

Syllabus

IN THE MATTER OF

HEROLIN COMPANY, INC., AND BERT H. RUBIN

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

Docket 4399. Complaint, Dec. 4, 1940—Decision, Mar. 9, 1942

Where a corporation and its president-treasurer, who administered its business policies, engaged in interstate sale and distribution of various cosmetics and medicinal preparations, toilet articles, and related items, and also of certain "curios" and "charms"; by advertisements in newspapers, circulars, leaflets, pamphlets, price lists, and other media—

- (a) Represented that their "Original Herolin Beautifier Hair Dressing" (formerly designated as "Herolin Double-Strength Quinine Hair Grower" and otherwise), penetrated to the roots of the hair, revived hair cells and caused hair to grow, furnish necessary oils and nourishment to hair, and would prevent dandruff and other scalp ailments, and that their "Hair Gloss and Temple Oil" combined the properties of hair grower, brilliantine, and pressing oil, promoted the growth of hair around the temples and prevented burning hair or scalp with hot combs and irons;

The facts being former was nothing more than a perfumed emollient, the quinine and betanaphthol contents of which were too small to have any appreciable counterirritant or stimulant effect; and both preparations were without therapeutic value in treatment of hair or scalp and would not accomplish results claimed therefor;

- (b) Represented that their "Tetter Salve" would clear up all common skin or scalp of all infections or diseases or stop falling hair;

The facts being that while preparation in question, in some cases, might be effective in clearing the skin of ringworm and some forms of itch, it would not cure eczema, tetter, or other skin ailments due to systemic factors, it had no therapeutic value in treatment of dandruff in excess of softening dandruff scales and facilitating removal thereof, and would not clear the scalp of all infections or diseases or stop falling hair;

- (c) Represented that their "Nayko Tablets" would relieve menstrual pains, and cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments; and that their "Herolin Female Tonic" was a uterine and sedative preparation that would cure female irregularity, and relieve suppressed, painful, and excessive menstruation and other similar female disorders;

The facts being that former preparation had little, if any, therapeutic value and in dosage recommended was incapable of any sedative action; and, while the latter had the therapeutic properties of a laxative and an alcoholic depressant, neither would cure or relieve the conditions claimed;

- (d) Represented that their "Moonbeam Pills" would relieve constipation, cure sick headaches and nausea, and were very beneficial in the treatment of disorders of the liver; and that their "Moonbeam Tonic" would cure constipation, headache, biliousness, dizziness, and back pains, and would correct and cure most systemic disorders of the stomach, kidneys, and liver;

Syllabus

34 F. T. C.

The facts being that while both preparations had laxative properties, they were not cures or remedies for constipation, and had no therapeutic value in the treatment of the other ailments mentioned, in excess of affording temporary relief when such conditions were due to constipation, and were without value in treatment of any disorders of the stomach, kidneys, or liver;

- (e) Represented that their "Blood Tonic" built blood and was valuable in the treatment of boils, pimples, sores, skin infections, dizziness, and troubles arising from poor circulation and disordered conditions of the blood stream;

The facts being it would not accomplish such results, and was without therapeutic value in treatment or cure of conditions above set forth; and was not, as indicated by name, a blood tonic;

- (f) Represented that their "Healing Oil," formerly designated "Rattlesnake Oil," possessed the power of penetrating through the skin to the muscles and joints and was a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, and lame back, and constituted a competent and effective treatment therefor;

The facts being that said oil would not penetrate the skin, and was not a remedy or effective treatment for the ailments above set forth, and did not, as indicated by name, contain healing ingredients;

- (g) Represented that their "Croup Salve" would cure head and chest colds, croup, inflammation, and congestion of the respiratory tract;

The facts being that while use of said preparation, a mildly semivolatile counter-irritant emollient, might afford soothing temporary relief for discomforts of congested respiratory passages, it did not constitute a cure for head or chest colds;

- (h) Failed to reveal facts material in the light of representations in advertisements in question as respects said "Blood Tonic," in that indiscriminate use thereof, due to its bichloride of mercury content, might result in subacute or chronic mercury poisoning, while, by virtue of potassium iodide content, such indiscriminate use might induce toxic thyroid activity in goiter cases and reactivate latent tuberculosis;

- (i) Failed to reveal, similarly, facts material in light of representations in question with respect to its said "Healing Oil," indiscriminate use of which strong irritant with its oil of mustard, oil of sassafras, ether and gasoline content, might cause severe dermatitis; and

