

IN THE MATTER OF

PHILLIP BARTELL TRADING AS THE EN-EX COMPANY
AND THE EN-EX 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 4766. Complaint, May 28, 1942—Decision, Jan. 23, 1945

Where an individual engaged in the interstate sale and distribution of a medicinal preparation which he designated as "En-Ex"; through advertisements in newspapers and other advertising literature—

- (a) Represented that said "En-Ex" was a cure or remedy for psoriasis, which would rid the skin and scalp of blotches, lesions, eruptions and pimples resulting therefrom; the facts being that no cure or remedy for psoriasis is known to the medical profession; the maximum benefit that might be obtained by the use of said "En-Ex" is that it might remove or assist in the removal of scales from psoriatic lesions, though lesions might later return at the same or other locations; and, while he stated in advertising material sent with purchases of his preparation that there is no known cure for psoriasis and that his preparation is not a cure for any skin disease, said statements reached members of the public only after they had responded to advertisements such as those set out and had purchased his preparation;
- (b) Falsely represented that said preparation was a cure or remedy and a competent and effective treatment for dandruff, which would prevent falling hair; the facts being that at most it afforded no more than temporary relief from dandruff and might aggravate the condition;
- (c) Represented that it was safe and harmless and might be used without danger of ill effects; the facts being it would, in many cases, seriously irritate the skin, and might result in secondary infections; it was particularly irritating to mucous membrane; and if it came in contact with the eyes might cause conjunctivitis; and
- (d) Failed to reveal facts material in the light of said representations and with respect to the consequences which might result from the use of their preparation under prescribed or usual conditions, and that, due to said product's irritant qualities, care should be exercised in applying it to the skin and its use discontinued if irritation resulted, and it should not be allowed to come into contact with the eyes or with any mucous membrane;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce 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. J. Earl Cox*, trial examiner.
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 Phillip Bartell, an individual, trading as The En-Ex Company, and The En-Ex Distributing Company,

respectively, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Phillip Bartell, is an individual, trading as The En-Ex Company, and The En-Ex Distributing Company, respectively, having his principal office and place of business at 614 Society for Savings Building, in the city of Cleveland, Ohio.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the business of selling and distributing a certain medicinal preparation designated as "En-Ex."

In the course and conduct of his business, respondent causes his said product when sold by him, to be transported from his place of business in the State of Ohio to the purchasers thereof, at their respective points of location 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 product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his 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 the United States mails, by advertisements inserted in newspapers, and by circulars, pamphlets and other advertising literature, are the following:

THIRTY DAY "CHART"

DIRECTIONS for application of "En-EX" to remove eruptions of psoriasis and other skin eruptions * * * follow this and you can always have a clean skin.

PSORIASIS EN-EX clears skin and scalp of blotches, lesions, eruptions, pimples and dandruff, or your money back within two weeks.

BEAT psoriasis at no risk.

FALLING HAIR AND DANDRUFF

Repeat this process after a week, then two weeks later, and then about once every three weeks or month. You should no longer be bothered with any hair falling out, or any Dandruff-lint appearing on your clothes.

PAR. 4. Through the use of statements and representations hereinabove set forth and others similar thereto not specifically set out herein, including advertisements in the form of testimonials, all of which purport to be descriptive of the remedial and therapeutic properties of respondent's preparation, respondent, directly or by implication, represents that said

preparation "En-Ex" is a cure or remedy for and constitutes a competent and effective treatment of psoriasis; that it will rid the skin and scalp of blotches, lesions, eruptions, pimples and dandruff resulting from psoriasis; that the use of said preparation will produce a clean skin in cases of persons suffering from psoriasis; that said preparation is a competent and effective treatment for dandruff and will prevent falling hair, and that said preparation is safe and harmless and may be used without danger of ill effects.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for and does not constitute a competent and effective treatment of psoriasis. It will not produce a clear skin or rid the skin or scalp of blotches, lesions, eruptions, pimples and dandruff in cases of persons suffering from psoriasis, and has no therapeutic value in the treatment of psoriasis or the external manifestations thereof in excess of affording temporary relief from itching and assisting in the removal of scales from the skin. Said preparation will not prevent falling hair and has no therapeutic value in the treatment of dandruff in excess of assisting in the removal of dandruff scales. It is not safe and harmless since, when used as directed or under such conditions as are customary and usual, it is strongly irritating to the skin and particularly irritating to the eyes and other mucous membrane and skin which is already irritated.

