentlest qualities of Sunshine into one of the ingredients of the world-famous Woodbury's Facial Soap.

Now, Winter or Summer, every time you wash or bathe, Woodbury's is ready to give your skin the glorious benefits of this kindly Sunshine element.

Everyone knows that Sunshine in careful measure, is a natural skin beautifier. And now by a marvelous new process, an exclusive patented process, the useful rays are irradiated into an ingredient of Woodbury's Facial Soap, which is readily absorbed by the skin. An important scientific work, by Woodbury skin scientists and a leading American university!

PAR. 4. All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products and their efficacy in use. In all of its advertising literature, respondent represents, through statements and representations herein set out and other statements of similar import and effect, that its "Facial Powder" (1) will guard the skin against blemishes and prevent surface infections from germs, (2) is sterile and germ-free both before and continuously during use, (3) will spread farther than competitive products and not clog the skin pores, and (4) is an antiseptic which possesses inhibitory properties and kills germs under conditions of normal use; that its "Cold Cream" (1) is sterile and germ-free both before and continuously during use, (2) will kill and banish germs and prevent infections and blemishes under conditions of normal use, and (3) is an antiseptic which possesses inhibitory properties and kills germs under conditions of normal use; that its "Facial Soap" (1) contains "filtered sunshine," (2) releases an invigorating "filtered sunshine" element, namely, vitamin

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D, (3) the skin absorbs a sufficient amount of vitamin D through use of such soap to produce a substantial effect thereon.

PAR. 5. In truth and in fact, said statements and representations were and are false and misleading in that the said Woodbury's Facial Powder will not guard against or prevent skin blemishes or infections from germs. It is not antiseptic and will not stay germ-free. It will not spread over a greater surface than some of the powders manufactured and sold by respondent's competitors, and will not be free from germ growth after use. In truth and in fact, said Woodbury's Cold Cream will not banish germs and will not remain sterile and free from germ growth in all instances after it has been applied to the skin. Bacterial infection is not prevented by the use of said cream or said facial powder. Said facial cream will not kill bacterial organisms within a reasonable time under ordinary conditions of use. The skin will not absorb an appreciable amount of vitamin D through the use of respondent's cold creams and the claims and representations made by respondent with respect thereto are exaggerated and not justified. In truth and in fact, respondent's vitamin D Soap is not irradiated with skin-beautifying qualities of sunshine, and the alleged youthful rays of sunshine are not readily absorbed by the skin. The skin can not absorb an appreciable amount of vitamin D by simply washing the skin or taking a lather bath. Washing or bathing with a soap containing vitamin D does not cause or bring about such a substantial absorption of vitamin D by the skin as to produce any substantial beneficial result on the skin or to justify the claims and representations made by respondent.

PAR. 6. The true facts are that the ingredients of respondent's products 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 to some extent under certain conditions of application. However, if vitamins are absorbed through the skin, they will not beneficially affect the local condition of the skin where applied by washing or bathing with respondent's soap.

PAR. 7. In the course and conduct of its business as hereinbefore described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in commerce among and between the several States of the United States, and in the District of Columbia, of other cosmetic preparations and soaps, which said competitors do not misrepresent the extent of the beneficial or therapeutic effects of their said competitive preparations.

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PAR. 8. The aforesaid misleading and deceptive statements and representations hereinabove set forth made by respondent in selling said cosmetic preparations and soaps have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said Woodbury's Facial Powder, Woodbury's Cold Cream and Woodbury's Vitamin D Soap, in the erroneous beliefs that such representations are true and that the use of said products will accomplish the results set out or indicated in said advertisements and statements. As a result of the aforesaid false and misleading statements, advertisements, and representations by the respondent with respect to said products, trade has been diverted unfairly to it from its said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

PAR. 9. The aforesaid acts and things done, or caused to be done, by the respondent, were and are each and all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent 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 21, 1938, issued its complaint in the above entitled proceeding and thereafter caused same to be served upon the respondent, Jergens-Woodbury Sales Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer thereto by said respondent, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of said complaint by Jerome L. Isaacs of the firm of Rogers, Hoge and Hills, attorneys for the respondent, before William C. Reeves and John J. Keenan, examiners for said Commission theretofore duly designated by it; also stipulations as to certain of the material facts were made and entered into by and between counsel for the Commission and counsel for the respondent, which stipulations were set out in the record, and the testimony so taken was reduced to writing and filed in the office of the Commission, together with numerous pieces of documentary evidence and samples of respondent's products, 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