- (j) Falsely represented that their so-called curios and charms, consisting of such varied articles as incense, powders, oil, lodestones, horseshoes, and bones, and referred to as "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone in Love Oil," "Adam and Eve Roots in Love Oil," "High John the Conqueror Root in Love Oil," and "Lucky Charm Love Powder Sachet," had mystic and supernatural powers to drive off and guard against evil spirits, bring the wearer or user good luck, love, money, and success in love and marriage, and that they charmed and attracted others; and

Where said corporation and individual, engaged as aforesaid—

- (k) Represented, through use on letterheads and advertising material of the words "manufacturer" and "manufacturing chemists," that they were manufacturers of their products, and chemists who operated the laboratory for origination of their formulae and compounding their cosmetics and medicinal preparations therefrom;

When in fact they were not chemists, did not own, control or operate any chemical laboratory, and made only about 5 percent of their products for export to foreign countries; and

(1) Represented to prospective agents and purchasers in their advertising material that they would supply other articles free with certain combinations of merchandise, when in fact the price of the so-called "free" merchandise was included in that paid for the combination offered;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public with respect to their products and prices thereof, and their business status, thereby causing it to purchase substantial quantities of their products as a result:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. John W. Carter, Jr. for the Commission.

Mr. Harry M. Wengrow, of Atlanta, Ga., 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 Herolin Co., Inc.—a corporation and Bert H. Rubin—individually and as president of Herolin Co., Inc., 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 thereof, would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Herolin Co., Inc., is a corporation organized under the laws of the State of Georgia with its principal place of business located at 201 Mitchell Street, Southwest, Atlanta, Ga.

Respondent, Bert H. Rubin, is an individual and is president and treasurer of Herolin Co., Inc. This respondent, acting in his individual capacity, for his own interest and as president of Herolin Co., Inc., determines, directs and administers the business policies, and is personally and actively engaged in controlling, conducting, and operating the business activities of the aforesaid corporation at its place of business aforesaid as hereinafter set forth.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various cosmetics and medicinal preparations, "Mystic Charms," toilet articles and related items, mainly under the trade name of "Herolin," and some items under the trade names "Duke" and "Lady Constance," in commerce

among and between the various States of the United States. Respondents cause said products when sold to be transported from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States. At all times mentioned herein respondents have maintained a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated, and are now disseminating and have caused, and are now causing, the dissemination of, false advertisements concerning their said products by the 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 products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products 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 by circulars, leaflets, enclosures, pamphlets, price lists, and other media, are the following:

1. That respondents' preparation "Original Herolin Beautifier Hair Dressing," formerly designated by respondent as "Herolin Quinine Hair Dressing" and sometimes designated by respondents as "Herolin Double-Strength Quinine Hair Grower," "Herolin, the Super-Fine Hair Dressing with Quinine Added" and "Herolin Hair Dressing With Real Quinine and Betanaphthol" is a preparation that penetrates to the roots of the hair; revives hair cells and causes hair to grow; that it furnishes necessary oils and nourishment to the hair and that it will prevent dandruff and other scalp ailments.

2. That respondents' preparation "Herolin Hair Gloss and Temple Oil," sometimes designated by respondents as "Herolin Hair Gloss and Temple Oil Brilliantine Temple Gloss Pressing Oil" is a preparation combining the properties of hair grower, brilliantine and pressing oil; that it promotes the growth of hair around the temples and prevents burning hair or scalp with hot combs and irons.

3. That respondents' preparation "Herolin Tetter Salve" is a preparation that will clear up all common skin or scalp diseases, and infections, such as tetter, itchy scalp, dandruff and falling hair.

4. That respondents' preparation "Herolin Nayko Tablets" is a preparation that will relieve women from the pains suffered during the menstruation period; it will cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments.

5. That respondents' preparation "Herolin Female Tonic" is a uterine and sedative preparation that will cure chronic functional irregularity of the female reproductive organs; it will relieve suppressed, painful, and excessive menstruation and other similar female disorders.

6. That respondents' preparation "Herolin Moonbeam Pills" is a preparation that will relieve constipation, cure sick headaches, nausea, and is very beneficial in the treatment of disorders of the liver.

7. That respondents' preparation "Herolin Moonbeam Tonic" is a preparation that will cure constipation, headache, biliousness, dizziness and back pains; and that it will correct and cure most systemic disorders of the stomach, kidneys, and liver.

8. That respondents' preparation "Herolin Blood Tonic" is a preparation that builds blood and is valuable in the treatment of boils, pimples, sores, skin infections, dizziness, and troubles arising from poor circulation and disordered conditions of the blood stream.

