

Complaint

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IN THE MATTER OF

STERLING PRODUCTS AND VITA-RAY CORPORATION

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

Docket 4197. Complaint, July 26, 1940—Decision, May 25, 1942

Where a corporation and its subsidiary, engaged in interstate sale and distribution of a line of cosmetic products made by latter; by means of advertisements in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

Represented that vitamins A and D constituted a basic need for the health of the skin which was satisfied through application of such vitamins locally by means of cold cream; and that a vitamin deficiency, of which dryness and coarse pores might be symptoms, would be relieved through the use of their cosmetic "Vita-Ray Vitamin Cream" containing said vitamins;

The facts being that the skin does not require vitamins A and D by means of local application, and while said vitamins may be absorbed to some extent through the skin under certain conditions of application, there is no scientific basis for the claim that there is any local or systemic effect whatever; dryness of skin due to vitamin deficiency constitutes a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores and presents a pathological condition requiring treatment by a physician; and their said cream has no beneficial or therapeutic effect because of the addition of such vitamins;

With effect of misleading and deceiving the purchasing public into the erroneous belief that such representations were true:

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

Mr. William L. Pencke for the Commission.

Rogers, Hoge & Hills, 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 Sterling Products, a corporation, and Vita-Ray Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sterling Products, is a corporation, organized, existing, and doing business under the laws of the State

of Delaware, with its principal office and place of business at 170 Varick Street in the city of New York, State of New York. Respondent, Vita-Ray Corporation, is a corporation, organized, existing, and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 176 Middle Avenue in the city of Lowell, State of Massachusetts, and is a subsidiary of respondent, Sterling Products.

Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a line of cosmetic products manufactured by respondent, Vita-Ray Corporation, in commerce between and among the various States of the United States and in the District of Columbia. They cause said products, when sold, to be shipped from respondent, Vita-Ray Corporation's place of business in the State of Massachusetts to purchasers thereof, located in States of the United States other than the State of Massachusetts and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said cosmetic products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of 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 products 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 products; 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 periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

VITA-RAY VITAMIN CREAM * * *

All purpose cream containing Vitamins A and D which helps nourish and stimulate skin cells—relieves dryness and helps recede enlarged pores.

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Vita-Ray Doveskin Oil

Compounds of highly beneficial oils * * * vitamized. Aids in bringing relief to dry sensitive skin—helps overcome tightness of the skin. Delicately perfumed. Postpaid.

The noted Boston doctor promised nothing. He knew that dryness, lines wrinkles, coarse pores might indicate lack of Vitamins A and D. No cosmetic could succeed until *both* vitamins were replaced.

BUT HOW? Not by diet! Vitamins must be fed where needed—*through the skin*. "Suppose," he reasoned, "I combine vitamins with *vitalescence*—one element skin *can* absorb. Perhaps vitamins will be *absorbed with it* * * * to revitalize tissues."

HIS THEORY WORKED! * * * On the 28th day she stood before him—radiantly happy, her skin youthfully *fresh* and smooth. News spread. Women begged treatment. His discovery of Vita-Ray was praised by Beauty Editors—*honored in the HALL OF SCIENCE*.

Why Vita-Ray Cream Corrects Dry Skin—Wrinkles * * * Coarse Texture.

Praise of Beauty Editors—published articles on the "beauty" value of vitamins, *signed by Doctors of world-famed universities*—will be sent you on request to Vita-Ray.

To you, and to *your physician*, they reveal tests on thousands of skins, both dry and oily—on wrinkles, lines, coarse pores. You can know *why* neither Vitamin A nor D *alone* is sufficient—why Vita-Ray combines *both* Vitamins A and D in *vitalescence*, to *revitalize* tissues.

Vita-Ray is sold only by leading stores, under guarantee that you will see a noticeable improvement in 28 days or prompt refund of your money. If your favorite store hasn't yet been selected, mail coupon below.