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and counsel for the respondent and oral argument of the respective counsel, and the Commission having 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, Jergens-Woodbury Sales Corporation, is a corporation organized under the laws of the State of Ohio, with its principal place of business at Cincinnati, in said State. For more than 1 year prior to the date of the issuance of the complaint herein, and since said date, said respondent has been engaged in the sale and distribution of cosmetics and a facial soap manufactured by John H. Woodbury, Inc., and the Andrew Jergens Co. Said respondent has caused said cosmetics and soap, when sold, to be transported from Cincinnati in the State of Ohio, through and into various other States of the United States, to the respective purchasers thereof. In the course and conduct of its said business said respondent has been, and is now, in active competition with numerous persons and partnerships, and other corporations, also engaged in the sale and distribution in commerce between and among the several States of the United States of cosmetics and soaps intended to be used and used, for the same general purposes.

PAR. 2. The respondent, in the course and conduct of its business, as set out in paragraph 1 hereof, has sold a soap described by it as "Woodbury's Facial Soap," which soap has been produced in cakes of $3\frac{7}{8}$ ounces, each of which has contained 1,453 international units of vitamin D. Among the cosmetics sold by respondent were a facial powder, and certain creams designated as "Woodbury's Cleansing Cream," "Woodbury's Facial Cream," "Woodbury's Tissue Cream," and "Woodbury's Cold Cream." Each ounce of each of these items has contained 150 international units of vitamin D.

One ounce of the cream will last the average user for approximately 1 week, and one cake of the soap, used as a facial and bath soap, will last the average user about 10 days.

PAR. 3. In the course and conduct of its business in the years 1936, 1937, and 1938, and for the purpose of inducing members of the public to purchase the aforesaid cosmetics and soap, the respondent caused advertisements to be published in newspapers and other periodicals having a general circulation among various States of the United States, caused printed advertising matter to be distributed generally among the various States, and caused advertising

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programs to be broadcast over radio stations in the various States. All of this advertising matter contained numerous claims and representations concerning certain of the ingredients of such cosmetics and soap and benefits that would be derived by the use of same. The claims and representations with respect to the facial powder and cold creams are to the effect that they are sterile and germ free both before use and continuously during use; that they guard the skin against blemishes and prevent infections from germs and will kill germs under conditions of normal use; that the powder will spread farther than competitive powders and will not clog the pores of the skin but will leave them free, enabling them to breathe, stay fine and active. Further claims and representations with respect to the creams and facial soap are that the presence of vitamin D in such creams will help users to fulfill their "fondest hopes for beauty"; that a way has been found to incorporate vitamin D in Woodbury's Facial Soap; and that this is done by the patented "filtered sunshine" process by which one of Woodbury's ingredients is irradiated with gentle, nonburning rays; that by the use of Woodbury's Facial Soap the skin of the user will absorb a sufficient amount of vitamin D to produce a substantial effect thereon; and that this element in the soap is readily absorbed by the skin; that certain rays which produce Sunshine vitamin D keep the skin healthy and alive, and functioning as it should because they help the skin to breathe. Other claims and representations of like import concerning such cosmetics and soap were contained in such advertisements, advertising matter and radio broadcasts.

PAR. 4. All the experts testifying at the instance of the Commission have been members of the medical profession for many years and include three dermatologists, a pharmacologist, and a specialist in public health research and X-ray work. They are members of numerous medical and scientific societies; and the dermatologists, in addition to an extensive hospital experience, have also made investigations and researches in the vitamin field, and have published many papers in scientific journals. One of the dermatologists has also specialized in cosmetology for about 12 years, published several books and papers on that subject, and given courses therein at medical schools in New York. The pharmacologist has served for over 20 years in the United States Public Health Service, is recognized as one of the foremost researchers in pharmacology and is credited with the discovery of vitamin B2.

The opinions of these experts with respect to the function of vitamin D may be summarized as follows: Vitamin D fixes and maintains the calcium and phosphorus supply in the bony structure.

