

Syllabus

IN THE MATTER OF
UNITED DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3729. Complaint, Mar. 4, 1939—Decision, Oct. 26, 1942*

Where a corporation, engaged in the compounding and in the competitive interstate sale and distribution of its "Cara Nome" face powder, among various cosmetic preparations—

Sold its said powder so packaged that outside container of package was twice the size of the inmost "powder pouch," in turn included in an intermediate container, whereby powder content much greater than was the fact was indicated, absent opening enabling prospective purchaser to determine size of pouch and opportunity of content inspection by reason of cellophane wrapping employed in recent years;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to the quantity of powder contained within said packages, and of causing it to purchase substantial quantities of powder in question; whereby trade was diverted unfairly to said corporation from its competitors who do not use any such misleading method;

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.

As respects the insistence of a seller of face powder engaging in the alleged misleading practice of packaging the same so contained that innermost "powder pouch," enclosed by larger container, in turn included in a still larger container, size, and capacity of which were such as to indicate that quantity of powder was much greater than was the fact, in the absence of any visual or practical opportunity for determining the true content, that it is the custom and practice of the trade to package cosmetic products in attractive containers, frequently involving use of those which do not accurately indicate the exact quantity of the product enclosed; the Commission was of the opinion, nevertheless, after making due allowance for such factors, that the particular package in question was misleading, in that size of outside container was substantially in excess of that which could reasonably be considered necessary for packaging the quantity of powder therein contained.

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

Mr. Jesse D. Kash and *Mr. Carrel F. Rhodes* for the Commission.

Mr. William F. Davis, Jr., of Boston, Mass., and *Mr. Richard A. Mahar*, of Washington, D. C., for respondent.

Complaint

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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 United Drug 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, United Drug Co., is a corporation, organized under the laws of the State of Delaware, having its office and principal place of business in the city of Boston, State of Massachusetts.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the business of compounding, selling and distributing various cosmetic preparations. One of the preparations compounded and distributed by respondent is known as and sold under the name "Cara Nome Face Powder." Respondent causes its said products, when sold, to be transported from its place of business in the city of Boston, State of Massachusetts, to the purchasers thereof located in various States of the United States other than the State of Massachusetts and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia. Respondent sells its said preparation "Cara Nome Face Powder" to retail stores for resale to the purchasing and consuming public.

PAR. 3. Respondent, in the course and conduct of its business in said commerce, as aforesaid, is in competition with other corporations and with firms, partnerships, and individuals selling and distributing cosmetics and allied products in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors in said commerce are many who do not, in any manner, misrepresent the quantity or amount of said preparation which is enclosed in the container in which said preparation is offered for sale and sold to the purchasing and consuming public, and who do not misrepresent, in any manner, the quantity of their preparation which is offered for sale and sold.

PAR. 4. Respondent packages its said product, "Cara Nome Face Powder," in cardboard containers which are so completely enclosed in cellophane wrappers as not to afford an opportunity for purchasers to examine or inspect the content thereof to determine the quantity of

powder therein contained until after a purchase has been made and the cellophane wrapper destroyed.

Said cardboard containers are of a capacity and size greatly in excess of that required to package the quantity of said powder actually placed therein by the respondent. Said containers, when offered for sale and sold to the purchasing public, are not filled to capacity with the said powder but are only partially filled, the quantity of powder contained therein varying from 50 to 70 percent of the capacity of said containers. The practice of the respondent of only partially filling said containers with said powder is what is known in the trade and generally as "slack filling," and is a practice that is not indulged in by a great majority of the competitors of the respondent because of the inherent deceptive capacity of such practice, as purchasers of such products, expect the containers thereof to be filled to approximate capacity.

PAR. 5. The acts and practices of the respondent in connection with the offering for sale, sale and distribution of its said product in said commerce as aforesaid in "slack filling" said containers and in using containers of a size and capacity of from 30 to 50 percent greater than that necessary or required to package the quantity of powder actually placed in such containers are misleading and deceptive and have the capacity and tendency to and do lead prospective purchasers erroneously and mistakenly to believe that said containers are filled to capacity and contain the quantity of powder indicated by the capacity of the containers, and because of said erroneous and mistaken belief to purchase substantial quantities of respondent's said face powder. As a result thereof, trade in said commerce is diverted unfairly to respondent from its competitors, who do not engage in the practices aforesaid, to their injury, and to the injury of the public.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 4, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, United Drug Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After

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the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, the answer thereto (together with a motion to dismiss the complaint), testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; 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. The respondent, United Drug Co., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business located in the city of Boston, Mass. Respondent is now, and for a number of years last past has been, engaged in the business of compounding, selling, and distributing various cosmetic preparations, one of which is a face powder designated by respondent as "Cara Nome" face powder. Respondent's products are sold and distributed to the public principally through retail dealers.

