

IN THE MATTER OF
POST INSTITUTE SALES CORPORATION, POST INSTITUTE,
LOUIS J. STERN AND HELMUTH M. KIESEWETTER

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

Docket 4129. Complaint, May 7, 1940—Decision, Dec. 16, 1941

Where a corporation engaged in interstate sale and distribution of the "Ultrazol Scalp Treatment," consisting of Ultrazol Hair Bath, Ultrazol Pituitary Fluid, and Ultrazol .33, together with the manufacturer thereof who was its president, manager, and majority stockholder; by means of advertisements disseminated through the mails, newspapers, and periodicals, and circulars, leaflets, pamphlets, and other advertising literature, directly and by implication—

- (a) Represented that the process of keratinization interferes with the natural growth of hair and prevents the free emergence of new hair, that insufficiency of pituitary secretion at the hair root causes abnormal loss of hair, faded hair, and other hair troubles, and that use of their said preparations, either singly or in combination, would remove keratin epidermal tissue and cause their pituitary content to penetrate to the hair roots and stimulate or revive the growth of hair; and
- (b) Represented that the use of their preparations, either singly or in combination, would stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, restore natural color to the hair, and be effective in removing or curing dandruff;

The facts being that said preparations had no therapeutic value in the treatment of any normal condition of hair or scalp and the only benefit which might be obtained from their use was the possible counterirritant action supplied by massage on application thereof, keratinization of the skin is a normal process and adherence to the scalp of the scaly substance formed thereby, not necessarily a diseased condition, can be removed by a good shampoo medium; shedding of such cells has no significance as respects growth of hair, for which, in any event, external application of pituitary substance would be of no value; and products in question, either singly or in combination, would not bring about the results claimed therefor or remove the scale referred to better than soap and water or any other cleansing agent, and, beyond effecting temporary removal of dandruff scales, did not constitute a cure or remedy for said condition; and

Where said corporation and individual, engaged as above set forth—

- (c) Represented, through the use of the word "Institute" in their trade and corporate names and in various forms of advertising, that they were a scientific organization formed to promote learning and research, and furthered such misrepresentation by such statements as "After twelve years of research Post Institute presents Ultrazol, a new hair discovery," and "The ethics of the Institute preclude exaggerated claims" when in fact "Post

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Institute" was merely a trade name used by said individual in connection with the manufacture and sale of his preparations, and said corporation was engaged as aforesaid in sale and distribution thereof;

- (d) Placed in their various advertising a replica of a seal, usually round, on the outer margin of which appeared, in large letters "CERTIFIED SAFE", and in the center "Post Institute certifies that Ultrasol is made to meet the highest standards of city, State and Federal boards of health," implying thereby that their said preparations had been certified, tested, or approved by boards of health, when in fact such products had never been thus certified, tested or approved by any board of health or any department of the Federal Government; and
- (e) Placed in advertising booklets and circulars such statements as "References concerning the influence of the stratum corneum on the emergence of hair," "Concerning the relation of the pituitary gland to hair growth," and "Concerning the absorption of substances through the hair follicle"; followed by references to certain medical works, with tendency and capacity to cause purchasers to believe that their said preparations had been examined and approved by the doctors referred to, when in fact such doctors had not examined or approved their preparations and did not subscribe to the theories appearing in their booklets and advertising;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that all such representations were true, and of inducing it to purchase their cosmetic preparations because 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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. Morris L. Bower, of New York City, 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 Post Institute, Inc., and Post Institute, corporations, and Louis J. Stern, individually trading under the name of Post Institute, and as an officer of Post Institute, Inc., and Post Institute, corporations, and Helmuth M. Kiesewetter, individually, and as officer of Post Institute, a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Post Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws

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of the State of New York, having its office and principal place of business at 105 East Sixteenth Street, in the city of New York, in said State; respondent, Post Institute, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its office at 9 East Fortieth Street, in the city of New York, N. Y., and its principal place of business at 105 East Sixteenth Street, in the city of New York, N. Y.

Louis J. Stern, an individual, is president and treasurer of Post Institute, Inc., vice president of Post Institute, corporations, and also trades as Post Institute, and has his principal office and place of business at 105 East Sixteenth Street, in the city of New York, N. Y. Helmuth M. Kiesewetter is president and treasurer of corporate respondent, Post Institute, and is an individual having his office and place of business at 9 East Fortieth Street, in the city of New York, N. Y. Respondents Louis J. Stern and Helmuth M. Kiesewetter direct and control the sales activities and policies of said corporate respondents with respect to the acts and practices herein set forth.