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Its lack results in rickets or osteomalacia. Vitamin D is supplied by the action of the ultraviolet rays of the sun upon the pro-vitamins, such as cholesterol, contained in the skin, and by certain foods rich in various sterols such as fish oils, certain fish, butter, and leafy vegetables. Medical authorities are not in agreement as to the daily requirement of vitamin D for the normal adult human being, the estimates running from 400 to 5,000 international units. Likewise there is some disagreement among the experts as to whether the average adult person in the United States is deficient in vitamin D. Generally the witnesses testifying at the instance of the Commission are of the opinion that the average person does get a sufficient supply in the two ways indicated. Several of the respondent's experts are of the opinion that a great many individuals are deficient. All of them are agreed that in the event of deficiency the most effective method of supplying vitamin D is by giving huge doses by mouth, external application, or inunction being both ineffective and expensive.

In substance respondent claims that the appearance and beauty of the skin will be enhanced and improved by reason of the absorption by the skin of vitamin D contained in the cold creams and facial soap, and that the respiration of the skin will be increased thereby.

The witnesses testifying at the instance of the Commission are in complete agreement that such results are not possible. There is nothing in scientific or medical literature indicating that local benefits may be derived through the use of cosmetic creams or soaps containing vitamin D in the quantities present in respondent's products. So far as is known, no authors or writers in dermatology ascribe any condition of the skin as being due to a lack of vitamin D.

Vitamin D, if contained in a suitable vehicle and massaged into the skin, may be absorbed by the skin. Such absorption, however, will not in any event affect the appearance of the skin, for the reason that if absorption takes place the vitamin will be absorbed into the blood stream, so that its action must be systemic and not local. The only exception occurs in instances when a pathological condition exists in the skin itself such as lesions caused by wounds or burns, and in that case huge doses of vitamin D contained in the vehicle are required. Nor will the use of respondent's products improve the appearance of the skin of persons who are slightly deficient in vitamin D, for the reason that such deficiency is not manifested in the skin. Neither the vehicle nor the quantity of vitamin D contained in respondent's creams and soap nor the method of application is conducive to permitting more than a negligible or infinitesimal amount of

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vitamin D to be absorbed. In the average use of the cosmetics not more than 20 units of vitamin D will be applied to the face once or twice a day. The bulk of the material will be wiped off, with the result that only a minute quantity can possibly be absorbed by the skin.

With respect to the use of the soap, the experts introduced by the Commission are in complete agreement that so far as the absorption of vitamin D is concerned, it can have no demonstrable effect whatever. The skin is an organ of excretion. Soap is a cleansing agent. The small quantity of vitamin D which might be made available at each use would be contained in the lather and rinsed off before any absorption could take place. No medicaments contained in a soap can enter the body in sufficient quantity to have any medicinal or therapeutic effect.

The claim that vitamin D added to cosmetic creams will help the skin to breathe is wholly unwarranted. There is no scientific basis for such treatment. The skin does not breathe as breathing is commonly understood. In the sense of an interchange of gases the word "breathe" may be applied to all the tissues of the body. The respiration of the skin as compared with the amount of normal respiration is infinitesimal.

A certain experiment was adduced in which the metabolism of tissue was increased by the administration of vitamin D, this experiment being adduced in support of the claim that the use of respondent's cosmetic products containing vitamin D will likewise accelerate the rate of respiration of the tissue. It was shown that the condition of the tissue in the experiment was so abnormal that the increased metabolism may well have been due to other causes than to the administration of vitamin D. In any event, the effect is so slight that it can be demonstrated only under the microscope.

The appearance of the human skin in youth is smooth and without wrinkles and as individuals grow older, lines and wrinkles will appear and the tissues will lose their firmness. This physiological phenomenon can not be deferred or altered by the use of cosmetic creams. Moreover the appearance and texture of the skin are hereditary or congenital. Such characteristics cannot be overcome by treatment with cosmetic creams containing small quantities of vitamin D. In many instances the use of cold creams may even interfere with the activities of the skin. There are dermatologists who will inhibit the use of cosmetics in cases of skin disorders and there are no reports in medical literature in which the use of vitamin D by local application is indicated.

PAR. 5. To support its contentions with respect to the claims for its cosmetic products, the respondent called a number of experts. These

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included several scientists, who, while they had done considerable research work in connection with subjects unrelated to the present case, had also devoted considerable time to experimental work dealing with the absorption of vitamin D by the skin and the effects thereon. Most of this work was done at the request of the respondent, or under fellowships established by the Andrew Jergens Co. In addition, there was called a practicing physician who had done some experimental work on vitamin absorption and a practicing dermatologist who had made certain experiments with the respondent's soap several years prior to the complaint.