USE VITA-RAY

Vitamin All-Purpose Cream

TO MAKE YOUR SKIN GROW YOUNG AGAIN.

Because it carries a rich supply of vitamin D direct to the capillaries—the *only* source of skin nourishment—Vita-Ray All-Purpose Cream actually helps nature to make the skin grow young again!

Vita-Ray All-Purpose Cream was discovered by a scientist. It conforms to natural laws so wonderfully that microphotographs of skin *before and after* its use show a basic change in the skin structure in a few weeks. Pores are actually finer—lines fainter—dryness less. It is a veritable "gift of science" to women with wrinkles and crepey throat.

PAR. 3. All of said statements, together with many similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' products and their efficacy in use. In all of their advertising literature respondents represent, through the statements and representations herein set out and other statements of similar import and effect, that a basic need for the health of the skin is vitamins A and D and that by applying said vitamins locally by means of cold cream such need is satisfied, in that the skin will be stimulated and nourished; that dryness, lines, wrinkles, and coarse pores may be symptoms of vitamin deficiency and that such deficiency

may be relieved through the use of respondents' cosmetic cream containing vitamins A and D.

PAR. 4. In truth and in fact said statements and representations are false, misleading, and grossly exaggerated. Respondents' cosmetic cream will have no beneficial or therapeutic effect, either with or without the addition of vitamins A and D, beyond the soothing, emollient, and cleansing effects inherent in any cold cream. The skin does not require vitamins A and D by means of local application. Where dryness of the skin is due to vitamin deficiency it is a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores in the body and presents a pathological condition requiring treatment by a physician. In such cases the use of respondents' cream containing vitamins A and D applied topically will have no therapeutic effect, nor will it improve the appearance of the skin.

PAR. 5. While vitamins A and D may be absorbed to some extent through the skin if contained in a suitable vehicle and under certain conditions of application, there is no scientific basis for the claim that there is any local, direct, or selective action at the site of application, or that there is any local or systemic effect whatever unless a sufficient quantity of said vitamins is administered. Except in cases of burns, wounds, and other similar pathological conditions, vitamins A or D applied to the skin will have not local effect, but the action will be systemic because of the absorption through the skin into the blood stream. Lines and wrinkles are the result of advancing age due to the gradual breakdown of tissue, and will not be affected by any treatment with cosmetic creams containing vitamins.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations hereinabove set forth, made by the respondents in selling said cosmetic preparations, have the capacity and tendency to, and do, mislead and deceive the purchasing public into purchasing said cosmetic preparations in the erroneous belief that such representations are true, and that the use of said products will accomplish the results indicated in said advertisements.

PAR. 7. The aforesaid acts and practices of the respondents 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 July 26, 1940, issued, and subsequently served its complaint in this proceeding upon respondents, Ster-

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ling Products, a corporation, and Vita-Ray Corporation, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 24, 1940, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and their counsel, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in oppositon thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same 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, Sterling Products, is a corporation, organized, existing, and doing business under the laws of the State of Delaware, with its principal office and place of business at 170 Varick Street in the city of New York, State of New York. Respondent, Vita-Ray Corporation, is a corporation, organized, existing, and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 176 Middle Avenue in the city of Lowell, State of Massachusetts, and is a subsidiary of respondent Sterling Products.

Respondent, Vita-Ray Corporation, is now, and for more than 1 year last past has been, engaged in the sale and distribution of a line of cosmetic products manufactured by respondent, Vita-Ray Corporation, in commerce between and among the various States of the United States and in the District of Columbia. It causes said products, when sold, to be shipped from respondent, Vita-Ray Corporation's place of business in the State of Massachusetts to purchasers thereof located in States of the United States other than the State of Massachusetts and in the District of Columbia. Respondent, Vita-Ray Corporation maintains, and at all times mentioned herein has maintained, a course

of trade in said cosmetic products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of 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 products 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 products; 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 periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, is the following:

VITA-RAY VITAMIN CREAM * * *

All-purpose cream containing vitamins A and D which helps nourish and stimulate skin cells—relieves dryness and helps recede enlarged pores.

