

Complaint

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IN THE MATTER OF

HELEN E. HOECK, TRADING AS HELENA VOLAY COSMETICS; AND CHICAGO UNION ADVERTISING AGENCY, INC.

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

Docket 4967. Complaint, May 26, 1943—Decision, Jan. 20, 1944

Where an individual engaged in the interstate sale and distribution of her cosmetic preparation "Helena Volay Face Oil," together with the corporation acting as her advertising agency; by advertisements in newspapers and periodicals and in circulars, leaflets, pamphlets and other advertising literature—

Represented falsely that use of said preparation improved the skin and caused it to become finer and more youthful looking, and was effective in the treatment of, and combated and prevented the formation of, wrinkles and sagging tissues;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and to induce it, because of such erroneous belief, to purchase substantial quantities of such preparation:

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

Mr. B. W. Stanley for the Commission.

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 Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics and Chicago Union Advertising Agency, Inc., 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Helen E. Hoeck, is an individual, doing business under the trade name Helena Volay Cosmetics, with her principal place of business located at 421 Bazoobuth Street, Needles, Calif.

PAR. 2. Said respondent is now, and has been, for more than three years last past engaged in the sale and distribution of a cosmetic preparation designated Helena Volay Face Oil. The quantitative formula of said cosmetic is stated by respondent to be

Mineral Oil	11 oz.
Olive Oil	1 oz.
Benzoin	1 oz.
Lanolin	1 oz.
Bergamot Oil	1 oz.

In the course and conduct of her said business, respondent causes and has caused said cosmetic preparation, when sold, to be shipped or transported from her said place of business in the State of California to pur-

chasers thereof located in various other states of the United States. Respondent maintains and at all times herein mentioned has maintained a course of trade in her said cosmetic preparation in commerce between and among the various States of the United States.

PAR. 3. Chicago Union Advertising Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its offices and principal place of business located at 20 West Jackson Boulevard, Chicago, Ill.

This Respondent is an advertising agency and as such is engaged in formulating, editing, selling and distributing advertising matter. This respondent is the advertising representative or agent of respondent, Helen E. Hoeck, and prepares, formulates, disseminates and aids in the dissemination of the advertising material hereinafter set forth in connection with the sale and distribution of the cosmetic preparation hereinabove designated.

Respondents acted in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 4. In furtherance of the sale and distribution of the cosmetic preparation sold and distributed by respondent, Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, the respondents have disseminated and have caused the dissemination of false advertisements concerning said cosmetic preparation by the 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 said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined by the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive 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:

Girls! Why look old?

New FACE OIL does wonders in improving the skin—helps to keep it SMOOTHER, FIRMER, more YOUTHFUL LOOKING * * * Helena Volay Face Oil * * * combats the formation of wrinkles or sagging of the tissues.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import not set out herein, all of which purport to be descriptive of the therapeutic properties and remedial value of said cosmetic preparation, respondents have represented that the use of said preparation improves the skin and causes it to become firmer and more youthful looking and that said preparation is effective in the treatment of and combats and prevents the formation of wrinkles and sagging of the tissues.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact the use of said preparation will not significantly improve the skin and will not cause it to become firmer and to look more youthful. It is not effective in the treatment of and will not combat or prevent the formation of wrinkles and sagging of tissues.

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PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to said preparation, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous belief to purchase substantial quantities of said preparation.

PAR. 8. 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 May 26, 1943, issued and thereafter served its complaint in this proceeding upon respondents Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, and Chicago Union Advertising Agency, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 18, 1943, the respondent Helen E. Hoeck, individually and trading as Helena Volay Cosmetics, 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. On June 4, 1943, the respondent Chicago Union Advertising Agency, Inc., a corporation, filed its answer and on August 17, 1943, the Commission by order entered herein granted said respondent's motion for permission to withdraw its said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said answer and substitute answer, 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, Helen E. Hoeck, is an individual, doing business under the trade name Helena Volay Cosmetics with her principal place of business located at 421 Bazoobuth Street, Needles, Calif.

PAR. 2. Said respondent is now, and has been, for more than three years last past engaged in the sale and distribution of a cosmetic preparation designated Helena Volay Face Oil. The quantitative formula of said cosmetic is as follows:

Mineral Oil	11 oz.
Olive Oil	1 oz.
Benzoin	1 oz.
Lanolin	1 oz.
Bergamot Oil	1 oz.

