

Complaint

IN THE MATTER OF

M. L. KAY AND HUMBERT O'CAMP, ET AL, TRADING
AS LATTA CREAM

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

Docket 4925. Complaint, Mar. 4, 1943—Decision, June 16, 1943

Where two individuals engaged in interstate sale and distribution of their "Latta Cream" cosmetic, by means of advertisements including depictions in newspapers and other advertising literature, directly and by implication—

Represented falsely that the use of said product would make one look 10 to 15 years younger, that the youthful appearance of motion picture stars was brought about through use thereof, and that it would effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age, and would bring about a youthful and beautiful appearance;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into purchase of substantial quantities of its 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 and deceptive acts and practices in commerce.

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

Mr. Frederick E. M. Ballou, of New York City, for M. L. Kay.

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 M. L. Kay and Hubert O'Camp, individuals, trading as Latta Cream, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, M. L. Kay and Hubert O'Camp, are individuals, and for some time prior to December 19, 1942, traded and did business under the firm name of Latta Cream, with their principal office and place of business located at 505 Fifth Avenue, New York City, N. Y.

PAR. 2. Said respondents were engaged in the sale and distribution of a cosmetic preparation designated as "Latta Cream." Subsequent to the aforesaid date the business has been carried on under the sole proprietorship of the respondent, M. L. Kay. Respondents caused their said product when sold to be transported from their said place

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of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and maintained a course of trade in said product 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 their aforesaid business respondents have disseminated and have caused the dissemination of, false advertisements concerning their said product, Latta Cream, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of, false advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product 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 United States mails, by advertisements inserted in newspapers and other advertising literature are the following:

Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 for a full month's supply of Latta Cream.

A part of said advertisement consists of a depiction of a woman's face, one side of which shows blemishes, wrinkles, sagging muscles, and other signs of old age, the other side being youthful and beautiful in appearance and disclosing no signs of old age.

PAR. 4. Through the use of the aforesaid statements, representations and others similar thereto not specifically set out herein, and through the use of the depiction above described, respondents have represented, directly and by implication, that the use of said product will make one look 10 to 15 years younger, that the youthful appearance of motion picture stars is brought about through the use of said product; that said product will effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and will bring about a youthful and beautiful appearance.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the use of said product will not make one look 10 to 15 years younger or any number of years younger. Said product is not used by motion picture stars. It will not remove or eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and its use will not bring about a youthful and beautiful appearance. The use by the respondents of

the depiction hereinabove referred to is deceptive and misleading in that it serves as a representation that said product will remove and eradicate skin blemishes, wrinkles, sagging muscles, and other signs of old age and will cause the face to appear youthful and beautiful.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to said product, Latta Cream, disseminated as aforesaid, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondents' said product.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 4, 1943, issued and thereafter served its complaint in this proceeding upon respondents, M. L. Kay and Humbert O'Camp (named in the complaint as Hubert O'Camp), individuals, trading as Latta Cream, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 25, 1943, respondent, Humbert O'Camp, filed his answer, and on April 7, 1943, respondent, M. L. Kay, filed his answer, in which answers they 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 answers 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. Respondents, M. L. Kay and Humbert O'Camp (named in the complaint as Hubert O'Camp), are individuals, and for some time prior to December 19, 1942, traded and did business under the firm name of Latta Cream with their principal office and place of business located at 503 Fifth Avenue, New York City, N. Y.

PAR. 2. Said respondents were engaged in the sale and distribution of a cosmetic preparation designated as "Latta Cream." Subsequent to the aforesaid date the business has been carried on under the sole proprietorship of the respondent, M. L. Kay. Respondents caused their said product, when sold, to be transported from their said place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and maintained a course of trade in said product 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 their aforesaid business respondents have disseminated, and have caused the dissemination of, false advertisements concerning their said product, Latta Cream, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated, and have caused the dissemination of, false advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product 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 United States mails, by advertisements inserted in newspapers, and other advertising literature are the following:

Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 for a full month's supply of Latta Cream.

A part of said advertisement consists of a depiction of a woman's face, one side of which shows blemishes, wrinkles, sagging muscles, and other signs of old age, the other side being youthful and beautiful in appearance and disclosing no signs of old age.

PAR. 4. Through the use of the aforesaid statements, representations, and others similar thereto not specifically set out herein, and through the use of the depiction above described, respondents have represented, directly and by implication, that the use of said product will make one look 10 to 15 years younger; that the youthful appearance of motion-picture stars is brought about through the use of said product; that said product will effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and will bring about a youthful and beautiful appearance.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the use of said prod-

uct will not make one look 10 to 15 years younger or any number of years younger. Said product is not used by motion-picture stars. It will not remove or eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and its use will not bring about a youthful and beautiful appearance. The use by the respondents of the depiction hereinabove referred to is deceptive and misleading in that it serves as a representation that said product will remove and eradicate skin blemishes, wrinkles, sagging muscles, and other signs of old age and will cause the face to appear youthful and beautiful.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to said product, Latta Cream, disseminated as aforesaid, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondents' said product.

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 and the answers of the respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, M. L. Kay and Humbert O'Camp (named in the complaint as Hubert O'Camp), individually, and trading as Latta Cream or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their cosmetic preparation designated "Latta Cream," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or

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any other name, do forthwith cease and desist from directly or indirectly:

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 advertisement represents directly or through inference that the use of said preparation will give a youthful and beautiful appearance and make one look younger; that the youthful appearance of motion picture stars is brought about through the use of said preparation; or that said preparation will effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, or other signs 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 in commerce as "commerce" is defined in the Federal Trade Commission Act, of said cosmetic preparation "Latta Cream," which advertisement contains 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.

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IN THE MATTER OF

DOROTHY GRAY, LTD., DOROTHY GRAY SALONS AND
LEHN & FINK PRODUCTS CORPORATION

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

Docket 3447. Complaint, May 27, 1938—Decision, June 19, 1943

Where a corporate subsidiary and its parent concern and their common officers, engaged in interstate sale and distribution of their Dorothy Gray cosmetics, in competition with many who do not misrepresent their products; by means of advertisements in magazines and newspapers and otherwise—

- (a) Falsely represented that the vitamin D in their said cream was beneficial to the skin, cleared its coloring, brightened it and softened its texture, and smoothed out lines; and
- (b) Represented that treatments therewith cleared pores of dirt and other accumulations, stimulated lagging circulation, tightened the relaxed contour of the face, and removed lines and wrinkles therefrom;

The facts being that while their creams, and emollient creams generally, have a lubricating effect in massaging and, when so used, aid in temporarily stimulating local circulation and might aid in temporarily counteracting or removing lines caused by dryness of the skin, treatment therewith would not stimulate lagging circulation, tighten relaxed facial contours, fortify against or remove lines or wrinkles; and while treatment might remove superficial accumulations of dirt in exterior openings of the pores, they would not dissolve dirt or other accumulations in the pores; and

- (c) Falsely represented that their "Special Toning Oil," either alone or in combination with their creams, made a penetrating application, and that their creams gave the skin rich lubrication, fortifying it against wrinkles;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true, as a result of which a number thereof purchased a substantial volume of said products:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Simon Michelet, of Washington, D. C., *Rogers, Woodson & Rogers*, of Chicago, Ill., and *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 Dorothy Gray, Ltd.,