

Complaint

IN THE MATTER OF

CHARLES OF THE RITZ DISTRIBUTORS CORPORATION

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

Docket 3923. Complaint, Oct. 12, 1939—Decision, May 12, 1942

Where a corporation, engaged in interstate sale and distribution of a cosmetic preparation which it designated "Charles of the Ritz Rejuvenescence Cream" or "Rejuvenescence Cream Ritz"—

Falsely represented, through use of term "Rejuvenescence Cream" and statements in advertisements, directly or by implication, that its said preparation would rejuvenate the skin and restore youth of the appearance thereof to skin to which applied, regardless of the condition thereof or user's age;

The facts being that a skin which has become dry or harsh because of external conditions can be improved by the application of an emollient or lubricant, but not skin conditions due to systemic causes; and there is no treatment known to medical science by which skin changes due to the passage of time can be erased or an aged skin rejuvenated or restored to youthful condition;

With capacity and tendency of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby causing it to purchase said preparation because of such mistaken belief:

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. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mock & Blum, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Charles of the Ritz Distributors Corporation, hereinafter referred to as respondent, has 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, Charles of the Ritz Distributors Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office and place of business at 9 University Place, city of New York, State of New York.

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PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a cosmetic preparation designated "Charles of the Ritz Rejuvenescence Cream." Respondent causes said cosmetic preparation, when sold, to be distributed from its place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cosmetic preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said cosmetic preparation by United States mails by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are disseminated in commerce among and between the various States of the United States, and by 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 its said cosmetic preparation, and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purpose of its said cosmetic preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated by respondent as aforesaid, and which purport to describe the effectiveness in use of said preparation are the following:

Charles of the Ritz Rejuvenescence Cream.

Used again at night when you are relaxed, It is constantly active in keeping your skin clear, radiant and young looking.

Charles of the Ritz Rejuvenescence Cream aids your skin in retaining that fresh, dewy look.

Charles of the Ritz Rejuvenescence Cream contains a vital organic ingredient that preserves and restores natural moisture so necessary to healthy skin. It will improve the texture and quality of your skin and make it radiant and beautiful.

Through the use of the above statements and representations and through the use of the word "Rejuvenescence" in the aforesaid advertisements as part of the designation of the respondent's said cosmetic preparation, respondent has represented and now represents that

said cosmetic preparation will rejuvenate the skin of the user thereof and will restore youth and the appearance of youth to skin to which it is applied regardless of the condition of the skin or the age of the user.

PAR. 4. The aforesaid statements and representations by respondent are misleading and untrue. In truth and in fact said cosmetic preparation will not rejuvenate the skin of the user thereof. Said preparation will not restore youth or the appearance of youth to the skin to which it is applied.

PAR. 5. The use by respondent of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous belief that said statements and representations are true and into the purchase of substantial quantities of respondent's said cosmetic preparation designated "Charles of the Ritz Rejuvenescence Cream" because of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondent, 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 October 12, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Charles of the Ritz Distributors Corporation, charging it 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 respondent's answer thereto, testimony and other evidence were introduced before an 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, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions 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 public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles of the Ritz Distributors Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 9 University Place, New York, N. Y.

PAR. 2. Respondent is now, and for a number of years last past, has been, engaged in the sale and distribution of a cosmetic preparation designated as "Charles of the Ritz Rejuvenescence Cream" or as "Rejuvenescence Cream Ritz." Respondent causes said cosmetic preparation, when sold, to be distributed from its place of business in New York, N. Y., to purchasers thereof located in various States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent, by means of the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said cosmetic preparation; and respondent, by various means, has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said cosmetic preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

CHARLES OF THE RITZ REJUVENESCENCE CREAM

* * *

Used again at night when you are relaxed, it is constantly active in keeping your skin clear, radiant and young looking.

* * *

Charles of the Ritz Rejuvenescence Cream aids your skin in retaining that fresh, dewy look.

* * *

Charles of the Ritz Rejuvenescence Cream contains a vital organic ingredient that preserves and restores natural moisture so necessary to a healthy skin. It will improve the texture and quality of your skin and make it radiant and beautiful.

* * *

Rejuvenescence Cream Ritz is a unique product * * * made of essences and compounds which restore the natural humidity to the skin, giving it a bloom which is wonderfully rejuvenating. A single application makes a noticeable difference.

