

Complaint

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.,

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a corporation, Dorothy Gray Salons, a corporation, and Lehn & Fink Products Corporation, a corporation, 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. Dorothy Gray, Ltd., is a corporation, created by and existing under the laws of the State of Delaware, with its office and principal place of business located at 683 Fifth Avenue, New York, N. Y. Dorothy Gray Salons, is a corporation, created by and existing under the laws of the State of New Jersey with its principal office and place of business located at 683 Fifth Avenue, New York, N. Y. Lehn & Fink Products Corporation, is a corporation, created by and existing under the laws of the State of New Jersey, with its office and principal place of business located in Bloomfield, N. J. Respondent, Dorothy Gray, Ltd., is a wholly owned subsidiary of Dorothy Gray Salons, which said corporation is a wholly owned subsidiary of Lehn & Fink Products Corporation. Said corporate respondents have acted together and in cooperation with each other in carrying out the acts, practices and methods hereinafter alleged.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the business of distributing and selling a line of cosmetics known as Dorothy Gray Cosmetics. Respondents cause said products when sold to be transported from their place of business in the State of New Jersey to their customers located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics sold and distributed by them 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 business respondents are in active and substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondents have made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, many representations concerning the character and nature of said cosmetics and concerning results obtained from their use. Among said representations made by respondents are the following:

Now the Dorothy Gray Salons crown years of achievement with an exciting new development. Their emollient creams so faithful in combating age have been enriched with vitamin D. This is the vitamin that skin absorbs. As scientific evidence indicates, it is directly beneficial. Coloring clears, brightens. Skin texture feels softer. Lines seem to smooth out noticeably.

Today there is no need for sluggish circulation to cause wrinkles, drooping flabby cheeks and chins. The Dorothy Gray Treatment Method briskly stimulates lagging circulation and tightens the relaxed contour.

If your skin looks sluggish let it revel in our Masque Frappe. This very successful Dorothy Gray Treatment sparkles up circulation—clears your pores of any shadowy accumulations.

Lines took me by surprise. So aging! But these Dorothy Gray Alimenteau Treatments tackle every line and wrinkle that come my way.

Special Toning Oil: To counteract lines and wrinkles. A rich oil that may be patted on directly or combined with Special Dry Skin Cream or extra rich cream to make a richer and more penetrating application.

Special Dry Skin Mixture: The softening and lubricating cream, the night cream, for dry skins. Gives the skin rich lubrication, fortifying it against wrinkles.

All of said statements together with similar statements appearing in the respondents' advertising literature purport to be descriptive of respondents' products and of their effectiveness in use. In all of their advertising literature and through other means respondents directly or by inference through statements and representations herein set out and other statements of similar import and effect, represent that the vitamin D contained in their products is directly beneficial to the skin, that it clears the coloring of the skin and brightens the skin, that their creams containing this vitamin make skin texture softer, and smooth lines out of the skin, that their creams clear skin pores of dirt and other accumulations, that their creams stimulate lagging circulation and tighten the relaxed contour of the face, that treatments with their creams remove lines and wrinkles from the face, that their Special Toning Oil combined with other of their creams makes a penetrating application and that their creams give the skin rich lubrication, fortifying it against wrinkles.

PAR. 5. Representations made by respondents with respect to the nature and effect of their products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact their creams containing vitamin D are not directly beneficial to the skin. Vitamins contained in their creams do not clear or brighten the skin, nor do these creams make the texture of the skin softer or smooth out lines. Respondents' creams do not clear the pores of the skin of dirt and other accumulations. Dorothy Gray Treatments do not stimulate lagging circulation, nor tighten relaxed contour of the face. Respondents' creams do not attack every line and wrinkle of the face. Respondents' Special Toning Cream does not penetrate the skin nor

do respondents' creams provide the skin with rich lubrication fortifying it against wrinkles.

The true facts are that the ingredients of Dorothy Gray Cosmetics other than vitamins are not absorbed by or through the skin, nor do they penetrate the skin. It is possible that some types of vitamins may be absorbed through the skin. However, if vitamins are absorbed through the skin they will not beneficially effect the local condition of the skin where applied. Any vitamin deficiency can be more scientifically treated by way of diet and by the introduction of vitamins and vitamin concentrates by way of the mouth. Respondents' creams' only value consists in the fact that they provide a pleasant lubricant for massaging the face, which massage may be directly beneficial to the skin.

