

IN THE MATTER OF

CLAIROL, INC., AND JOAN GELB, LEON A. SPILO, AND
MORRIS GELBCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3615. Complaint, Sept. 30, 1938—Decision, Oct. 8, 1941*

Where three individuals engaged, through a corporation, since dissolved, which they controlled, in the competitive interstate sale and distribution of hair dyeing preparations which they designated generally as "Clairol," and more specifically as "Instant Clairol" and "Progressive Clairol"; in advertisements in circulars, leaflets, display cards and other advertising material distributed among retailers and beauty shops, and by them among the purchasing public, and also through extensive advertisements in trade journals and in advertisements which said individuals inserted in newspapers, or caused to be inserted therein, by dealers and beauty shops; directly or by implication—

- (a) Represented that their said products were not hair dyes, but preparations which reconditioned and supplied nourishment to the hair, and restored the natural or youthful color thereof, imparting thereto color which was permanent; facts being said preparations were shampoos which contained certain dyeing ingredients and their effect on the color of the hair was due solely to such ingredients, they were incapable of reconditioning the hair or restoring the natural or youthful color thereof, and their effect was not permanent, since they served only to color the hair to which applied and had no effect upon new hair, and they were incapable of supplying nourishment to the hair; and
- (b) Represented that said preparations were harmless and safe for use, and were made or compounded in Paris, France, and that as many as 12 million treatments thereof had been used in America in 1 year; facts being said "Instant Clairol" contained paratolylene diamine, and would result in irritation or rash to users allergic to such coal tar derivative, and blindness might result from its use for dyeing eyelashes or eyebrows; said preparations were compounded in the United States and not in Paris, France; and the actual number of treatments used in America in 1 year was not in excess of 1,500,000;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and to cause such portion of the public, because of said belief, to purchase substantial quantities of their preparations, and with result of diverting substantial trade to them from their competitors, among whom are those who do not misrepresent their products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

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Mr. John M. Russell for the Commission.

Mr. John Wattawa, of Washington, D. C., for respondents.

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 Clairol, Inc., a corporation, and Joan Gelb, Leon A. Spilo, and Morris Gelb, individuals, hereinafter referred to as respondents, have 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, Clairol, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and respondents, Joan Gelb, Leon A. Spilo, and Morris Gelb, individuals, are president, vice president, and secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located at 132 West Forty-sixth Street, in the city of New York, State of New York.

PAR. 2. Respondents now are, and for more than two years last past have been, engaged in the business of compounding and soliciting the sale of and selling, directly and through retail dealers and salesmen, two hair dyeing preparations, both generally known as Clairol and each specifically known as Progressive Clairol and Instant Clairol, respectively. Respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Clairol preparations 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 their said business, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

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Among such competitors there are many who do not make any misrepresentations or false statements concerning the qualities and properties of their respective products and of their effectiveness when used.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of said Clairol preparations by members of the purchasing public, respondents, by means of statements in radio broadcasts, advertisements inserted in magazines, trade journals, display cards, bulletins and in other printed matter distributed among the trade and locally used by it in advertising said products and through other advertising media circulated generally throughout the United States, have made and are making many representations, directly and indirectly, as hereinafter stated, concerning the qualities and effectiveness of said Clairol preparations.

Among and typical of said representations made by the respondents are the following:

Clairol is not a dye.

Don't dye your hair—Clairol it.

Clairol does not contain the harsh metallic salts that dyes contain.

I can't use common old-fashioned dyes. I can't use anything but Clairol
* * *

Clairol * * * reconditions, obliterates the gray * * *.

Something effective, yet not a dye * * * colors white or gray hair completely, permanently in one treatment.

Naturally with Clairol * * * your hair regains and retains its youth.

* * * restore it to its youthful beauty and endow it with all the shimmering loveliness of its original and natural shade.

* * * the trained technician will apply these corrective oils to your hair and scalp and as these nourishing unguents are deeply absorbed by the hair shaft and follicles the Clairol tints * * * imparts color that is permanent.

Clairol Baby, yes, sir, her hair is ev'ry girl's de-si-re.

Clairol * * * harmless way to beauty.

Clairol * * * safe enough to bathe in.

Last year in America alone twelve million of Clairol shampoo tint treatments were used.

Mury of Paris presents Clairol. It is * * * absolutely safe.

All of said statements, together with similar statements appearing in respondents' advertising literature and in and through other said advertising media, purport to be descriptive of respondents' said Clairol hair dyeing preparations and of their effectiveness when used. In all of their advertising literature, and through other means, respondents, directly or indirectly by implication, insinuation or otherwise, through statements and representations herein set out and other statements of similar import and effect, represent: By advertising Progressive and Instant Clairol as merely Clairol, that all of their claims concerning both are applicable to each of said preparations. That they are not dyes. That they do not contain the harsh, metallic

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salts that dyes contain. That they recondition and restore hair to its natural and youthful color and loveliness. That they contain beneficial oils and unguents which nourish the hair, as they are deeply absorbed by the hair shaft and follicles. That they permanently color white, gray or other shades of hair. That Instant and Progressive Clairol are both absolutely harmless and safe to use. That even every girl should prefer her hair colored with Clairol to its own natural color. That 12 million Clairol shampoo tint treatments are used annually in America alone. That respondents have an office and place of business in Paris, France, where said Clairol preparations are made.