9. That respondents' preparation "Herolin Healing Oil," formerly designated by respondents as "Rattlesnake Oil," is a preparation possessing the power of penetration through the skin to the muscles and joints and is a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, and lame back, and constitutes a competent and effective external treatment therefor.

10. That respondents' preparation "Herolin Croup Salve" is a preparation that will cure head and chest colds, croup, inflammation, and congestion of the respiratory tract.

11. That respondents' items "Lucky Charm Mystic Curios," "Lucky Charm Moon Incense," "Magnetic Lodestone in Love Oil," "Adam and Eve Roots in Love Oil," "High John the Conqueror Root in Love Oil," "Lucky Charm Love Powder Sachet," are items that have mystic and supernatural powers to drive off and guard against evil spirits; to bring to the wearer or user good luck, love, money, and success in marriage and in love; they will charm, attract, draw, and hold in love, romance, and marriage.

PAR. 4. The aforesaid representations and claims, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, misleading, and untrue, and constitute false advertising in that the respondents represent that some of their items possess supernatural powers and that other various preparations are cures or remedies for, or competent treatments of, various diseases and ailments for which said preparations have little or no therapeutic value.

In truth and in fact respondents' preparation "Original Herolin Beautifier Hair Dressing," formerly and sometimes designated as aforesaid, is nothing more than a perfumed emollient, the quinine and betanaphthol contents of which are so small that no appreciable local counterirritating or circulatory stimulation would result from its use.

This preparation, under whatever name it may be designated, has no therapeutic value in the treatment of the hair or scalp. It will

Complaint

34 F. T. C.

not penetrate to the roots of the hair, revive hair cells, or cause hair to grow. It will not furnish necessary oils or nourishment to the hair. It has no value in the treatment or prevention of dandruff or other scalp ailments.

Respondents' "Herolin Hair Gloss and Temple Oil," sometimes otherwise designated by respondents as aforesaid, is nothing more than an oily emollient that has no therapeutic value in the treatment of either the hair or the scalp. It will not promote the growth of hair around the temples. It will not prevent hot combs or hot irons from burning the hair or scalp.

Respondents' preparation "Herolin Tetter Salve" is a combination of counterirritant, fungicidal, and emollient principles that may promote local healing and afford some temporary relief from the symptoms of itching associated with many skin disorders; it has no therapeutic value in the treatment of dandruff in excess of softening dandruff scales and facilitating the removal thereof. It may in some cases be effective in clearing the skin of ringworm and some forms of itch. It will not cure eczema, tetter, or other skin infections and ailments due to systemic factors. It will not clear the scalp of all infections or diseases or stop falling hair.

Respondents' preparation "Herolin Nayko Tablets" have little if any therapeutic value and in the dosage recommended is incapable of providing any sedative action. It will not stop the pains associated with menstruation. It will not cure or relieve headaches, backaches, nausea, neuralgia, or colds.

Respondents' preparation "Herolin Female Tonic" has the therapeutic properties of a laxative and an alcoholic depressant. It will not afford relief during the menstruation period from suppressed painful or excessive menstruation. This preparation will not cure or remove the cause of female disorders due to functional female trouble of the reproductive organ or have any therapeutic value in the treatment of such disorders.

Respondents' preparation "Herolin Moonbeam Pills" has laxative properties.

It is not a cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from such conditions. It has no therapeutic value in the treatment of disorders of the liver. It is not a cure or remedy for sick headaches or nausea, and does not constitute a competent or effective treatment therefor in excess of affording temporary relief when such conditions are due to constipation.

Respondents' preparation "Herolin Moonbeam Tonic" is a bitter saline laxative possessing little of any diuretic action. It is not a

cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from such conditions. It has no therapeutic value in the treatment of headaches, biliousness, dizziness, or back pains in excess of affording temporary relief when such conditions are due to constipation. Said preparation has no value in the treatment of any systemic disorder of the stomach, kidney, or liver.

Respondents' preparation "Herolin Blood Tonic" will not build blood. It has no therapeutic value in the treatment or cure of boils, pimples, sores, skin infection, dizziness or any other trouble arising from or occasioned by poor circulation or poor blood. The name is false and misleading as it will not supply any substance that will overcome blood deficiency. It is not a blood tonic.

Respondents' preparation "Herolin Healing Oil" is a volatile irritant capable of causing severe dermatitis. It will not penetrate the skin. It is not a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia or lame back, and does not constitute a competent or effective treatment therefor. The name is false and misleading as it contains no healing ingredients.