* * *

Now, year after year, as you yourself grow lovelier, rich in charm, warm in understanding * * * you also can keep the freshness of your skin! Your face need know no drought years! Its bloom cannot wilt as long as you are wearing Rejuvenescence Cream Ritz.

PAR. 4. Respondent's "Rejuvenescence Cream" is a type of product generally known in the trade as a "powder base" or as foundation for make-up. It has been marketed by respondent under the aforesaid designation since 1933, and the sales of this product by respondent during the 6 years beginning with 1934 have totalled approximately \$1,000,000.

In the conduct of said business, respondent, by the use of the term "Rejuvenescence Cream" to designate its said cosmetic preparation and by the use of statements such as those set forth in the preceding paragraph, has represented, directly and by implication, that its cosmetic preparation variously designated as "Charles of the Ritz Rejuvenescence Cream" and as "Rejuvenescence Cream Ritz" will rejuvenate the skin of the user thereof and will restore youth or the appearance of youth to the skin to which it is applied, regardless of the condition of the skin or the age of the user.

The passage of time brings about physiological changes in the skin of human beings, and there is no treatment known to medical science by which these changes in the skin of an individual can be arrested or by which an aged skin can be rejuvenated or restored to a youthful condition. In instances where the skin of an individual, because of external conditions, has become dry or harsh, its condition and appearance can be improved by the application of an emollient or lubricant. However, external applications of such preparations cannot overcome skin conditions which are due to system causes present in the individual. Respondent's said cosmetic product does not keep the skin of the user "clear, radiant and young looking" or "make it radiant and beautiful"; nor does the use of respondent's said cosmetic preparation arrest the effects of age or disease upon the skin of the user or restore the condition or appearance of youth to a skin from which, because of age, such condition and appearance have departed.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and implications with respect to its said cosmetic preparation and the effects of the use thereof has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and

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mistaken belief that such statements, representations, and implications are true, and into the purchase of respondent's said preparation because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices, as herein set forth, 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 on the complaint of the Commission, the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Charles of the Ritz Distributors Corporation, a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a cosmetic preparation designated as "Charles of the Ritz Rejuvenescence Cream" or as "Rejuvenescence Cream Ritz," or any other cosmetic preparation or preparations which are substantially similar in composition or possess substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from directly or indirectly:

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

- (a) in which the word "Rejuvenescence," or any other word or term of similar import or meaning, is used to designate, describe, or refer to respondent's said cosmetic preparation; or

- (b) which represents, directly or by inference, that respondent's said cosmetic preparation will rejuvenate the skin of the user thereof or restore youth or the appearance of youth to the skin of the user.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to

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induce, directly or indirectly, the purchase of said cosmetic preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That respondent shall, within 60 days after the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
DAVIDSON ENAMEL COMPANY

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

Docket 4001. Complaint, Jan 27, 1940—Decision, May 12, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of an interior wall covering which consisted of small unit metal plates covered with a vitreous enamel such as that commonly applied to bathtubs, kitchen sinks, etc., and which, when applied to a wall as contemplated, presented an appearance practically identical with that of glazed clay tile, and which it particularly recommended for modernizing bathrooms and kitchens in old buildings because it could be used where the greater weight of clay tile might impose undue strain; in advertisements, folders, and circulars, and in periodicals and newspapers of general circulation—

Represented and described its said product as "Veos Tile" and "Veos Porcelain Tile," "Veos Porcelain Wall Tile" and "Veos Porcelain on Steel Wall Tile"; the facts being that its said product was not a "porcelain tile" or one composed entirely of porcelain—a homogeneous clay product capable of being self-sustaining through the forming and firing process and matured at temperatures which would be destructive to the metal base to which said corporation applied its vitreous enamel—nor adequately and correctly described by word "tile," namely, a baked clay product and not a metal one, but was, as above set forth, a steel or metal shape to which had been applied a thin, opaque glass-like surface of vitreous enamel;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that such statements were true, and thereby causing it to purchase substantial quantities of said product:

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

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

Mr. Randolph W. Branch for the Commission.

Miller, McManus, Hagerty & Shoemaker, of Toledo, Ohio, 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 Davidson Enamel Co., a corporation, hereinafter referred to as respondent, has 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,