PAR. 2. In the course and conduct of its business respondent causes and has caused its products, when sold, to be transported from its place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is, and at all times mentioned herein has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of face powders and other cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The cardboard containers in which respondent packages its Cara Nome face powder are of a size and capacity greatly in

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excess of that required to package the quantity of powder actually placed therein. In addition to the outside container, there is an inner container or filler, and within this inner container is another and smaller container, referred to as the powder pouch, in which the powder is placed. This powder pouch is approximately one-half the size of the outside container. At one time respondent also used in its packages a piece of corrugated cardboard, which was placed beneath the powder pouch. Later, the use of this corrugated cardboard was discontinued and a piece of smooth cardboard was placed on top of the powder pouch. At no time has there been any opening or window in the outside container which would enable prospective purchasers to determine the size of the powder pouch or the quantity of powder actually contained in the package. In recent years the package has been wrapped in cellophane, which renders an inspection of the contents of the package impossible unless the cellophane wrapper is broken.

The Commission finds from an examination of the containers, and also from the testimony of certain members of the public, that the appearance of the package is misleading, that the size and capacity of the outside container are such as to indicate that the quantity of powder contained within the package is much greater than is actually the fact.

It is insisted by respondent that the custom and practice of the trade is to package cosmetic products in attractive containers, and that such practice frequently involves the use of containers which do not accurately indicate the exact quantity of the product enclosed within the package. After making due allowance, however, for these factors, the Commission is nevertheless of the opinion that respondent's package is misleading in that the size of the outside container is substantially in excess of that which can reasonably be considered necessary for the packaging of the quantity of powder contained therein.

PAR. 5. The use by respondent of the method of packaging herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the quantity of powder contained within respondent's packages, and to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to respondent from its competitors, among whom are those who do not use a method of packaging which is misleading to the public.

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CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 respondent (together with a motion to dismiss the complaint), testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, United Drug Co., a corporation, and 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 respondent's face powder and other cosmetic products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale or selling respondent's products in containers or packages of a size or capacity substantially larger than that required for packaging the quantity of product actually contained therein.

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.

It is further ordered, That the respondent's motion to dismiss the complaint herein be, and it hereby is, denied.

Complaint

IN THE MATTER OF

VIVIAN S. NASH

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

Docket 4811. Complaint, Aug. 13, 1942—Decision, Oct. 26, 1942

Where an individual, engaged in the manufacture and interstate sale and distribution of certain so-called "Bee-Dew" preparations recommended for hair and scalp treatments and use as deodorant; by means of advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature—

(a) Represented, through statements and pictorial representations, including "before and after" depictions, that preparations designated by her as Bee-Dew "Special Hair Grower," "Special U-Gro," "Scalp Oil," "Shampoo," "Pressing Oil" and "U-Gro," provided a remedy for falling hair, baldness, dull hair, scalp irritation, and dandruff, and an effective treatment therefor, use of which would cause new hair to grow;

The facts being that her said products had no therapeutic value in excess of cleansing the hair and scalp, allaying itching due to minor irritations, and facilitating the removal of loose dandruff scales, and would not cause new hair to grow; and

(b) Represented that her "Bee-Dew O-No" deodorant preparation would assure complete protection from offensive body odors;

The facts being protection afforded was for a limited time only, and not complete;

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

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

Mr. S. F. Rose 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 Vivian S. Nash, 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 public interest, hereby issues its complaint against said respondent stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, is an individual, now trading and doing business under the name of Bee-Dew Cosmetic Co., with her prin-

principal place of business located at 703-705 East Forest Avenue, Detroit, Mich.

PAR. 2. The respondent was during the month of October 1937, and for more than a year prior thereto, the president of Bee-Dew Laboratories, a corporation organized under the laws of the State of Michigan. For some time subsequent thereto and prior to February 26, 1941, the said respondent was president of Bee-Dew Products, Inc., also a corporation organized under the laws of the State of Michigan. On said last named date the charter of Bee-Dew Products, Inc., was dissolved. During all the time respondent was president of said corporations she owned a large percentage of the capital stock of each of said corporations, and formulated, directed and controlled their policies and activities. Each of said corporations was engaged in the sale of a similar line of various hair and face cosmetics. Upon the dissolution of Bee-Dew Products, Inc., the respondent, under the trade name of Bee-Dew Cosmetic Co., has continued to manufacture, sell, and distribute substantially the same preparations as those sold by the corporations of which she was president.

PAR. 3. The respondent, Vivian S. Nash, an individual, is now and has been for more than 5 years last past, as stated in the preceding paragraph, engaged in the manufacture, sale, and distribution of certain preparations recommended for hair and scalp treatments, including those designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro."