In truth and in fact respondents' preparation "Herolin Croup Salve" is a mildly semivolatile counterirritant emollient, the use of which may afford soothing temporary relief for discomforts of congested respiratory passages but does not constitute a cure or remedy for head or chest colds.

Respondents' items "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone In Love Oil," "Adam and Eve Roots In Love Oil," "High John the Conqueror Root In Love Oil," "Lucky Charm Love Powder Sachet," possess none of the supernatural or mystic powers claimed for them by respondents; they will not drive off or guard against evil spirits; they will not bring to the wearer or user good luck, love, money or success in marriage or love; they will not charm, attract, draw or hold in love, romance or marriage; they are valueless and possess none of the virtues indicated in respondent's advertisements.

PAR. 5. Respondents' items "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone in Love Oil," "Adam and Eve Roots In Love Oil," "High John the Conqueror Root in Love Oil," "Lucky Charm Love Powder Sachet," due to their names and because of the mystic and supernatural qualities attributed to them by respondents, have and make a definite appeal to that section of the buying public whose emotional nature is easily fired by superstition. Many types of individuals belong to this group of the buying public. Respondents' items find a ready customer among members of this

Complaint

34 F. T. C.

group who are induced to purchase an item that is worthless. These items of respondents, because of the false and misleading statements made by respondents in reference to their qualities and powers, appeal to the ignorant and the superstitious and, because of this appeal, have a tendency to and they do, aid in the development of this type of character.

PAR. 6. In addition to the false and misleading statements hereinabove set forth, the respondents are also engaged in the dissemination of false advertisements, for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal:

(a) That the use of respondent's preparation "Herolin Blood Tonic" under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause subacute or chronic mercury poisoning and that this preparation should not be used by persons having either active or quiescent tuberculosis or goiter.

(b) That the use of respondents' preparation "Herolin Healing Oil" under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause severe dermatitis and that said preparation is highly inflammable and should be kept away from heat or fire.

By reason of the existence of bichloride of mercury and potassium iodide in respondents' preparation "Herolin Blood Tonic," the use of the preparation would be definitely harmful in two ways:

(a) Although bichloride of mercury may be eliminated with relative rapidity there is a tendency towards excretory decline and the establishment of absorption depots in the system. Therefore, in the main, indiscriminate use of the preparation may result in subacute or chronic mercury poisoning.

(b) By reason of the potassium iodide content of the preparation, the use of it is harmful to users who have pulmonary tuberculosis, either active or quiescent. The indiscriminate use of this preparation may, therefore, result in inducing toxic thyroid activity or reactive latent tuberculosis.

By reason of the presence of oil of mustard, oil of sassafras, ether and gasoline, in respondents' preparation "Herolin Healing Oil," this preparation is highly inflammable and may be explosive and it is also a strong irritant. The indiscriminate use of this preparation may cause severe dermatitis. The careless handling of the preparation around open flames, lights, or other hot objects may cause serious and irreparable injury to the user.

PAR. 7. In addition to the false and misleading statements hereinabove set forth, respondents by the use of the word "manufacturer" and the use of the phrase "creators of guaranteed beauty aids" on their letterheads and the use of the phrase "manufacturing chemists" on some of their printed matter, have represented and are now representing that they are:

(a) *Manufacturers*—owning, controlling or operating a plant or factory for the manufacture of their products;

(b) *Creators*—That by chemical research or otherwise they formulate new and not heretofore known beauty aids; and

(c) *Chemists*—owning, controlling or operating a chemical laboratory for the creation and the compounding of formulae from which their cosmetic and medical preparations are manufactured.

Respondents are not now and they never have been manufacturers, creators or chemists. They do not now own, control or operate, directly or indirectly, any plant or factory for the manufacture of these products, or any laboratory for, or employ any chemist for research work in, the creation or compounding of any formula or formulae for the manufacture of their cosmetic and medicinal preparations.

PAR. 8. Respondents in the course and conduct of their business and for the purpose of inducing the purchase of many of their products, have set forth in printed circulars and form letters distributed through the mails and by other media, various offers and combination offers under several designations, purporting to be introductory and get-acquainted offers to new agents and money savers to other purchasers, all offers purporting to carry free items of respondents' products and some in addition thereto carrying other free merchandise.

Respondents' so-called introductory and get-acquainted offers to new agents, however designated, are not and never have been restricted and limited to new purchasers. On the contrary, such offers have been and are now available to any and all purchasers.

The products and article of merchandise which the respondents represent are given free or without charge are not free in any instance. The prices of the so-called "free" goods, under whatever name designated, are included in the price of the other items of respondents' offer. The price paid by the purchaser is the regular price which would be paid for the combination offered, including the so-called "free" goods.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations and others of a

Findings

34 F. T. C.

similar nature, 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 such false statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' products.