All of said respondents act in conjunction and cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of preparations for the hair and scalp, known as "Ultrazol Hair Bath," "Ultrazol Pituitary Fluid," and "Ultrazol .33," recommended for use in combination as "Ultrazol Scalp Treatment." Respondents caused said preparations, when sold, to be transported from their places 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 maintain, and at all times mentioned herein have maintained, a course of trade in said 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 aforesaid business, the respondents have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said preparations, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparations; and the respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dis-

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semination of false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Ultrasol rids the scalp pores of those hard, little particles of foreign matter, which are bound to collect there from time to time; it stimulates the hair roots to normal scalp lubrication; creates a condition under which normal hair growth may continue, and one's hair may again be its healthy, glowing best.

POST INSTITUTE

presents

A REVOLUTIONARY HAIR DISCOVERY

After twelve years of research, Post Institute presents Ultrasol, a new hair discovery. Although Ultrasol has won enthusiastic endorsement from distinguished users, the ethics of the Institute preclude exaggerated claims. The safety, simplicity and economy of Ultrasol has been demonstrated by thousands of men and women, who have used Ultrasol at home, and by over 100,000 treatments, given by specialists.

* * * * *

Ultrasol users report:

How abnormal hair loss has stopped.

How fuzz has grown to mature hair.

How the scalp feels refreshed, free from dandruff.

How dull, faded hair becomes brilliant.

How dry scalp becomes normal.

How limp, dull, scanty, "impossible hair" is revived without scalp manipulation or tiring massage.

Ultrasol courses for women are designed:

To revive limp, dull, scanty, "impossible hair" * * * without strong rinses, scalp manipulation or tiring massage.

To strengthen the hair for lasting, artistic permanent waving.

To normalize dry or oily scalp.

To give dyed hair even, "refined" luster.

To keep the scalp and hair clean, free from dandruff, without soap or drying solutions.

To check abnormal hair falling and combat premature graying.

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PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning, not specifically set out herein, the respondents represent, directly and by implication, that their preparations, used either singly or in combination, will revive the growth of hair and are cures or remedies for baldness and constitute competent and effective treatments therefor; that the use of said preparations will stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, and restore the natural color to the hair; and that the use of said preparations will be effective in removing and curing dandruff.

PAR. 5. The aforesaid representations and claims, used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact, respondents' preparations, whether used singly or in combination, have no therapeutic value in the cure or treatment of baldness, and will not revive the growth of hair. The use of said preparations will not stop the abnormal loss of hair or cause fuzz to develop into mature hair. Said preparations will not normalize dry or oily scalp, check premature graying or restore the natural color to the hair. Respondents' preparations have no therapeutic value in removing or curing dandruff or causing dull, faded hair to become brilliant in excess of furnishing a dressing for the hair and providing a shampoo which might aid in removing scales.

PAR. 6. In addition to the representations hereinabove set forth, the respondents have further represented that the formation of keratinized epidermal waste obstructs the hair follicle, interferes with natural lubrication, restricts growth of hair, and prevents free emergence of new hair, and that other causes of loss of hair and hair troubles are caused by insufficiency of pituitary secretion at the hair roots, and that their preparations have therapeutic value in correcting such conditions.

Typical of such representations regarding the efficacy of respondents' preparations in such conditions, which the respondents disseminate, and have caused to be disseminated, in the manner hereinabove described, is the following:

AFTER MATURE RESEARCH

Post Institute has formulated the theory that abnormal hair loss, faded hair and most other hair troubles, in non-pathological cases, are due to:

(A) Neo-keratin, horn-like matter, which fills up the "funnel" of the hair follicle, interferes with natural lubrication, restricts the growth of luxuriant hair and often prevents the free emergence of new hair.

(B) Insufficiency, at the hair root, of some constituent of pituitary secretion.

Based on this theory, the Institute has designed Ultrasol and the method for applying it:

(a) To remove neo-keratin; (b) to supply to the scalp—in a manner planned to aid penetration—a special extract from the whole-gland pituitary body, in combination with other ingredients, which the Institute has found, by practical tests, conducive to hair improvement; (c) to create a condition under which natural revival of hair growth may become possible.

