

Complaint.

IN THE MATTER OF

MONTGOMERY WARD & 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 4728. Complaint, Mar. 12, 1942—Decision, Oct. 12, 1942

Where a corporation, engaged in interstate sale and distribution, by mail order, of various cosmetic preparations, among other things, directly and by implication, through advertisements disseminated by it in various ways—

(a) Represented that just as vitamins internally consumed help make a healthy body, so vitamins A and D externally applied help make the skin healthy and beautiful; and

(b) Represented that its said preparations, because of the addition of vitamins A and D would therapeutically treat or benefit the skin, and were more effective in keeping the complexion clear and smooth, helped retard the appearance of age, and would relieve skin dryness and promote beautiful, glowing skin; and that its hand preparations, because of the addition of vitamin D would aid in keeping the hands soft, smooth, and white;

The facts being that external application of vitamins will not therapeutically affect the skin as will internal consumption thereof affect the health, and ordinary application thereof by means of cold cream would have no therapeutic value; while vitamins may be absorbed to some extent through the skin under certain conditions, the effect would be systemic and not restricted to the site of the application; said creams contained so little of said vitamins that even if the entire vitamin content were carried into the blood stream, it would not affect the appearance of the skin beyond having an emollient, smoothing, and cleansing action; and its said products, either with or without the addition of vitamins, were of no value in excess of their properties as ordinary cosmetic cream preparations; and

(c) Falsely implied, through use of words "Tissue Cream" in name of preparation, or by reference thereto, that such product had therapeutic value in treating and nourishing the tissues of the skin beyond the ordinary value of a lubricant;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said representations were true, thereby inducing purchase thereof:

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.

Mr. Brooks Wynne, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to 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 Montgomery Ward & Co., Inc., a corpo-

Complaint

35 F. T. C.

ration, hereinafter referred to as respondent, has 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:

PARAGRAP^H 1. Respondent, Montgomery Ward & Co., Inc., is a corporation, organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business located at 619 West Chicago Avenue in the city of Chicago and State of Illinois.

Respondent is now, and for several years past has been, engaged in the operation of a mail order business. Among the articles sold by the respondent are various cosmetic preparations which have been and are sold and distributed 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 its said business, respondent causes and has caused said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading advertisements concerning its 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 respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its 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 means of catalogs and other written or printed advertising matter, are the following:

WARD'S CREAMS CONTAIN VITAMINS "A" AND "D" Super-fine Creams—
doubly rich in vitamins. When made, 1400 U. S. P. Units of Vitamin A and 300
U. S. P. Units D are added to each ounce of cream.

Complaint

Double-Vitamin Cold Cream

Rich in Vitamins A and D. Use for cleansing skin of dirt, make-up. Pat into skin morning and evening—will help keep complexion clear and satin smooth. For normal and dry skins.

SKIN SOFTENING CREAM

Formerly called Wards Tissue Cream. Rich in Vitamins A and D. When first signs of age appear—a skin needs massage with a rich Cream like Wards to provide beneficial lubrication.

VITAMINS! VITAMINS! Whose Skin Needs Vitamins? Just as vitamins help make a healthy body, so they help make a beautiful skin. *Vita Ray Vitamin Cream* brings directly to your skin Vitamins A and D. It helps relieve dryness and adds a fresh, glowing tone to your face. Try Vita Ray—an all purpose Cream.

Double Vitamin Cream for Dry Skins

Extra heavy, rich—for skins susceptible to dryness. Double-vitamin skin-softening cream. Rich and softening oils for massaging that "past 30" complexion.

Kleer Skin

An improved formula containing Vitamin D and Olive Oil in addition to Almond Oil and other skin-softening ingredients. Not sticky—easy-to-rub-in vanishing-type cream—helps keep hands smooth, soft, white.

Lady Carole
Vita Facial Pak

1000 units of Vitamin D per ounce. Easy-to-make facial packs for less than 2c each. A powder—just mix with water. Cleansing, stimulating—helps keep skin smooth. * * * 5-oz. Jar, Enough for 20-Facials.

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents, directly and by implication, that its various cosmetic cream preparations, because of the addition thereto of vitamins, will therapeutically treat or benefit the skin to which they are applied; that, because of the addition of vitamins to said preparations, said preparations are made more effective in keeping the complexion clear and smooth; that in the same manner as vitamins internally consumed help make a healthy body, so vitamins A and D externally applied to the skin help make the skin healthy and beautiful; that said preparations, because of their vitamin A and D content, help keep the facial skin firm and smooth, and help to retard the appearance of age; that said preparations, by reason of their vitamin content, will relieve skin dryness and promote beautiful, glowing skin; and that respondent

Complaint

35 F. T. C.

ent's hand cream preparations, because of the addition of vitamin D thereto, will aid in keeping the hands soft, smooth and white.