In the course and conduct of her said business, respondent causes and has caused said cosmetic preparation, when sold, to be shipped or transported from her said place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintains and at all times herein mentioned has maintained a course of trade in her said cosmetic preparation in commerce between and among the various States of the United States.

PAR. 3. Chicago Union Advertising Agency, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its offices and principal place of business located at 20 West Jackson Boulevard, Chicago, Ill.

This respondent is an advertising agency and as such is engaged in formulating, editing, selling and distributing advertising matter. This respondent is the advertising representative or agent of respondent, Helen E. Hoeck, and prepares, formulates, disseminates and aids in the dissemination of the advertising material hereinafter set forth in connection with the sale and distribution of the cosmetic preparation hereinabove designated.

PAR. 4. Respondents acted in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the cosmetic preparation sold and distributed by respondent, Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, the respondents have disseminated and have caused the dissemination of false advertisements concerning said cosmetic preparation by the 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 said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined by the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive representations contained in said advertisements disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature are the following:

Girls! Why look old?

New FACE OIL does wonders in improving the skin—helps to keep it SMOOTHER, FIRMER, more YOUTHFUL LOOKING * * * Helena Volay Face Oil * * * combats the formation of wrinkles or sagging of the tissues.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others of similar import not set out herein, all of which purport to be descriptive of the therapeutic properties and remedial value of said cosmetic preparation, respondents have represented that the use of said preparation improves the skin and causes it to become firmer and more youthful looking and that said preparation is effective in the treatment of and combats and prevents the formation of wrinkles and sagging of the tissues.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact the use of said preparation will not significantly improve the skin and will not cause it to become firmer and to look more youthful. It is not effective in the treatment of

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and will not combat or prevent the formation of wrinkles and sagging of tissues.

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

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 respondent, Helen E. Hoeck, an individual, trading as Helena Volay Cosmetics, or trading under any other name, her representatives, agents, and employees, and the respondent, Chicago Union Advertising Agency, 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 a certain cosmetic preparation designated "Helena Volay Face Oil" or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, 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 represents directly or by implication that said preparation —

- a. Will significantly improve the skin or cause it to become firmer and look more youthful;

- b. Is effective in the treatment of or will combat or prevent the formation of wrinkles and sagging tissues.

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 said product, in commerce as "commerce" is defined in the Federal Trade Commission Act, 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.

Complaint

IN THE MATTER OF

KAY LABORATORIES, INC., AND JOSEPH P. KAYATTA

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

Docket 5054. Complaint, Sept. 24, 1943—Decision, Jan. 21, 1944

Where a corporation and an individual, its president, treasurer and principal stockholder, responsible for its operation and management, engaged in the interstate sale and distribution of their "Kaytonik" medicinal preparation —

- (a) Represented falsely by means of radio continuities and advertisements in newspapers that said preparation was a preventive of, and constituted a competent and effective treatment for, colds; and that it would prevent a cold from developing into grippe, influenza and pneumonia; build up strength, health and body resistance to disease, and conquer or destroy germs; and through use of the trade name "Kaytonik" that it was a general tonic; and
- (b) Represented falsely by selling and distributing their preparation under corporate name "Kay Laboratories, Inc.," that it was compounded or manufactured in a place or places appropriately equipped for and devoted to experimental study in medicine or pharmaceutical science or the application of medical or pharmaceutical principles in the testing and analysis or in the preparation of drugs or medicine by persons skilled in those arts, i.e., in "laboratories" within the common and usual meaning of the word when used in connection with the preparation of drugs and medicine;

With capacity and tendency to mislead a substantial portion of the purchasing public into an erroneous belief that such representations were true, and with result of thereby inducing it to purchase preparation in question:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Francis J. O'Brien and *Mr. A. Norman LaSalle*, of Providence, R. I., 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 Kay Laboratories, Inc., a corporation, and Joseph P. Kayatta, individually, and as President and Treasurer of Kay Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kay Laboratories, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business at 150 Niagara Street, Providence, R. I.

Respondent, Joseph P. Kayatta, is an individual and is the principal stockholder, president and treasurer of Kay Laboratories, Inc., and also