PAR. 6. The advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, said preparation is strongly irritating to the skin and its use will result in definite injury to the superficial layers of the skin. Furthermore, because of its irritating qualities, said preparation should never be allowed to come into contact with the eyes or any other mucous membrane of the body and should not be used on skin which is already irritated.

PAR. 7. The use by the respondent of the foregoing false, misleading and deceptive statements and representations disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

PAR. 8. The aforesaid acts and practices of respondent, as alleged herein, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the meaning and intent 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 28, 1942, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer, testimony

and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); 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, Phillip Bartell, is an individual, trading as En-Ex Company and En-Ex Distributing Company and having his principal office and place of business in the Society for Savings Building, Cleveland, Ohio. He is now, and for a number of years last past has been, engaged in the sale and distribution of a medicinal preparation designated as "En-Ex."

PAR. 2. In the course and conduct of his said business, respondent causes his said medicinal preparation, when sold, to be transported from his place of business in Cleveland, Ohio, to purchasers thereof at their respective points of location in various other States of the United States, and respondent maintains, and has maintained, a course of trade in said preparation in commerce among and between various States of the United States.

PAR. 3. In carrying on his business as aforesaid, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said medicinal preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said medicinal preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation 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 above set forth, by advertisements inserted in newspapers and by other advertising literature, are the following:

PSORIASIS

EN-EX clears skin and scalp of blotches, lesions, eruptions, pimples and dandruff, or your money back within two weeks (Comm. Ex. 10).

* * * * *

PSORIASIS

Quit hiding your skin. "EN-EX" clears skin and scalp of eruptions, blotches, or money back within one month. * * * BEAT Psoriasis at no risk (Comm. Ex. 11).

* * * * *

Findings

40 F. T. C.

PSORIASIS

ERUPTIONS DISAPPEAR when you apply "EN-EX" (liquid-externally) following our DIRECTIONS—"CHART," * * *. You see them FADE day by day or MONEY BACK in 30 days. Discouraged amazed, happy, send us unsolicited interesting Testimonials. Sent FREE.

\$1.00	* * *	ONE BOTTLE ENOUGH
BOTTLE	* * *	IN MANY CASES

(Comm. Ex. 19).

* * * * *

PSORIASIS SUFFERERS

GOOD NEWS: Our exclusively NEW METHODS of EXTERNAL APPLICATION of "EN-EX" makes it possible for you to have a NORMAL APPEARING SKIN! * * *. \$1.00 Bottle Enough in many cases (Comm. Ex. 21).

* * * * *

FALLING HAIR AND DANDRUFF

- 4 Repeat this process after a week, then two weeks later, and then about once every three weeks or month. You should no longer be bothered with any hair falling out, or any Dandruff-lint appearing on your clothing.
- (a) After a half dozen applications along this routine, it will be necessary to apply "EN-EX" only once in about six months, to keep your scalp in good condition (Comm. Ex. 5).

PAR. 4. By means of the above statements and representations, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial and therapeutic properties of respondent's preparation, respondent represents, directly or by implication, that "En-Ex" is a cure or remedy for psoriasis, that it will rid the skin and scalp of blotches, lesions, eruptions, and pimples resulting from psoriasis, that it is a cure or remedy and a competent and effective treatment for dandruff and will prevent falling hair, and that it is safe and harmless and may be used without danger of ill effects.

PAR. 5. (a) In truth and in fact respondent's preparation is not a cure or remedy for psoriasis. There is no cure or remedy for this disease known to the medical profession. The external manifestations of psoriasis tend to follow a wave-like pattern of up-and-down trends and the lesions or eruptions which have appeared will sometimes disappear without any treatment whatever. Typically, the lesions of psoriasis appear on the elbows, knees, and scalp, but may appear anywhere on the body and may substantially cover the body. There are numerous types of psoriasis but the typical lesion is a reddened surface of the skin covered with silvery scales. In some cases the lesions or eruptions are accompanied by itching. Various treatments are used for the purpose of relieving the external manifestations of psoriasis and in some types of psoriasis the external manifestations respond better to one treatment than to another. The maximum benefit that may be obtained by the use of respondent's product is that it may remove or assist in the removal of scales from psoriatic lesions, and if more scales do not reappear on such lesions the reddened skin at those points will in course of time become normal in appearance, though lesions

may later return at the same or some other locations. Respondent states in his advertising pamphlets, circulars, and other material sent to members of the public with their purchases of his preparation that there is no known cure for psoriasis and that his preparation is not a cure for any skin disease. These statements, however, reach members of the public only after they have responded to advertisements such as those heretofore set out and have purchased respondent's preparation. Respondent's preparation consists of approximately 20 percent coal tar, 10 percent soap bark, and 70 percent isopropyl alcohol. Occasionally a small quantity of methyl salicylate is added. This formula corresponds rather closely to the formula for *liquor picis carbonis* appearing in the "National Formulary," except for the presence of any methyl salicylate and the fact that respondent uses isopropyl alcohol instead of ethyl alcohol. Coal tar is one of the accepted treatments for psoriatic lesions but is not as widely used by dermatologists as certain other treatments, and when used is more generally used in an ointment form than in an alcohol solution, because alcohol tends to irritate psoriatic lesions.