Through the use of the aforesaid statements, and representations, and others of similar import and meaning, not specifically set out herein, the respondents have represented, directly and by implication, that their preparations will remove keratin epidermal tissues and cause pituitary substance to penetrate to the hair roots and stimulate the growth of hair.

In truth and in fact, respondents' preparations, used either singly or in combination, will have no effect upon the process of keratinization. Furthermore, there is no scientific basis for the assumption that pituitary or other substance, applied to the scalp, will penetrate to the hair roots and stimulate the growth of hair.

PAR. 7. In addition to the representations hereinabove set forth, the respondents, by the use of the word "Institute" in their trade or corporate name and in their various forms of advertising, represent that they are a scientific organization, formed for the purpose of promoting learning and research.

In furtherance of this representation, the respondents placed in their advertising material statements to the same effect, of which the following are typical examples:

AFTER TWELVE YEARS OF RESEARCH
POST INSTITUTE PRESENTS
ULTRASOL
A NEW HAIR DISCOVERY

The ethics of the Institute preclude exaggerated claims.

By a costly process, Post Institute isolates from whole gland pituitary body a special extract.

As an additional means of furthering such representations, the respondents place on their various advertising a replica of a seal, usually round in design, by means of which the respondents represent that their products have been certified, tested or approved by some scientific organization or some State, city or federal board of health-

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An example of one of such seals is one of a circular design, on the outer margin of which appears the following, in large letters:

CERTIFIED SAFE

and in the center of which appears the following legend:

POST INSTITUTE
CERTIFIES
THAT ULTRASOL IS
MADE TO MEET THE
HIGHEST STANDARDS
OF CITY, STATE, AND
FEDERAL
BOARDS OF HEALTH

In truth and in fact, Post Institute is not a scientific organization, formed for the purpose of promoting learning and research, and its products have not been certified, tested or approved by any scientific organization or board of health of any city or State or any department of the Federal Government.

PAR. 8. A further example of the false and misleading representations made by the respondents is the placing in their booklets, advertising and describing their products, the following statement:

REFERENCES

CONCERNING THE INFLUENCE OF THE STRATUM CORNEUM ON THE EMERGENCE OF HAIR. Reference is made to the works of W. J. O'Donovan, M. D., a physician at the Skin Department of London Hospital, lecturer at the London School of Dermatology, St. John's Hospital; J. M. H. Macloed, Vice-President, Dermatological Section of the Royal Society of Medicine.

CONCERNING THE RELATION OF THE PITUITARY GLAND TO HAIR GROWTH. Reference is made to the works of William Engleback, M. D., authority on endocrinology, late Professor, St. Louis College of Medicine.

CONCERNING THE ABSORPTION OF SUBSTANCES THROUGH THE HAIR FOLLICLE. Reference is made to the works of George Clinton Andrews, M. D., Associate Professor of Dermatology, College of Physicians and Surgeons, Columbia University; Richard J. Sutton, M. D., Professor of Dermatology, University of Kansas, School of Medicine, and Richard L. Sutton, Jr., M. D., Assistant Professor of Dermatology, University of Kansas.

By this means, the respondents represent that the doctors and physicians, so named, subscribe to the theories, appearing in said booklet, and in effect approve respondents' product, when in truth and in fact said doctors and physicians have not examined or approved respondents' preparations and do not subscribe to the theories appearing in respondents' booklets and advertising.

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PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondents' cosmetic preparations because of such erroneous and mistaken belief, engendered as above set forth.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 7, 1940, issued and subsequently served its complaint on the respondents, Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), Post Institute, a corporation, Louis J. Stern, individually, trading as Post Institute and as officer of Post Institute Sales Corporation (formerly known as Post Institute, Inc.) and Post Institute, a corporation, and Helmuth M. Kiesewetter, individually, and as officer of Post Institute, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Morris L. Levine, attorney for the respondents, before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; 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

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public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Post Institute Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 105 East Sixteenth Street in the city of New York, State of New York. Said corporation was originally incorporated under the name of Post Institute, Inc., and on or about July 6, 1939, the name of said corporation was changed to Post Institute Sales Corporation. During the time that said respondent operated under the name of Post Institute, Inc., it was engaged in the manufacture and in the sale and distribution of certain preparations for the hair and scalp known as Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol .33, recommended for use, in combination, as Ultrasol Scalp Treatment. On or about July 6, 1939, at the time the name of respondent corporation was changed to Post Institute Sales Corporation, said corporate respondent discontinued the manufacture of said preparations and from that time until the present, said preparations have been manufactured by respondent Louis J. Stern, an individual trading as Post Institute, and said respondent Post Institute Sales Corporation has been sole distributor of said preparations so manufactured by the said respondent Louis J. Stern, trading as Post Institute.