In the course and conduct of her business, the respondent causes said preparations, when sold, to be transported from her place of business in the State of Michigan to the 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 preparations, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in the course and conduct of her business aforesaid has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparations recommended for hair and scalp treatment, by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparations by various means, for the purpose of inducing and which are likely to induce, directly or in-

directly, the purchase of said preparations in commerce as commerce is defined in the Federal Trade Commission Act.

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

Don't surrender to short, broken, harsh hair. Every woman owes it to herself to hold on to her youth and beauty.

Before

After

(Picture of a lady
with short hair.)

(Picture of a lady
with long hair.)

Use Bee-Dew Scalp Oil, Bee-Dew Shampoo, Bee-Dew Pressing Oil, Bee-Dew Special U-Gro.

Bee-Dew Special U-Gro.

Stop that falling hair and scalp irritation. Remove dandruff.

Bee-Dew U-Gro.

Remove dandruff. Stop falling hair and scalp irritations.

Bee-Dew Special U-Gro.

Check that falling hair. Bring life to your scalp.

Short, stubby, dead looking hair or even long hair not well kept is never admirable. Beautiful hair, then, is the first beauty secret.

Bee-Dew Special U-Gro.

Beautiful hair requires a healthy scalp. Thinning hair, bald spots, dull hair and itchy scalp indicate an unnatural scalp condition.

And concerning *Bee-Dew O-No* are the following:

Instant sweetness and complete protection is yours now, through *Bee-Dew O-No*, the perfect and sure deodorant cream.

Assures certain, instant, complete protection from offensive body odors.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, and by pictorial representations, respondent represents and has represented that her said preparations recommended for use in hair and scalp treatments provide a cure or remedy for falling hair, baldness, dull hair, scalp irritation, and dandruff, and constitute an effective treatment therefor, and that their use will cause new hair to grow.

In the same manner the respondent represents that the preparation advertised and designated as *Bee-Dew O-No* will assure complete protection from offensive body odors.

PAR. 6. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, the use of said hair and scalp treatments, either alone or in combination with each other, do not constitute a cure or remedy for falling hair, bald-

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ness, dull hair, scalp irritations or dandruff. Respondent's preparations have no therapeutic value in the treatment of such disorders or conditions in excess of cleansing the hair and scalp and allaying itching due to minor irritations of the scalp and in facilitating the removal of accumulated loose dandruff scales. Said preparations will have no therapeutic value in the treatment of baldness and will not cause new hair to grow. Respondent's preparation Bee-Dew O-No will give protection from body odors for a limited time only and will not give complete protection from such odors.

PAR. 7. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations and others of a similar nature, disseminated as aforesaid, has had and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a number of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said preparations.

PAR. 8. 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 the 13th day of August 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Vivian S. Nash, an individual, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On the 11th day of September 1942, the respondent filed her answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 is an individual, now trading and doing business under the name of Bee-Dew Cosmetic Co., with her principal place of business located at 703-705 East Forest Avenue, Detroit, Mich.

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PAR. 2. The respondent was, during the month of October 1937, and for more than a year prior thereto, the president of Bee-Dew Laboratories, a corporation, organized under the laws of the State of Michigan. For some time subsequent thereto and prior to February 26, 1941, the said respondent was president of Bee-Dew Products, Inc., also a corporation organized under the laws of the State of Michigan. On said last named date the charter of Bee-Dew Products, Inc., was dissolved. During all the time respondent was president of said corporations she owned a large percentage of the capital stock of each of said corporations, and formulated, directed, and controlled their policies and activities. Each of said corporations was engaged in the sale of a similar line of various hair and face cosmetics. Upon the dissolution of Bee-Dew Products, Inc., the respondent, under the trade name of Bee-Dew Cosmetic Co., has continued to manufacture, sell and distribute substantially the same preparations as those sold by the corporations of which she was president.

PAR. 3. The respondent, Vivian S. Nash, an individual, is now and has been for more than 5 years last past, as stated in the preceding paragraph, engaged in the manufacture, sale, and distribution of certain preparations recommended for hair and scalp treatments, including those designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro," and also of a preparation designated "Bee-Dew O-No," recommended for use as a deodorant.

In the course and conduct of her business the respondent causes said preparations, when sold, to be transported from her place of business in the State of Michigan to the 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 preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in the course and conduct of her business aforesaid has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Don't surrender to short, broken, harsh hair. Every woman owes it to herself to hold on to her youth and beauty.

Before
(Picture of a lady
with short hair.)

After
(Picture of a lady
with long hair.)

Use Bee-Dew Scalp Oil, Bee-Dew Shampoo, Bee-Dew Pressing Oil, Bee-Dew Special U-Gro.

Bee-Dew Special U-Gro

Stop that falling hair and scalp irritation. Remove dandruff.