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 December 4, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Herolin Company, Inc., a corporation, and Bert H. Rubin, individually and as president of the corporate respondent, 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 the complaint and the filing of respondents' answer thereto, a hearing was held before a trial examiner of the Commission therefore duly designated by it, during the course of which testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission. Thereafter, during the course of the hearing, a stipulation was entered into between the attorney for the Commission and the attorney for the respondents, wherein it was stipulated and agreed that the allegations of fact contained in the complaint (with certain exceptions) were admitted by the respondents to be true, and that the Commission might proceed without further hearings or other procedure to make its findings as to such facts and its conclusion based thereon, and might proceed also to issue its order based upon such findings and conclusion. Subsequent to the execution of said stipulation and during the course of said hearing, testimony and other evidence in support of the matters excepted from said stipulation were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, and such testimony and other evidence, together with the testimony and other evidence originally introduced, and the stipulation entered into between the attorneys, 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, the answer thereto, testimony and other evidence, stipulation, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Herolin Co., Inc. is a corporation organized under the laws of the State of Georgia, with its principal place of business located at 201 Mitchell Street, SW, Atlanta, Ga.

Respondent, Bert H. Rubin, is an individual and is president and treasurer of respondent, Herolin Co., Inc. He directs and administers the business policies of the corporation and also participates personally and actively in the business activities of the corporation.

PAR. 2. The respondents are now, and for a number of years last past have been, engaged in the sale and distribution of various cosmetics and medicinal preparations, toilet articles and related items, and also certain articles designated by respondents as "curios" and "charms." Respondents' products are generally sold under the trade name "Herolin."

In the course and conduct of their business the respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States. Respondents maintain, and have maintained, a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents have disseminated and have caused the dissemination of various advertisements concerning their products, by the 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 have caused the dissemination of advertisements concerning their products by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their products in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated

Findings

34 F. T. C.

as set forth above, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, price lists, and other media, are the following:

1. That respondents' preparation "Original Herolin Beautifier Hair Dressing," formerly designated by respondents as "Herolin Double-Strength Quinine Hair Grower," "Heroline, the Super-Fine Hair Dressing with Quinine Added" and "Herolin Hair Dressing With Real Quinine and Betanaphthol," penetrates to the roots of the hair; revives hair cells and causes hair to grow; that it furnishes necessary oils and nourishment to the hair and that it will prevent dandruff and other scalp ailments.

2. That respondents' preparation "Herolin Hair Gloss and Temple Oil," sometimes designated by respondents as "Herolin Hair Gloss and Temple Oil Brilliantine Temple Gloss Pressing Oil," is a preparation combining the properties of hair grower, brilliantine and pressing oil; that it promotes the growth of hair around the temples and prevents burning hair or scalp with hot combs and irons.

3. That respondents' preparation "Herolin Tetter Salve" will clear up all common skin or scalp diseases and infections, such as tetter, dandruff, and falling hair.

4. That respondents' preparation "Herolin Nayko Tablets" will relieve women from the pains suffered during the menstruation period; that it will cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments.

5. That respondents' preparation "Herolin Female Tonic" is a uterine and sedative preparation that will cure chronic functional irregularity of the female reproductive organs; that it will relieve suppressed, painful, and excessive menstruation and other similar female disorders.

6. That respondents' preparation "Herolin Moonbeam Pills" will relieve constipation, cure sick headaches and nausea, and that it is very beneficial in the treatment of disorders of the liver.

7. That respondents' preparation "Herolin Moonbeam Tonic" will cure constipation, headache, biliousness, dizziness, and back pains; and that it will correct and cure most systemic disorders of the stomach, kidneys, and liver.

8. That respondent's preparation "Herolin Blood Tonic" builds blood and is valuable in the treatment of boils, pimples, sores, skin infections, dizziness, and troubles arising from poor circulation and disordered conditions of the blood stream.

9. That respondents' preparation "Herolin Healing Oil," formerly designated by respondents as "Rattlesnake Oil," possesses the power of penetration through the skin to the muscles and joints and is a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, and lame back, and constitutes a competent and effective treatment therefor.

10. That respondents' preparation "Herolin Croup Salve" will cure head and chest colds, croup, inflammation and congestion of the respiratory tract.