PAR. 5. The above-mentioned representations, implications, and insinuations used by the respondents in the manner above described in connection with the offering for sale and selling of said Clairol preparations are false, misleading, and deceptive. In truth and in fact Progressive and Instant Clairol are both dyes, or shampoos containing dyes. The statement that they do not contain the harsh, metallic salts dyes contain is therefore unwarranted. They do not recondition or restore hair to its natural or youthful color and loveliness. They contain no beneficial oils and unguents, and have no properties which in any way nourish or benefit the hair. Neither of said preparations permanently colors white, gray or other shades of hair, new hair growing out thereafter will not be colored thereby. Instant Clairol is not harmless but dangerous when used by persons unable to pass a certain physical test, written notice of which is required by law in New York City to be stated on each bottle sold there. Every girl's hair will not be improved by using either of respondents' said products. The implication that 12 million Clairol shampoo tint treatments are used annually in America alone is a gross exaggeration and vastly exceeds the number of such treatments used here. None of the respondents has any office or place of business in Paris, France, and said Clairol preparations are not made there but are compounded in New York.

PAR. 6. The true facts are that there is nothing which will recondition or restore hair to its natural or youthful color. There is no known product which, when externally applied, will nourish the hair or hair shaft and follicles, or correct the cause of gray or faded hair or do more than impart color to existent hair. The slightest growth of the hair shows the natural color thereof and thus announces and proclaims that a hair dye has been used which accentuates lines and wrinkles and usually makes the face look hard.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in describing their said prod-

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ucts and their effectiveness when used, as hereinabove set out, were and are calculated to, and have had and now have 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 respondents' products, with the result that trade has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling similar preparations 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 respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition 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 September 30, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, Clairol, Inc., a corporation, and Joan Gelb, Leon A. Spilo, and Morris Gelb, individuals, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by John M. Russell, attorney for the Commission, and in opposition thereto by John Wattawa, attorney for respondents, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; 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.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. For approximately seven years prior to November 4, 1940, respondent Clairol, Inc. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The individual respondents, Joan Gelb, Leon A. Spilo, and Morris Gelb, were president, vice president, and secretary, respectively, of the corporate respondent. They had dominant control of the business activities and practices of the corporation, including its advertising policies and practices. The office and principal place of business of all of the respondents was located at 132 West Forty-sixth Street, New York City, N. Y.

On October 14, 1940, a new corporation was organized by the individual respondents, such corporation being organized under the laws of the State of Connecticut and being known as Clairol, Incorporated. The individual respondents were the sole incorporators of the new corporation and constitute its board of directors. They hold the same official positions in the new corporation as they held in the old corporation, Joan Gelb being president, Leon A. Spilo being vice president, and Morris Gelb being secretary.

The new corporation, Clairol, Incorporated, was organized for the purpose of taking over the business formerly conducted by Clairol, Inc., respondent herein. On October 31, 1940, respondent Clairol, Inc. transferred to Clairol, Incorporated, all of its business and physical assets, which were moved to the new corporation's principal place of business in Stamford, Conn. On November 4, 1940, respondent Clairol, Inc. was dissolved.

PAR. 2. Prior to November 4, 1940, the respondents were engaged in the sale and distribution of certain hair dyeing preparations designated generally as "Clairol" and more specifically designated as "Instant Clairol" and "Progressive Clairol." Respondents caused their preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintained a course of trade in their preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, the respondents were in active and substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of preparations intended for the same purposes as those for which respondents' preparations were intended.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their preparations, the respondents have advertised their preparations by means of circulars, leaflets, display cards and other advertising material distributed among retail dealers and beauty shops, and through such agencies among members of the purchasing public. Respondents have also advertised extensively in trade journals and have inserted advertisements in daily newspapers, or have caused such advertisements to be inserted in such papers by dealers and beauty shops. Among and typical of the statements and representations which have appeared in respondents' advertisements and advertising material are the following:

Clairol is not a dye.

Don't dye your hair—Clairol it.

Clairol does not contain the harsh metallic salts that dyes contain.

I can't use common old-fashioned dyes. I can't use anything but Clairol * * *.

Clairol * * * reconditions, obliterates the gray * * *.

Something effective, yet not a dye * * * colors white or gray hair completely, permanently in one treatment.

Naturally with Clairol * * * your hair regains and retains its youth.

* * * restore it to its youthful beauty and endow it with all the shimmering loveliness of its original and natural shade.