With the exception of the testimony of the last mentioned witness, all of the expert testimony and opinion rendered by the witnesses is based on animal experiments and case histories of pathological skin conditions. In the tests conducted with animals, the experimental rats were depleted of vitamin D according to the approved methods prescribed by the U. S. Pharmacopoeia, resulting in severe vitamin D deficiencies manifested by rickets. A large number of experiments were performed which varied with respect to the quantity of vitamin D contained in the cream or soap and the length of time employed to massage the material into the skin of the rat. The applications were continued for a prescribed length of time until improvements in the rachitic condition of the rat were demonstrated. The various degrees of improvements were shown by X-ray pictures taken of the leg joints of the rats, showing calcium deposits due to the treatment with respondent's product. In fact, one international unit administered to an experimental rat depleted of vitamin D is sufficient to demonstrate a calcium deposit on the joint of the leg bone of the rat. In the experiments conducted with the facial soap a liquid solution of the soap containing vitamin D was massaged into the skin of the rats, and sufficient absorption took place to indicate some improvement in the rachitic condition of the animal. The ordinary manner in which the soap is used differs entirely from the method employed in the experiments.

In order to demonstrate that the local administration of vitamin D to the skin causes the skin to breathe more rapidly, the scientists placed a small segment of the skin of a rat under the microscope after vitamin D had been added to the tissues and compared it with a section from the skin of a rat that had not been treated with vitamin D. It was found that there was a slight increase in the metabolism of the skin tissue.

With respect to these animal experiments, the testimony shows, and the Commission finds, that vitamin D contained in a suitable vehicle and massaged into the skin may be absorbed by the skin in quantities

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sufficient to improve the condition of a rachitic rat; that the action of such absorption is systemic and not local; that the acceleration of skin respiration can be demonstrated only under the microscope and may be due to the abnormal condition of the excised tissue rather than to the administration of vitamin D; that for these reasons the experiments on test animals are not sufficiently persuasive to warrant the conclusion that the use of respondent's products by the average healthy, adult woman will have an effect in the appearance of the skin.

A practicing physician testified that he had supplied vitamin D to a large number of premature rachitic infants by treating them with local applications of olive oil containing 15,000 units of vitamin D per half ounce. The treatment, repeated twice a day, consisted of a cotton pledget immersed in $\frac{1}{2}$ ounce of olive oil containing the vitamin being left on the body of the infant for some time, and it was calculated that approximately 22,000 units of vitamin D per day were absorbed. It appears from the evidence that several of the babies to whom Haliver Oil and Viosterol was fed did not respond as well as those who had been given the vitamin D externally, for the reason that their delicate stomachs did not tolerate the medicine. The evidence shows, and the Commission finds, that the difference between both the age and physical condition of the subjects and the method of application and the quantities of vitamin D contained in the vehicle is too great to permit a conclusion that because the condition of the infants was improved the claims with respect to the cosmetic properties are valid.

A dermatologist testified that about 5 years ago he performed half-face experiments with the facial soap on 29 women at the request of an advertising firm. The subjects were required to wash one-half of the face with the plain soap and the other half with the soap containing vitamin D. They were not advised which of the two cakes furnished them contained the vitamin. According to the testimony of the witness, 22 of the women preferred the soap containing vitamin D because their faces felt smoother and cleaner. However, the evidence shows that there was no supervision of the experiments or of the diet of the subject, nor were the individual conditions of the subjects taken into account. In order to determine the improvement, the witness found it necessary to use a magnifying glass under a good light. The evidence shows, and the Commission finds, that this experiment was not performed under such accepted and required scientific conditions as to support the cosmetic claims made for respondent's products.

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PAR. 6. The evidence shows, and the Commission finds, that respondent's cosmetic products are offered for purchase to the average normal healthy, adult American woman who is presumed to obtain a sufficient amount of vitamin D in her diet and through sunshine. Any slight vitamin D deficiency in an individual will not be manifested in the appearance of the skin. When deficiency exists, large doses of vitamin D are given by mouth. Vitamin D, when contained in large quantities in a suitable vehicle and massaged into the skin, may be absorbed by the skin. When absorption takes place the action of vitamin D will be systemic and not local. Respondent's products do not contain sufficient quantities of vitamin D, nor do they constitute a good vehicle for purposes of absorption, nor is the method of application conducive to permit absorption to the extent of having any effect upon the condition or appearance of the skin of the user, and the advertising claims with respect to the benefits to be derived from the use of respondent's products are, therefore, unwarranted, exaggerated, and misleading.