PAR. 4. The Commission finds that respondents' preparation Original Herolin Beautifier Hair Dressing is in fact nothing more than a perfumed emollient, the quinine and betanaphthol contents of which are so small that no appreciable local counterirritating or circulatory stimulation would result from its use. This preparation has no therapeutic value in the treatment of the hair or scalp. It

will not penetrate to the roots of the hair, revive hair cells or cause hair to grow. It will not furnish necessary oils or nourishment to the hair. It has no value in the treatment or prevention of dandruff or other scalp ailments.

Respondents' Herolin Hair Gloss and Temple Oil is nothing more than an oily emollient that has no therapeutic value in the treatment of either the hair or the scalp. It will not promote the growth of hair around the temples. It will not prevent hot combs or hot irons from burning the hair or scalp.

Respondents' preparation Herolin Tetter Salve is a combination of counterirritant, fungicidal, and emollient principles that may promote local healing and afford some temporary relief from the symptoms of itching associated with many skin disorders. It has no therapeutic value in the treatment of dandruff in excess of softening dandruff scales and facilitating the removal thereof. It may in some cases be effective in clearing the skin of ringworm and some forms of itch. It will not cure eczema, tetter, or other skin infections and ailments due to systemic factors. It will not clear the scalp of all infections or diseases or stop falling hair.

Respondents' preparation Herolin Nayko Tablets has little if any therapeutic value and in the dosage recommended is incapable of providing any sedative action. It will not stop the pains associated with menstruation. It will not cure or relieve headaches, backaches, nausea, neuralgia, or colds.

Respondents' preparation Herolin Female Tonic has the therapeutic properties of a laxative and an alcoholic depressant. It will not afford relief during the menstruation period from suppressed, painful, or excessive menstruation. This preparation will not cure or remove the cause of female disorders due to functional female trouble of the reproductive organs, or have any therapeutic value in the treatment of such disorders.

Respondents' preparation Herolin Moonbeam Pills has laxative properties. It is not a cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from such condition. It has no therapeutic value in the treatment of disorders of the liver. It is not a cure or remedy for sick headaches or nausea, and does not constitute a competent or effective treatment therefor in excess of affording temporary relief when such conditions are due to constipation.

Respondents' preparation Herolin Moonbeam Tonic is a bitter saline laxative possessing little if any diuretic action. It is not a cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from

Findings

34 F. T. C.

such condition. It has no therapeutic value in the treatment of headaches, biliousness, dizziness, or back pains in excess of affording temporary relief when such conditions are due to constipation. The preparation has no value in the treatment of any systemic disorder of the stomach, kidneys, or liver.

Respondents' preparation Herolin Blood Tonic will not build blood. It has no therapeutic value in the treatment or cure of boils, pimples, sores, skin infection, dizziness or any other trouble arising from or occasioned by poor circulation or poor blood. The name is false and misleading as the preparation will not supply any substance that will overcome blood deficiency. It is not a blood tonic.

Respondents' preparation Herolin Healing Oil is a volatile irritant capable of causing severe dermatitis. It will not penetrate the skin. It is not a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, or lame back, and does not constitute a competent or effective treatment therefor. The name is false and misleading as the preparation contains no healing ingredients.

Respondents' preparation Herolin Croup Salve is a mildly semi-volatile counterirritant emollient, the use of which may afford soothing temporary relief for discomforts of congested respiratory passages but does not constitute a cure or remedy for head or chest colds.

PAR. 5. The Commission therefore finds that the representations made by respondents with respect to their preparations as set forth above are false, misleading, and deceptive, and constitute false advertisements. The advertisements with respect to the preparations Herolin Blood Tonic and Herolin Healing Oil are false for the further reason that they fail to reveal facts material in the light of the representations contained in such advertisements, and fail to reveal that the use of these preparations under the conditions prescribed in the advertisements, or under such conditions as are customary or usual, may result in injury to the health of the user.

The preparation Herolin Blood Tonic contains bichloride of mercury. While ordinarily bichloride of mercury may be eliminated from the system with relative rapidity, there is a tendency toward excretory decline and the establishment of absorption depots in the system. The indiscriminate use of this preparation may therefore result in subacute or chronic mercury poisoning.

This preparation also contains potassium iodide, and the use of the preparation is harmful to users who have goiter or pulmonary tuberculosis in either the active or quiescent stage. The indiscriminate use of

the preparation in such cases may result in inducing toxic thyroid activity and may reactivate latent tuberculosis.

The preparation Herolin Healing Oil contains oil of mustard, oil of sassafras, ether and gasoline, and is a strong irritant. The indiscriminate use of the preparation may cause severe dermatitis.