PAR. 6. There are among respondents' competitors many who manufacture, distribute, and sell cosmetics who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating or describing their products, and their effectiveness when used, as hereinabove set out, was and is calculated to, and has had and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products, with the result that trade has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling cosmetics, and who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition 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 27th day of May, A. D. 1938, issued and subsequently served it complaint in this proceeding upon the respondents, Dorothy Gray, Ltd., a corporation; Dorothy Gray Salons, a corporation; and Lehn & Fink Products Corporation, *

corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 7, 1938, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents' counsel, Rogers, Hoge & Hills, 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 without the presentation of argument or the filing of briefs. Counsel for the respondents expressly waived filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulation, said stipulation having been approved, accepted, and filed, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Dorothy Gray, Ltd., is a corporation, created by and existing under the laws of the State of Delaware, with its office and principal place of business located at 192 Bloomfield Avenue, Bloomfield, N. J. Dorothy Gray Salons was until April 1, 1941, when it was liquidated and dissolved, a corporation, created by and existing under the laws of the State of New Jersey with its principal office and place of business located at 192 Bloomfield Avenue, Bloomfield, N. J. Lehn & Fink Products Corporation, is a corporation, created by and existing under the laws of the State of Delaware with its office and principal place of business located in Bloomfield, N. J. Respondent, of Dorothy Gray, Ltd., was until April 1, 1941, a wholly-owned subsidiary of Dorothy Gray Salons, a corporation, and since that time has been a wholly owned subsidiary of Lehn & Fink Products Corporation, and Dorothy Gray Salons was until its dissolution a wholly owned subsidiary of respondent, Lehn & Fink Products Corporation. Said corporate respondents, each of whose principal officers are the same individuals, have acted together and in cooperation with each other in carrying out the acts, practices, and methods hereinafter described.

PAR. 2. Respondent, Dorothy Gray, Ltd., is now, and for more than 6 years last past has been, engaged in the business of distributing and selling a line of cosmetics known as Dorothy Gray Cosmetics. Said respondent causes said products, when sold, to be transported from its place of business in the State of New Jersey to its customers located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics sold and distributed by them 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 business respondents are in active and substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondents have made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated generally throughout the United States, many representations concerning the character and nature of said cosmetics and concerning results obtained from their use. Among the representations made by respondents at various times prior to May 27, 1938, are the following:

Now the Dorothy Gray Salons crown years of achievement with an exciting new development. Their emollient creams so faithful in combating age have been enriched with vitamin D. This is the vitamin that skin absorbs. As scientific evidence indicates, it is truly beneficial. Coloring clears, brightens. Skin texture feels softer. Lines seem to smooth out noticeably.

Today there is no need for sluggish circulation to cause wrinkles, drooping flabby cheeks and chins. The Dorothy Gray Treatment Method briskly stimulates lagging circulation and tightens the relaxed contour.

If your skin looks sluggish let it revel in our Masque Frappe. This very successful Dorothy Gray Treatment sparkles up circulation—clears your pores of any shadowy accumulations.

Lines took me by surprise. So aging! But these Dorothy Gray Alimenteau Treatments tackle every line and wrinkle that come my way.

Special Toning Oil: To counteract lines and wrinkles. A rich oil that may be patted on directly or combined with Special Dry Skin Cream or extra rich cream to make a richer and more penetrating application.

Special Dry Skin Mixture: The softening and lubricating cream, the night cream, for dry skins. Gives the skin rich lubrication, fortifying it against wrinkles.

All of said statements, together with similar statements appearing in the respondents' advertising literature, purport to be descriptive of respondents' products and of their effectiveness in use. In all of their advertising literature and through other means, respondents have represented at various times in the past through the statements and representations herein set out and other statements of similar import and effect, that the vitamin D contained in their cosmetic creams was beneficial to the skin; that it cleared the coloring of, and brightened, the skin, and made the skin texture softer and smoothed lines out of the skin; that the treatments in which respondents' creams were used cleared skin pores of dirt and other accumulations; that treatments with their said creams stimulated lagging circulation, tightened the relaxed contour of the face, and removed lines and wrinkles from the face; that their Special Toning Oil, combined with other of their creams, made a penetrating application, and that their creams gave the skin rich lubrication, fortifying it against wrinkles.

PAR. 5. The aforesaid representations made by the respondents with respect to the nature and effect, when used, of their cosmetic products were exaggerated and misleading. In truth and in fact, the vitamin D contained in respondents' cosmetic creams would not cause the coloring of the skin to be cleared or brightened to any extent; would not make skin texture softer, nor smooth lines out of the skin, or have any beneficial effects whatsoever upon or to the skin.