PAR. 5. The foregoing representations and advertisements, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, the respondent's various cosmetic cream preparations will not, because of the addition thereto of vitamins, therapeutically treat or benefit the skin to which said preparations are applied. The addition of vitamins to said preparations will not aid said preparations in keeping the complexion clear and smooth. The external application of vitamins to the skin will not therapeutically affect such skin in the same manner as will the internal consumption of vitamins therapeutically affect the health of the body. In truth and in fact, the skin does not require local applications of vitamins, and although vitamins, to some extent, may be absorbed through the skin if applied thereto in a suitable manner and under certain conditions, the effect of such absorption would be systemic and not local or restricted to the site of the application. The ordinary application, however, of vitamins by means of cold cream applied to the skin would have no therapeutic value. The respondent's preparations, by reason of the addition of vitamins A and D, will not help keep the facial skin firm and smooth and retard the appearance of age. The said preparations will not, by reason of their vitamin content, relieve skin dryness and promote beautiful, glowing skin. The respondent's hand cream preparations will not, as a result of their vitamin D content, aid in keeping hands smooth, soft, and white. Further, respondent's said preparations are of no value either with or without the addition of vitamins A and D, or any other vitamins, in excess of their properties as ordinary, cosmetic cream preparations.

PAR. 6. The use by the respondent of the words "Tissue Cream" as the name or as part of the name, or by reference as part of a former name of a cosmetic cream preparation is misleading in that the words "Tissue Cream" so used implies that said preparation has a therapeutic value in treating or nourishing the tissues of the skin beyond the ordinary value of a lubricant.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, and representations with respect, to its said preparations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representatives are true, and induces a substantial number of the purchasing public, because

of such erroneous and mistaken belief to purchase respondent's said preparations.

PAR. 8. The aforesaid acts and practices of the respondent 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 March 12, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Montgomery Ward & Co. Inc., a 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, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondent 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 opposition 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. In said stipulation, respondent expressly waived the filing of a report upon the evidence by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission upon 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, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business located at 619 West Chicago Avenue in the city of Chicago and State of Illinois.

Respondent is now, and for several years past has been, engaged in the operation of a mail-order business. Among the articles sold by the respondent are various cosmetic preparations which have been, and are,

sold and distributed 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 its said business, respondent causes, and has caused, said cosmetic products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, the respondent has disseminated and has caused the dissemination of, false and misleading advertisements concerning certain of its said cosmetic 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 respondent has also disseminated, and has caused the dissemination of, false and misleading advertisements concerning its said cosmetic products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said cosmetic 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 means of catalogs and other written or printed advertising matter, are the following:

WARD'S CREAMS CONTAIN VITAMINS "A" AND "D" Super-fine Creams—doubly rich in vitamins. When made, 1400 U. S. P. Units of Vitamin A and 300 U. S. P. Units of Vitamin D are added to each ounce of cream.

Double-Vitamin Cold Cream

Rich in Vitamins A and D. Use for cleansing skin of dirt, make-up. Pat into skin morning and evening—will help keep complexion clear and satin smooth. For normal and dry skins.

SKIN SOFTENING CREAM

Formerly called Ward's Tissue Cream. Rich in Vitamins A and D. When first signs of age appear—a skin needs massage with a rich Cream like Ward's to provide beneficial lubrication.

VITAMINS! VITAMINS! Whose Skin Needs Vitamins? Just as vitamins help make a healthy body, so they help make a beautiful skin. *Vita Ray Vitamin Cream* brings directly to your skin Vitamins A and D. It helps relieve dryness and adds a fresh, glowing tone to your face. Try *Vita Ray*—an all purpose Cream.

Findings

Double Vitamin Cr  am for Dry Skins

Extra heavy, rich—for skins susceptible to dryness. Double-vitamin skin-softening cream. Rich and softening oils for massaging that "past 30" complexion.

Kleer Skin

An improved formula containing Vitamin D and Olive Oil in addition to Almond Oil and other skin-softening ingredients. Not sticky—easy-to-rub-in vanishing-type cream—helps keep hands smooth, soft, white.

Lady Carole

Vita Facial Pak

1000 units of Vitamin D per ounce. Easy-to-make facial packs for less than 2c each. A powder—just mix with water. Cleansing, stimulating—helps keep skin smooth. * * * 5-oz. Jar, Enough for 20 Facials.

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represented, directly and by implication, that its various cosmetic cream preparations, because of the addition thereto of vitamins, would therapeutically treat or benefit the skin to which they were applied; that, because of the additions of vitamins to said preparations, said preparations were made more effective in keeping the complexion clear and smooth; that in the same manner as vitamins internally consumed help make a healthy body, so vitamins A and D externally applied to the skin help make the skin healthy and beautiful; that said preparations, because of their vitamin A and D content, help keep the facial skin firm and smooth, and help to retard the appearance of age; that said preparations, by reason of their vitamin content, would relieve skin dryness and promote beautiful, glowing skin; and that respondent's hand cream preparations, because of the addition of vitamin D thereto, would aid in keeping the hands soft, smooth, and white.