(b) Respondent's product is not a cure or remedy for dandruff or falling hair. It would have no tendency to prevent falling hair. In the case of dandruff, it might in some cases be helpful as a temporary measure and in others might aggravate the condition, and at most affords no more than temporary relief.

(c) Respondent's preparation is not safe and harmless. If it comes in contact with normal skin surrounding a psoriatic lesion it will, in many cases, seriously irritate the skin, causing redness, inflammation, or weeping, and possibly result in secondary infections. It is particularly irritating to the eyes or any mucous membrane, and if it comes in contact with the eyes may result in conjunctivitis.

PAR. 6. The advertisements disseminated by respondent, as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations and material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. Because of the irritant qualities of said preparation, as set out above, care should be exercised in applying it to the skin and its use discontinued if irritation results, and it should not be allowed to come into contact with the eyes or with any mucous membrane of the body.

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

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), 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 respondent, Phillip Bartell, an individual, trading as En-Ex Company or En-Ex Distributing Company, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "En-Ex," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) That said preparation constitutes a cure or remedy for psoriasis; or will cause eruptions, blotches, or other psoriatic lesions to disappear permanently or contribute more to their disappearance than to remove or assist in the removal of the scales therefrom.

(b) That said preparation is a cure or remedy for or will prevent falling hair.

(c) That said preparation is a cure or remedy for or has therapeutic value in the treatment of dandruff in excess of affording temporary relief.

2. Disseminating or causing to be disseminated, by any means, any advertisement 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 medicinal preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that said preparation should not be allowed to come into contact with the eyes or any mucous membrane of the body and that if irritation results from its use on the skin its use should be discontinued; Provided, however, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed" if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain warnings to the above effect.

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

Syllabus

IN THE MATTER OF

ELI EGHAN, TRADING UNDER HIS OWN NAME AND
ALSO AS OX'O-GAS COMPANY

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

Docket 5040. Complaint, Sept. 3, 1943—Decision, Jan. 23, 1945

Where an individual engaged in interstate sale and distribution of a gasoline additive, or a solution designed to be mixed with gasolines for use as a motor fuel, under designation "Ox'o," and of a gasoline to which said Ox'o had been added, designated "Ox'o-Gas"; through statements on labels attached to the containers of said Ox'o and through advertisements thereof in newspapers and circulars and other advertising material, directly or by implication—

- (a) Falsely represented that his products greatly increased the combustion efficiency and power of an internal combustion engine and the mileage supplied thereby, and provided quicker starting and faster pickup; the facts being that laboratory tests by the National Bureau of Standards, and the testimony of the expert who supervised them established that his said products were wholly incapable of accomplishing said results; and
- (b) Falsely represented that his said "Ox'o" solution had been approved by major oil companies for blending with their gasoline; the facts being that while certain companies had stated to him that their examination of the product did not disclose any detrimental effects resulting from its use, none of the major oil companies had approved the solution;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the value, properties, and efficiency of his products, and thereby to cause it to purchase substantial quantities thereof:

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

As respects the validity of claims to the effect that a certain gasoline additive greatly increased the combustion efficiency and power of an internal combustion engine and the mileage supplied thereby and provided quicker starting and faster pickup: Evidence of certain road tests with automobiles and motor busses made by the seller's representative and by purchasers of the product—results of which, if acceptable, would indicate a product of substantial merit—was not sufficient to meet evidence consisting of laboratory tests made by the National Bureau of Standards with an automobile engine, electro-dynamometer and other necessary equipment, and testimony of the expert who conducted them, since said road tests, unlike the laboratory tests, do not permit adequate control or allowances for a great number of variables including such factors as engine temperatures, wind velocity and direction, effects of the road (surface conditions, curves and grades) and traffic density or control.

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

Mr. Joseph Callaway for the Commission.

Mr. James P. Kohler, *Mr. James P. Kohler, Jr.*, *Mr. Joseph H. Denmark* and *Mr. John Hoxie*, of New York City, for respondent.