Check that falling hair. Bring life to your scalp.

Short stubby, dead looking hair or even long hair not well kept is never admirable. Beautiful hair, then, is the first beauty secret.

Beautiful hair requires a healthy scalp. Thinning hair, bald spots, dull hair and itchy scalp indicate an unnatural scalp condition.

Bee-Dew U-Gro

Remove dandruff. Stop falling hair and scalp irritations.

Bee-Dew O-No

Instant sweetness and complete protection is yours now, through Bee-Dew O-No, the perfect and sure deodorant cream.

Assures certain, instant, complete protection from offensive body odors.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, and by pictorial representations, respondent represents and has represented that her said preparations recommended for use in hair and scalp treatments provide a cure or remedy for falling hair, baldness, dull hair, scalp irritation, and dandruff, and constitute an effective treatment therefor, and that their use will cause new hair to grow. In the same manner, the respondent represents that the preparation advertised and designated as Dee-Dew O-No will assure complete protection from offensive body odors.

PAR. 6. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the use of said hair and scalp preparations, either alone or in combination with one another, does not constitute a cure or remedy for falling hair, baldness, dull hair, scalp irritations, or dandruff. Respondent's preparations have no therapeutic value in the treatment of such disorders or conditions in excess of cleansing the hair and scalp, and allaying itching due to minor irritations of the scalp, and in facilitating the removal of accumulated loose dandruff scales. Said preparations will have no therapeutic value in the treatment of baldness and will not

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cause new hair to grow. Respondent's preparation Bee-Dew O-No will give protection from body odors for a limited time only, and will not give complete protection from such odors.

PAR. 7. The use by the respondent of the aforesaid, false, deceptive, and misleading statements and representations, and others of a similar nature, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a 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 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 and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that she waives all intervening procedure and further hearing as to said facts, 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 the respondent, Vivian S. Nash, individually and trading under the name of Bee-Dew Cosmetic Co., or trading under any other name, and her agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of her cosmetic preparations designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," "Bee-Dew U-Gro," and "Bee-Dew O-No," or any other preparations composed of substantially similar ingredients 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,

(a) represents, directly or by implication, that the preparations designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro," either when used alone or in combination with one or more of the others, constitute a cure or remedy for falling hair, baldness, dull hair, scalp irritation, or dandruff, or that any of such preparations will promote the growth of new hair or have any effect upon the growth of hair;

(b) represents, directly or by implication, that said preparations "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro" have any therapeutic values in the treatment of falling hair, baldness, dull hair, scalp irritation, or dandruff, in excess of cleansing the hair and scalp, allaying itching due to minor scalp irritations, and facilitating the removal of loose dandruff scales;

(c) uses the word "grow" or "grower," or any other word which is similar thereto either in spelling or in phonetics, to designate or describe the preparations now designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," and "Bee-Dew U-Gro," or otherwise represents that any of said preparations has any effect upon the growth of hair; or

(d) represents, directly or by implication, that the preparation "Bee-Dew O-No" will give complete protection from offensive body odors, or that it will have any effect in excess of affording temporary protection from such odors.

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 respondent's cosmetic preparations, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

Complaint

IN THE MATTER OF

BEN ARNOVITZ AND WILFORD ARNOVITZ, TRADING AS
UTAH BEVERAGE AND DISTRIBUTING COMPANY

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

Docket 4591. Complaint, Sept. 16, 1941—Decision, Oct. 27, 1942

Where two individuals, engaged in competitive interstate sale of various assortments of merchandise, including candles, gums, nuts, glassware, clocks, and handkerchiefs, which involved use of lottery schemes in sale and distribution to public, a typical assortment consisting of a number of uniform candy bars together with a push card for use in their sale and distribution under a plan, as there explained, by which a customer of said "Baseball" assortment received for 5 cents from 5 to 1 bars, dependent upon receipt of "Home Run," "3-Base Hit," or other legend concealed in that one of the board's 110 disks selected by him, with maker of "Last Play" in first section receiving 2 bars and of "Last Play" on card receiving 3;

Sold such assortments to retailers by whom they were exposed and sold to the purchasing public in accordance with said sales plan, and thereby supplied to and placed in the hands of such retailers means of conducting lotteries in the sale of their products, contrary to an established public policy of the United States Government, and in competition with many who do not use chance or lottery methods;

With effect, by reason of such element of chance, of diverting substantial trade unfairly to themselves from their said 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 acts and practices therein.

Before *Mr. Miles J. Furnas*, trial examiner.

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 Ben Arnovitz and Wilford Arnovitz, individuals, trading and doing business as Utah Beverage and Distributing Co., 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Ben Arnovitz and Wilford Arnovitz, are individuals, trading and doing business as Utah Beverage and