PAR. 3. All of said statements, together with many similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' products and their efficacy in use. In all of their advertising literature respondents represent, through the statements and representations herein set out and other statements of similar import and effect, that a basic need for the health of the skin is vitamins A and D and that by applying said vitamins locally by means of cold cream such need is satisfied, in that the skin will be stimulated and nourished; that dryness and coarse pores may be symptoms of vitamin deficiency and that such deficiency may be relieved through the use of respondents' cosmetic cream containing vitamins A and D.

PAR. 4. In truth and in fact said statements and representations are false and misleading and grossly exaggerated. Respondents' cosmetic cream will have no beneficial or therapeutic effect because of the addition of vitamins A and D. The skin does not require vitamins A and D by means of local application. Where dryness of the skin is due to vitamin deficiency it is a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores

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in the body and presents a pathological condition requiring treatment by a physician. In such cases the use of respondents' cream containing vitamins A and D applied locally has no therapeutic effect, nor will it improve the appearance of the skin.

PAR. 5. While vitamins A and D may be absorbed to some extent through the skin if contained in a suitable vehicle and under certain conditions of application, there is no scientific basis for the claim that there is any local, direct or selective action at the site of application, or that there is any local or systemic effect whatever.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations hereinabove set forth, made by the respondents in selling said cosmetic preparations, have the capacity and tendency to, and do, mislead and deceive the purchasing public into purchasing said cosmetic preparations in the erroneous belief that such representations are true, and that the use of said products will accomplish the results indicated in said advertisements.

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 answer of the respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Sterling Products, a corporation, and Vita-Ray Corporation, a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of cosmetic creams and oils do forthwith cease and desist from directly or indirectly:

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1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that respondents' cosmetic creams and oils have any added beneficial value upon the skin by reason of their vitamin content.

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 product, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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
BIGELOW-SANFORD CARPET COMPANY, INC.

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

Docket 4207. Complaint, July 31, 1940—Decision, May 26, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution to wholesale and retail dealers of rugs and carpets—

(a) Made use of names "Persiamar" and "Kashamar" to designate certain lines of its domestic, machine-made rugs which had many points of resemblance to genuine Orientals, and thereby caused the purchasing public to believe that they were hand-made Orientals, some of which are known as "Kashmir," "Cashmere," or "Kashan," or simply as "Persian," and which—long made in certain parts of the Orient by hand, with pile of wool or silk and wool, and threads individually knotted in special manner—have long been held in great public esteem by virtue of their beauty, durability, and other qualities; and

(b) Represented that its said rugs were replicas or duplicates of original Orientals through use, in advertising copy furnished to dealer-buyers for their use in newspapers and other publications of general circulation, of such words as "true copies," "perfect copies," or "reproductions," and labels displaying, along with aforesaid designations, trade-mark employed by it on all its rugs and carpets, depicting two hands tying a knot in yarn, causing purchasing public to believe that its said rugs were hand-made or made in the same way as the genuine Orientals, of which they were not true or perfect copies or reproductions, though so closely simulating them as to be indistinguishable therefrom by a portion of the purchasing public;

With tendency and capacity to mislead and deceive the purchasing public into the mistaken belief that such representations were true, thereby inducing it to purchase said rugs because of such belief; and with effect of placing in the hands of dealer-purchasers means and instrumentality of misleading and deceiving the public as aforesaid, whereby trade was unfairly diverted to it from its competitors engaged in sale of rugs, including both the Oriental and domestic products, and who truthfully represent their products as aforesaid; to the injury of competition in commerce:

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

Mr. Randolph W. Branch for the Commission.

Wright, Gordon, Zachry, Parlin & Cahill, of Washington, D. C., 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