While Dorothy Gray creams and emollient creams generally would have a lubricating effect when used in massaging the skin and while such creams, under such conditions of use, would aid in temporarily stimulating local circulation, treatments with respondents' Dorothy Gray creams would not stimulate lagging circulation and would not tighten the relaxed contours of the face nor fortify against, counteract, or remove lines or wrinkles in the skin. In some instances lines in the face may be caused by dryness of the skin, and Dorothy Gray creams and oils and emollient creams and oils generally which lubricate the skin and tend to counteract such dryness may aid in temporarily counteracting or removing such lines.

While the treatments in which respondents' creams are used may remove superficial accumulations of dirt in the exterior openings of the pores, such creams would not dissolve dirt or other accumulations in the pores of the skin or clear or cleanse the pores of such dirt or other accumulations.

Many skin creams, including respondents' creams, clean the surface of the skin, including the exterior openings of the pores, and respondents' creams in their method of cleaning are no different in this general

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respect from such other preparations. Respondents' Special Toning Oil, when used either alone or in combination with respondents' creams, does not counteract wrinkles and does not penetrate the skin.

PAR. 6. There are among respondents' competitors many who manufactured, distributed and sold cosmetics who did not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the misleading statements and representations made by the respondents in designating or describing their products, and their effectiveness when used, as hereinabove set out, has had a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice of the public and of respondents' 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 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, Dorothy Gray, Ltd., a corporation, and Lehn & Fink Products Corporation, a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of their cosmetic preparations or any products of substantially similar composition, or possessing substantially similar properties, do forthwith cease and desist from representing:

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1. That the vitamin D contained in respondents' cosmetic creams will cause the coloring of the skin to be cleared or brightened, will make skin texture softer, will smooth lines out of the skin or will provide any beneficial effect whatsoever to the skin.

2. That treatments with respondents' cosmetic preparations tighten the relaxed contour of the face or stimulate lagging circulation or have any effect upon circulation in excess of temporarily stimulating local circulation.

3. That treatments with respondents' cosmetic preparations will clear the pores of dirt and other accumulations: *Provided, however,* That the respondents are not hereby prohibited from representing that such creams may remove superficial accumulations of dirt from the pore openings. .

4. That respondents' cosmetic preparations will remove, counteract, or fortify against lines or wrinkles in the skin: *Provided, however,* Respondents are not prohibited hereby from representing that an emollient cream which lubricates the skin will aid in smoothing out lines caused solely by dryness of the skin.

5. That respondents' Special Toning Oil, used alone or in combination with their creams will penetrate the skin.

It is further ordered, That the respondents, Dorothy Gray, Ltd., and Lehn & Fink Products Corporation, 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.

It is further ordered, That the case growing out of the complaint issued herein be closed, without prejudice, insofar as the respondent, Dorothy Gray Salons, a corporation, is concerned for the reason that said respondent corporation was liquidated and dissolved April 1, 1941.

IN THE MATTER OF

MAX E. HEYMAN AND MAUDE S. JARET, TRADING AS
DOMESTIC DIATHERMY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4942. Complaint, Apr. 12, 1943—Decision, June 19, 1943*

Where two individuals engaged in interstate sale and distribution of their "Domestic Short-Wave Diathermy" device; by means of advertisements in newspapers, radio and other advertising literature—

- (a) Represented that their said device when used by the unskilled lay public in the home treatment of self-diagnosed diseases and ailments, provided a scientific, safe, harmless, and effective treatment of, and a competent remedy for, rheumatism, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsillitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women, and for the alleviation of pain resulting therefrom; and
- (b) Represented that through use thereof one might renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; and that the treatment was similar to that known as "friendly fever" and produced comparable results;

The facts being that said representations were grossly exaggerated, false and misleading; use of said device as recommended might result in serious and irreparable injury to health in conditions involving acute inflammatory processes, or involving the special senses and glandular structures; use thereof for relieving pains which might be symptomatic of deeper and serious underlying diseases or causes, might fatally delay proper diagnosis and treatment; under certain circumstances, might stimulate growth of cancer cells or cause their spread to other tissues; in others, might increase congestion or result in severe burns and destruction of tissues; and question as to when diathermy is contra-indicated, and the method and duration of use to alleviate rather than aggravate the condition, requires competent medical diagnosis of the ailment and its underlying cause; and

- (c) Failed to reveal facts material in the light of such misrepresentations: that prescribed use of said device might result in serious and irreparable injury to health, and that it might be safely used only after determination by competent medical authority that diathermy was indicated, and prescription thereby of frequency and amount of application of the treatments, and adequate instruction of the user by a trained technician in operation of the device;

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

Held, That said 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.