PAR. 6. The articles designated by respondents as "curios" and "charms" consist of numerous and varied articles such as incense, powders, oil, lodestones, horseshoes, and bones. Among the names given by respondents to these articles are "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone In Love Oil," "Adam and Eve Roots in Love Oil," "High John the Conqueror Root in Love Oil," and "Lucky Charm Love Powder Sachet." In connection with the sale and distribution of these articles, respondents represent that they have mystic and supernatural powers to drive off and guard against evil spirits; to bring to the wearer or user good luck, love, money and success in love and marriage; and that they charm and attract others. These representations are false in their entirety. The articles in question are valueless and possess none of the powers or virtues indicated in respondents' advertisements.

PAR. 7. The respondents have also used on their letterheads and on certain of their advertising material the legends, "manufacturer" and "manufacturing chemists." Through the use of these legends the respondents have represented that they are the manufacturers of the products sold by them, and also that they are chemists and own, control or operate a chemical laboratory for the origination and compounding of formulas from which their cosmetics and medicinal preparations are manufactured.

Respondents are not in fact chemists and do not own, control, or operate any chemical laboratory. While respondents manufacture that portion of their products which is exported to foreign countries, this portion now constitutes only about 5 percent of respondents' total volume of business. The reason given by respondents for manufacturing the products which are exported is that by manufacturing such products they are able to effect certain savings in the way of federal excise taxes. The Commission finds that the use by respondents of the legend "chemists" in connection with their trade name is misleading and deceptive; and also that such use of the legend "manufacturer" is misleading and deceptive unless the application of such legend be restricted to that portion of respondents' products which is exported to foreign countries.

PAR. 8. In their advertising material the respondents also represent to prospective agents and other prospective purchasers that upon the

Order

34 F. T. C.

purchase from respondents of certain combinations of merchandise, the respondents supply certain other articles of merchandise "free" to such agents and purchasers. In fact, the merchandise designated by respondents as "free" is in no sense free or without charge, but the price of such merchandise is included in the price paid by the purchaser for the combination offered.

PAR. 9. The Commission finds further that the use by respondents of the false and misleading representations and advertisements herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties, value and safety of respondents' products, and with respect to respondents' business status and the prices of their products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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 answer of respondents, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, stipulation entered into between the attorney for the Commission and the attorney for respondents, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), 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 the respondents, Herolin Co., Inc., a corporation, and its officers, and Bert H. Rubin, individually and as president of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal and cosmetic preparations hereinafter named, 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 directly or indirectly:

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 by implication:

(a) That respondents' preparation "Original Herolin Beautifier Hair Dressing" penetrates to the roots of the hair; that it revives hair cells or causes hair to grow; that it furnishes necessary oils or nourishment to the hair; or that it prevents dandruff or other scalp ailments.

(b) That respondents' preparation "Herolin Hair Gloss and Temple Oil" combines the properties of hair grower, brilliantine, and pressing oil; that it promotes the growth of hair; or that it prevents hot combs or irons from burning the hair or scalp.

(c) That respondents' preparation "Herolin Tetter Salve" will stop falling hair; that it possesses any therapeutic value in the treatment of dandruff in excess of softening dandruff scales and facilitating the removal thereof; or that it constitutes a cure for eczema, tetter or other skin infections or ailments due to systemic factors.

(d) That respondents' preparation "Herolin Nayko Tablets" will relieve women from the pains suffered during the menstruation period; or that it will cure or relieve headaches, backaches, nausea, neuralgia, or colds.

(e) That respondents' preparation "Herolin Female Tonic" will cure, or have any therapeutic value in the treatment of, chronic functional irregularity of the female reproductive organs; or that it will relieve suppressed, painful, or excessive menstruation.

(f) That respondents' preparation "Herolin Moonbeam Pills" possesses any therapeutic value in the treatment of disorders of the liver; or that it constitutes a cure for sick headaches or nausea, or possesses any therapeutic value in the treatment thereof in excess of affording temporary relief when such conditions are due to constipation.

(g) That respondents' preparation "Herolin Moonbeam Tonic" will correct or cure systemic disorders of the stomach, kidneys or liver; that it will cure constipation, or is a competent or effective treatment therefor in excess of furnishing temporary relief; or that it constitutes a cure for headaches, biliousness, dizziness, or back pains, or possesses any therapeutic value in the treatment thereof in excess of affording temporary relief when such conditions are due to constipation.

(h) That respondents' preparation "Herolin Croup Salve" constitutes a cure for head or chest colds, croup, or inflammation or

congestion of the respiratory tract, or that it possesses any therapeutic value in the treatment thereof in excess of affording soothing temporary relief from the discomforts associated with such conditions.