* * * the trained technician will apply these corrective oils to your hair and scalp and as these nourishing unguents are deeply absorbed by the hair shaft and follicles the Clairol tint * * * imparts color that is permanent.

Clairol * * * harmless way to beauty.

Clairol * * * safe enough to bathe in.

Mury of Paris presents Clairol. It is * * * absolutely safe.

Last year in America alone twelve million of Clairol shampoo tint treatments were used.

PAR. 5. Through the use of these statements and representations and others of similar import, the respondents have represented, directly or by implication, that their preparations are not hair dyes; that the preparations recondition the hair, and restore the natural or youthful color of the hair; that the color imparted to the hair by the use of the preparations is permanent; that the preparations supply nourishment to the hair; that the preparations are harmless and safe for use; that the preparations are made or compounded in Paris, France; and that as many as 12 million treatments of the preparations have been used in America in 1 year.

PAR. 6. The Commission finds that respondents' preparations are shampoos which contain certain dyeing ingredients. The effect produced upon the color of the hair through the use of the preparations is due solely to such dyeing ingredients. The preparations are incapable of reconditioning the hair or restoring the natural or youthful color of the hair. Nor is the effect produced by the preparations

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permanent, as the preparations serve only to color the hair to which they are applied, and have no effect upon new hair. The preparations are incapable of supplying nourishment to the hair.

The Commission further finds that the preparation Instant Clairol is not in all cases harmless or safe for use, as it contains the drug paratolylene diamine, a coal tar derivative, and in those cases where the user is allergic to such drug, the use of the preparation will result in irritation or rash. In no event should the preparation be used for dyeing the eyelashes or eyebrows, as blindness may result. The preparations are not made or compounded in Paris, France, but are compounded in the United States. The number of treatments of the preparations represented by respondents as having been used in America in 1 year is grossly exaggerated. The actual number was not in excess of 1,500,000.

PAR. 7. The Commission therefore finds that the representations made by the respondents with respect to their preparations, as set forth in paragraphs 4 and 5 hereof, are misleading and deceptive.

PAR. 8. The Commission further finds that the use by the respondents of these misleading and deceptive representations with respect to their preparations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' preparations as a result of such erroneous and mistaken belief. As a result substantial trade has been diverted to the respondents from their competitors, among whom are those who do not misrepresent their products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and ex-

ceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That said individual respondents, Joan Gelb, Leon A. Spilo, and Morris Gelb, their 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 their cosmetic preparations designated generally as "Clairol" and more specifically designated as "Instant Clairol" and "Progressive Clairol," or any other preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

1. Representing that said preparations are not hair dyes.
2. Representing that said preparations recondition the hair, or restore the natural or youthful color of the hair.
3. Representing that the effect produced upon the color of the hair by the use of said preparations is permanent.
4. Representing that said preparations supply nourishment to the hair.
5. Representing that said preparations are made or compounded in France.
6. Representing that the number of treatments of said preparations used by the public is greater than is the fact.
7. Representing that said preparation Instant Clairol is harmless or safe for use.

It is further ordered, That said individual respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

The corporate respondent, Clairol, Inc., having been dissolved, *It is further ordered*, That this proceeding be, and it hereby is, dismissed as to said corporate respondent.

Syllabus

IN THE MATTER OF

DAVID L. SILVER AND O. C. COLWES, TRADING AS KAY'S
CUT RATE AND AS KAY'S CUT RATE DRUGSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4510. Complaint, May 27, 1941—Decision, Oct. 14, 1941*

Where two individuals engaged in interstate sale and distribution of various medicinal preparations; in advertisements through the mails, in newspapers, circulars, and other advertising literature, directly and by implication—

- (a) Represented that their "Madame Bea's Capsules" constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation, and that it was safe and harmless, through such statements as "*Modern women: Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. Madame Bea's Capsules sold at Kay's Cut-Rate*";

Facts being that said product was not a competent or effective treatment for such ailment, and was not safe or harmless, in that it contained the drugs ergot, oil of savin, aloin, and hellebore in quantities sufficient to cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs; where used to interfere with the normal course of pregnancy, might result in uterine infection causing blood poisoning; might also produce a severe circulatory condition by constriction of the blood vessels and contraction of the involuntary muscles, tending to cause abortion, and might result in severe poisonous effects upon the human system, in some instances resulting in loss of limbs or other serious and irreparable injury to health; and

- (b) Failed to reveal facts material in the light of representations in such advertisements, and that the use of said preparation, under prescribed or usual conditions, might cause aforesaid disturbances and serious and irreparable injury;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said preparation possessed properties which it did not in fact possess, and that it was safe and harmless when such was not the fact, and to cause such public to buy substantial quantities of said preparation, as a result of such belief:

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. William L. Taggart for the Commission.

McGinnis & Mann, of Beckley, W. Va., for respondents.