PAR. 7. An associate bacteriologist of the Food and Drug Administration, who specializes in testing antiseptics and disinfectants, tested respondent's creams and facial powder to determine whether said products would remain germ-free both before and during use. The samples tested were all received in a germ-free condition. The witness added certain bacteria which are ordinarily found in the skin and in places that come in contact with the hands. He found that the organisms remained active in the creams up to seven hours and were still alive and active in the powder after 24 hours. It was his opinion that an infection might occur should organisms be carried to the face from the finger tips. With respect to the claim that the products will guard against infection, the evidence shows, and the Commission finds, that no aseptic agent will guard against an infection of the skin.

A chemist called by respondent also made extensive tests to determine the sterility of the products during use. His tests showed that organisms were killed between 3 and 5 hours after they had been added to the products. The evidence therefore shows, and the Commission finds, that the representations to the effect that the products will remain germ-free during use, will guard against infection, and inhibit germ growth, are unwarranted and misleading.

PAR. 8. The evidence shows, and the Commission finds, that the representation with respect to the spreading qualities of respondent's facial powder is exaggerated and misleading. A test performed at the request of the respondent demonstrated that one competitive powder spread farther than respondent's powder and that a number of

other competitive powders were equal to respondent's product in this respect.

PAR. 9. The claims and representations made by respondent in its advertisements and advertising matter concerning the cosmetics and soap sold by it 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 quantities of such cosmetics and soap in the mistaken belief that the statements and representations contained in such advertisements and advertising matter concerning such cosmetics and soap were true. Said representations have therefore unfairly diverted trade 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 the competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the 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 Jerome L. Isaacs, 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, Jergens-Woodbury Sales Corporation, 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 soaps, cosmetic creams and face powders, or any products of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Representing that its facial powder will guard against or prevent skin blemishes or infection from germs, or that said powder will remain germ-free during use.

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2. Representing that its facial powder will spread farther than other competitive face powders of comparable quality.

3. Representing that its cold cream will remain sterile, or that said cream will kill germs or prevent germ growth, infections or blemishes under ordinary conditions of use.

4. Representing in any manner whatever that respondent's creams or soap have any added beneficial value upon the skin by reason of their vitamin content.

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.

IN THE MATTER OF

SPENCER SYSTEM, AND JOHN L. SHEA, WILLIAM J. HAGERTY, JEAN G. MITCHIE, AND GLENDA S. HILLS

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

Docket 4350. Complaint, Oct. 16, 1940—Decision, Sept. 12, 1941

Where a concern, organized as a Massachusetts trust, and four individuals in charge of its business, determining and carrying out its policies and practices, engaged in interstate sale of courses of instruction, including lesson sheets, tools, and materials, in the design and fabrication of arch supports and foot exercisers, and in a system of foot correction and culture; in circulars, letters and pamphlets, and in advertisements in periodicals of general circulation, directly and indirectly—

- (a) Represented that the structure of the foot is simple, that anyone of ordinary intelligence who could read and write could readily master their courses and become proficient therein, that their treatment was infallible, that the instruction could be given by mail and the necessary knowledge and proficiency acquired in 10 weeks or less, and that by reason of such mastery and the use of their system of foot culture and arch supports made by their method, student would be able to determine whether or not a person required arch supports and prescribe, design and fabricate the proper supports, and diagnose as surgical or nonsurgical all foot ailments or conditions; and
- (b) Represented further that student would be able to correct, overcome and cure all foot troubles, other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, calluses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints and bunions, and prevent the growth of corns and bunions;

The facts being the structure of the foot is not simple; adequate correction of arch troubles, diseases, and ailments of the feet, and the proper designing of arch supports, require a diagnosis which can be properly made only by one familiar not only with the structure and physiology of the feet but also of the rest of the body; the knowledge necessary for proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to latter conditions by arch supports, exercises, or otherwise, cannot be imparted by mail, in the short time indicated, to the ordinary literate person, and cannot be acquired from their courses of instruction; proper arch support cannot be made by one without substantial practical experience and training, and those mastering the course cannot be assured, in all cases of nonsurgical foot conditions or diseases, of successful results from use of the corrective system as taught, either with or without use of exercises of their design or arch supports made and fitted in accordance with their instructions; and

- (c) Falsely represented that the student would learn how to obtain trade without solicitation, delay, or expense, and was assured, by mastery of the course, of a paying business and large income;