PAR. 5. The foregoing representations and advertisements, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, the respondent's various cosmetic cream preparations will not, because of the addition thereto of vitamins, therapeutically treat or benefit the skin to which said preparations are applied. The addition of vitamins to said preparations will not aid said preparation in keeping the complexion clear and smooth. The external application of vitamins to the skin will not therapeutically affect such skin in the same manner as will the internal consumption of vitamins therapeutically affect the health of the body. In truth and in fact, the skin does not require local applications of vitamins, and although vitamins to some extent may be absorbed through the

Conclusion

35 F. T. C.

skin if applied thereto in a suitable manner and under certain conditions, the effect of such absorption would be systemic and not local or restricted to the site of the application. The ordinary application, however, of vitamins by means of cold cream applied to the skin would have no therapeutic value. The respondent's preparations, by reason of the addition of vitamins A and D, will not help keep the facial skin firm and smooth and retard the appearance of age. The said preparations will not, by reason of their vitamin content, relieve skin dryness and promote beautiful, glowing skin. The respondent's hand cream preparations will not, as a result of their vitamin D content, aid in keeping hands smooth, soft, and white. Further, respondent's said preparations are of no value either with or without the addition of vitamins A and D, or any other vitamins, in excess of their properties as ordinary, cosmetic cream preparations. Its creams contain such small amounts of vitamins A and D that if they are in contact with the skin only a short time no effective absorption by the skin will take place, and even if the entire vitamin A content of the cream applied should be absorbed by the skin and then carried into the blood stream, it would not affect the appearance of the skin beyond having an emollient, smoothing, and cleansing action.

PAR. 6. The use by the respondent of the words "Tissue Cream" as the name or as part of the name, or by reference as part of a former name of a cosmetic cream preparation is misleading in that the words "Tissue Cream" so used imply that said preparation has a therapeutic value in treating or nourishing the tissues of the skin beyond the ordinary value of a lubricant.

PAR. 7. The Commission further finds that the dissemination of the false and misleading advertisements herein above described, was discontinued by the respondent a short time prior to the issuance of the complaint herein.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to these preparations, disseminated as aforesaid, has had the capacity and tendency to, and did, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations were true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparations.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public, and constitute unfair

Order

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 respondent, and a stipulation as to the facts entered into between counsel for the respondent 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 respondent herein, findings as to the facts and conclusions based thereon, and an order disposing of the proceedings; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Montgomery Ward & Co., Inc., a corporation, its 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 preparations, do forthwith cease and desist from:

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

- (a) That any of respondent's cosmetic preparations containing vitamins A and D have any therapeutic value when applied to the skin or have any effect upon the appearance of the skin beyond the emollient, soothing, and cleansing action of ordinary cosmetic cream preparations.

- (b) That the presence of vitamins A and D in respondent's cosmetic preparations gives such preparations special properties over and above those of ordinary cosmetic creams, or that the use of such creams, because of such vitamin content, will have any beneficial effect in keeping the facial skin firm and smooth or the hands soft, smooth, and white, or have any effect in relieving dryness of the skin, promoting glowing skin, or retarding the appearance of age.

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 of respondent's cosmetic preparations in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the

Order

35 F. T. C.

representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

3. The use of the words "Tissue Cream" or any other words of similar import or meaning to designate or describe any cosmetic preparation, or representing through any other means or device, that respondent's cosmetic preparations have therapeutic value in treating or nourishing the tissues of the skin.

It is further ordered, That the respondent shall, within 60 days after 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.

Complaint

IN THE MATTER OF

L. L. EDWARDS

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

Docket 4797. Complaint, Aug. 6, 1942—Decision, Oct. 12, 1942

Where an individual, engaged in competitive interstate sale and distribution of assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment consisting of 30 identical 5-cent cartons for sale under a plan by which chance purchasers secured an additional cent enclosed in five of said cartons, the 5-cent piece contained in three, and the 10-cent piece in one—

Sold such assortments to jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with aforesaid sale plan, involving game of chance to procure a prize in addition to the nuts; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government, and in competition with many who do not use any method involving chance or contrary to public policy;

With result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell his products in preference to those of said competitors; whereby trade was diverted unfairly to him from them:

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 in commerce and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr., for the Commission.

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 L. L. Edwards, an individual, 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, L. L. Edwards, is an individual, with his principal office and place of business located at Shelbyville, Tenn. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of nut products and candy to jobbers and retail dealers located in the various States of the United