Respondent, Louis J. Stern, is an individual, trading under the name of Post Institute. Prior to July 6, 1939, said respondent Louis J. Stern was president and owner of all the capital stock of Post Institute, Inc. Subsequent to July 6, 1939, said respondent Louis J. Stern has been president and manager of Post Institute Sales Corporation and owns 60 percent of the capital stock of said corporation. Said respondent Louis J. Stern has, at all times mentioned herein, directed and controlled the policies and sales activities of Post Institute Sales Corporation and its predecessor, Post Institute, Inc.

Post Institute, a corporation, also known as the Post Institute of Delaware, Inc., a corporation, was organized under and by virtue of the laws of the State of Delaware, having its principal office at 100 West Tenth Street, Wilmington, Del., and was engaged in the sale and distribution of preparations known as Ultrasol Scalp Treatment, in the city of Philadelphia, State of Pennsylvania. Said corporation was dissolved on March 4, 1939.

Respondent, Helmuth M. Kiesewetter, is an individual, and was president of Post Institute of Delaware, Inc., a corporation, until its

dissolution in March, 1939. Said respondent is also the owner of five percent of the stock of Post Institute Sales Corporation but is not a director or officer of said corporation and has not actively participated in any of the acts and practices hereinafter found.

PAR. 2. Respondent, Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), and respondent Louis J. Stern, individually and trading as Post Institute and as officer and director of Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), have caused said preparations for the hair and scalp known as Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol .33, when sold to be transported from their places 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 maintain, and at all times mentioned herein have maintained, a course of trade in said 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 aforesaid businesses, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

AFTER MATURE RESEARCH

Post Institute has formulated the theory that abnormal hair loss, faded hair and most other hair troubles, in nonpathological cases, are due to:

(A) Neo-keratin, horn-like matter, which fills up the "funnel" of the hair follicle, interferes with natural lubrication, restricts the growth of luxuriant hair and often prevents the free emergence of new hair.

(B) Insufficiency, at the hair root, of some constituent of pituitary secretion.

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Based on this theory, the Institute has designated Ultrasol and the method of applying it:

(a) To remove neo-keratin; (b) to supply to the scalp—in a manner planned to aid penetration—a special extract from the whole-gland pituitary body, in combination with other ingredients, which the Institute has found, by practical tests, conducive to hair improvement; (c) to create a condition under which natural revival of hair growth may become possible.

Ultrasol rids the scalp pores of those hard, little particles of foreign matter, which are bound to collect there from time to time; it stimulates the hair roots to normal scalp lubrication; creates a condition under which normal hair growth may continue, and one's hair may again be its healthy, glowing best.

Ultrasol users report:

How abnormal hair loss has stopped.

How fuzz has grown to mature hair.

How the scalp feels refreshed, free from dandruff.

How dull, faded hair becomes brilliant.

How dry scalp becomes normal.

How limp, dull, scanty, "impossible hair" is revived without scalp manipulation or tiring massage.

Ultrasol courses for women are designed:

To revive limp, dull, scanty, "impossible hair" * * * without strong rinses, scalp manipulation or tiring massage.

To strengthen the hair for lasting, artistic permanent waving.

To normalize dry or oily scalp.

To give dyed hair even, "refined" luster.

To keep the scalp and hair clean, free from dandruff, without soap or drying solutions.

To check abnormal hair falling and combat premature graying.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning, not specifically set out herein, the said respondents represent, directly and by implication, that the process of keratinization interferes with the natural growth of hair and prevents the free emergence of new hair; that insufficiency of pituitary secretion at the hair root causes abnormal loss of hair, faded hair, and other hair troubles; and that the use of respondents' preparations, either singly or in combination, will remove keratin epidermal tissue and cause pituitary substance to penetrate to the hair roots and stimulate or revive the growth of hair. By the same means the said respondents represent, directly or by implication, that the use of their preparations, either singly or in combination, will revive the growth of hair, stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, restore natural color to the hair, and be effective in removing or curing dandruff.