(i) That respondents' preparation "Herolin Blood Tonic" will build blood, or that it has any therapeutic value in the treatment of boils, pimples, sores, skin infections, dizziness, or any troubles arising from disordered conditions of the blood stream or from poor circulation; or which advertisement uses the words "Blood Tonic" as a part of the name of said preparation or otherwise represents that said preparation is a blood tonic; or which advertisement fails to reveal that the continued use of said preparation may result in chronic mercury poisoning, and that said preparation should not be used by those having tuberculosis or goiter; provided, however, that such advertisement need contain only the statement, "Caution: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the above effect.

(j) That respondents' preparation "Herolin Healing Oil" is capable of penetrating the skin to the muscles or joints; or that it constitutes a cure or remedy or a competent or effective treatment for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, or lame back; or which advertisement uses the word "Healing" as a part of the name of said preparation or otherwise represents that said preparation possesses healing properties; or which advertisement fails to contain a warning against the repeated application of said preparation to the same place; provided, however, that such advertisement need contain only the statement, "Caution: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the above effect;

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 said preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement with respect to said preparations Herolin Blood Tonic and Herolin Healing Oil fails to comply with the affirmative requirements set forth in subparagraphs (i) and (j) above;

It is further ordered, That the respondents and their officers, agents, representatives and employees, as aforesaid, 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 respondents' so-called "curios" and "charms," including incense, powders, oils, lodestones, horseshoes, and bones, or any other articles, do forthwith cease and desist from;

Representing that said articles possess any mystic or supernatural powers; that they will bring to the wearer or user good luck, love, money, or success in love and marriage; or that they will charm or attract others;

It is further ordered, That the respondents and their officers, agents, representatives, and employees, as aforesaid, 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 respondents' medicinal and cosmetic preparations and so-called curios and charms, do forthwith cease and desist from:

1. Using the word "Chemists," or any other word of similar import, to designate or describe respondents' business, or otherwise representing that respondents are chemists, or that they own, control or operate a chemical laboratory.

2. Using the unqualified word "manufacturer," or any other word of similar import, to designate or describe respondents' business, or otherwise representing that respondents manufacture all of the products sold by them; provided, however, that this provision shall not be construed to prohibit the use of such term when its application is expressly restricted to that portion of respondents' products which is exported to foreign countries and which is in fact manufactured by respondents.

3. Using the word "free," or any other word of similar import, to designate or describe any articles of merchandise which are not in fact given free and without charge, or otherwise representing that any merchandise is given free or without charge when such is not the fact.

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.

IN THE MATTER OF
INTERNATIONAL PARTS CORPORATION

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

Docket 4513. Complaint, May 29, 1941—Decision, Mar. 9, 1942

Where a corporation, engaged in competitive interstate sale and distribution of replacement automobile mufflers—

- (a) Represented, directly or by implication, that the occupant of an automobile equipped with a muffler, the seams of which were spot-welded, locked or crimped, was in danger of injury from carbon monoxide gas as a result of leakage of exhaust gas, and that such danger was avoided through the use of a muffler with continuous electric-welded seams, through such statements on cartons and tags attached to its said product (together with a depiction of a police officer) as "WARNING! To Protect Yourself Against Leaking Carbon Monoxide Gas Be Sure Your Muffler is Made With Continuous ELECTRIC-WELDED SEAMS Throughout * * * Not Locked, Crimped or Spot-Welded—Your Safeguard is An INTERNATIONAL";
- The facts being that in the customary operation of an automobile there is little or no danger of such poisoning as a result of such leakage, regardless of how its muffler seams are closed; and its said products in such respect had no practical advantage over other types, some of which in fact were equipped with small drainage holes; and
- (b) Represented that the finish on its mufflers afforded permanent protection against rust or corrosion, through use of statement "Finest Quality Metallic Finish Prevents Rust and Corrosion" in advertising circulars;

The facts being that while the finish used thereon, consisting of powdered metal suspended in a varnish-like binder, might prevent rust and corrosion for a limited time, it did not afford permanent protection, as implied;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the belief that there was substantial danger of injury from use of mufflers with locked, crimped or spot-welded seams, and that by use of muffler here in question such danger was removed; and that finish on said mufflers afforded protection against rust and corrosion; whereby such public was induced to purchase its products, and trade was diverted unfairly to it from competitors:

Held, That such acts and practices, under the circumstances set forth, were all 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. Randolph Preston*, trial examiner.

Mr. Donovan Divet for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., for respondent.