PAR. 5. Respondents' preparations are designed for external application to the hair and scalp, and contain whole-gland pituitary body,

a special extract, combined with derivatives from oil, cholesterin, and lechithin. The only benefit which might be obtained from the use of respondents' preparations is the possible counterirritant action supplied by massage on application of these preparations. Respondents' preparations have no therapeutic value in the treatment of any abnormal condition of the hair or scalp.

The keratinization of the skin is a normal process and forms a scaly or horny substance on the scalp, as well as other parts of the skin. In some cases it sheds easily and in other cases adheres to the scalp. The adherence to the scalp is not necessarily a disease condition and can be removed by a good shampoo medium. Respondents' preparations would have no more effect than soap and water or any other cleansing agent under such conditions. The shedding of such epidermal horny cells has no significance in the growth of hair.

The pituitary gland is not generally recognized by the medical profession as being a controlling factor in the growth of hair, although it may, under certain conditions, have some bearing upon hair growth. Under the conditions of use the extract of whole-gland pituitary body contained in respondents' preparations is inactive, since the use of pituitary substance by external application has no value whatsoever and is ineffective in the treatment of any hair or scalp condition.

The use of said respondents' preparations Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol .33, either singly or in combination, will not revive the growth of hair, stop abnormal loss of hair, cause fuzz to develop into mature hair, or cause dull, faded hair to become brilliant. The use of said preparations will not normalize dry or oily scalp, check premature graying, or restore natural color to the hair. Respondents' preparations do not constitute a cure or remedy for dandruff and have no value in the treatment of dandruff in excess of effecting the temporary removal of dandruff scales.

PAR. 6. The Commission further finds that the said respondents represent, through the use of the word "Institute" in their trade or corporate name and in various forms of advertising, that they are a scientific organization formed for the purpose of promoting learning and research, when, in fact, Post Institute is a trade name used by Louis J. Stern, an individual, in connection with the commercial manufacture and sale of his various preparations, and Post Institute Sales Corporation, is a corporation engaged in the sale and distribution of various preparations manufactured by the said Louis J. Stern. Said respondents are not scientific organizations formed for the purpose of promoting learning and research. In furtherance of their plan

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of misrepresentation as to the nature and scope of the business conducted by them, the respondents use in advertising the following statements and representations:

AFTER TWELVE YEARS OF RESEARCH

POST INSTITUTE PRESENTS

ULTRASOL

A NEW HAIR DISCOVERY

The ethics of the Institute preclude exaggerated claims

PAR. 7. In addition to the acts and practices hereinabove described, the respondents place on their various advertising, a replica of a seal, usually round in design, on the outer margin of which appears the following, in large letters:

CERTIFIED SAFE

and in the center of which appears the following legend:

POST INSTITUTE

CERTIFIES

THAT ULTRASOL IS

MADE TO MEET THE

HIGHEST STANDARDS

OF CITY, STATE, AND

FEDERAL

BOARDS OF HEALTH

The use of such seal has a tendency and capacity to cause purchasers and prospective purchasers to believe that said respondents' preparations have been certified, tested, or approved by city, State, or federal boards of health, when, in fact, such products have never been certified, tested, or approved by any board of health of any city, State or any department of the Federal Government.

PAR. 8. The Commission further finds that the said respondents place the following statements in their various advertising booklets and circulars:

REFERENCES

CONCERNING THE INFLUENCE OF THE STRATUM CORNEUM ON THE EMERGENCE OF HAIR. Reference is made to the works of W. J. O'Donovan, M. D., a physician at the Skin Department of London Hospital, lecturer at the London School of

Dermatology, St. John's Hospital; J. M. H. Macloed, Vice President, Dermatological Section of the Royal Society of Medicine.

CONCERNING THE RELATION OF THE PITUITARY GLAND TO HAIR GROWTH. Reference is made to the works of William Englebach, M. D., authority on endocrinology, late Professor, St. Louis College of Medicine.

CONCERNING THE ABSORPTION OF SUBSTANCES THROUGH THE HAIR FOLLICLE. Reference is made to the works of George Clinton Andrews, M. D., Associate Professor of Dermatology, College of Physicians and Surgeons, Columbia University; Richard J. Sutton, M. D., Professor of Dermatology, University of Kansas, School of Medicine, and Richard L. Sutton, Jr., M. D., Assistant Professor of Dermatology, University of Kansas.

The use of the above statements in their various booklets and circulars describing their various preparations and the results to be obtained from their use, has the tendency and capacity to cause purchasers and prospective purchasers to believe that said respondents' preparations have been examined and approved by the various doctors referred to in said references, when, in fact, such doctors and physicians have not examined or approved respondents' preparations and do not subscribe to the theories appearing in respondents' booklets and advertising.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true and induces a substantial portion of the purchasing public to purchase said respondents' cosmetic preparations because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and exceptions filed thereto, briefs filed in support of the complaint

and in opposition thereto, and oral arguments of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), and its officers and respondent Louis J. Stern, an individual, trading as Post Institute, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their preparations for the hair and scalp designated Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol 33, either singly or in combination under the designation of Ultrasol Scalp Treatment, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference.

(a) That the use of respondents' preparations, either singly or in combination, will revive the growth of hair, stop abnormal loss of hair, cause fuzz to develop into mature hair, or cause dull, faded hair to become brilliant.

(b) That the use of respondents' preparations, either singly or in combination, will normalize dry or oily scalp, check premature graying, or restore natural color to the hair.

(c) That respondents' preparations, either singly or in combination, constitute a cure or remedy for dandruff, or have any value in the treatment of dandruff in excess of effecting the temporary removal of dandruff scales.

(d) That the pituitary substance contained in respondents' preparations is an active ingredient or that it will have any effect upon the growth of hair under the conditions of use.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act of respondents' preparations, which advertisement contains any of the representations prohibited in paragraph (1) hereof and the respective subdivisions thereof.

3. The use, in circulars and other advertising material, of any general reference to any article or book written by any doctor or physician which does not subscribe to the statements or theories contained in such circulars and other advertising without disclosing that such article or book does not constitute an endorsement of respondents' preparations or subscribe to the theories advanced by the respondents in such advertising material.

4. The use of the word "Institute," or any other word of similar import or meaning, in respondents' corporate or trade name, or representing through any other means or device, or in any manner, that respondents constitute scientific organizations or associations formed for the purpose of promoting learning and research, or that the business operated by them, or any of them, is anything other than a private business enterprise for profit.

5. The use of any seal, emblem, or other insignia, which represents, either directly or by implication, that respondents' preparations have been certified, tested, or approved by any board of health of any city or State or by any department of the Federal Government.

It is further ordered, That the complaint be dismissed as to the respondents, Helmuth M. Kieseewetter, an individual, and Post Institute, a corporation, also known as Post Institute of Delaware, Inc., a corporation.

It is further ordered, That the 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.

Complaint

34 F. T. C.

IN THE MATTER OF

MELVIN V. EISENBERG, IRWIN GOLDBERG, HARRY
KROHNER, AND SEYMOUR EISENBERG, TRADING AS
BENTLEY COMPANY, MAIL ORDER DIVISIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4552. Complaint, July 31, 1941—Decision, Dec. 16, 1941*

Where four individuals engaged in interstate sale and distribution of their "Fat-O-No" medicinal preparation; by means of advertisements disseminated through the mails and otherwise—

- (a) Represented, directly and by implication, that their said product was a safe, simple, easy and effective treatment for obesity and an amazing fat-reducing remedy, purity and safety of which were guaranteed by a leading insurance company, and that it was recommended by many physicians; the facts being it was not such a treatment or remedy, or so guaranteed or recommended, but contained the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid and phenolphthalein in quantities sufficient to be harmful to the user;
- (b) Failed to reveal facts material in the light of said representations in that use of the product in question under usual or prescribed conditions, might cause diarrhea and a dependence upon a laxative for evacuation of the bowels, and its use by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis, was dangerous; and
- (c) Failed to reveal further material facts in that use of said preparation as aforesaid might result in edema of the lungs, and might also accelerate metabolic processes, resulting in nervousness and irritability, and dangerously increase body temperature and heart action;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such belief, to purchase their said preparation:

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. R. P. Bellinger for the Commission.

Mr. Robert H. Rudnick, of Chicago, Ill., 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 Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Company, Mail Order Division, 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