

Complaint

IN THE MATTER OF

SYLVIA PIETRI, TRADING AS DR. H. A. PIETRI COMPANY

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

Docket 5146. Complaint, Mar. 31, 1944—Decision, Feb. 6, 1945

Where an individual engaged in the interstate sale and distribution of a lead acetate hair dye designated as "Zenaida"—

- (a) Represented, directly and by implication, through advertisements in Spanish in newspapers and other advertising material, that her said preparation would restore the hair of the user to its original color, and restore thereto "the appearance of its natural color";

The facts being said product was a dye, its only action was that of a dye, and the color it imparted did not have, in many respects, the appearance of a natural color, particularly as respected hair which was originally of a light shade;

- (b) Falsely represented that it would not stain clothing, hands or scalp; and
- (c) Falsely represented, through the use of the trade name "Dr. H. A. Pietri Co." that her said preparation was the prescription of a member of the medical profession by that name, or was made under his supervision or offered for sale by him;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and of thereby inducing it to purchase substantial quantities of her said preparation:

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. B. G. Wilson 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 Sylvia Pietri, an individual, trading as Dr. H. A. Pietri Company, hereinafter referred to as respondent, 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, Sylvia Pietri, is an individual, trading as Dr. H. A. Pietri Company, with her office and principal place of business at 620 West 141st Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a lead acetate hair dye designated as "Zenaida."

Respondent causes her said preparation when sold to be shipped from her 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.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in her said preparation in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of her aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation by 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 causing the dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive and misleading 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 by means of other advertising material are the following, all in Spanish language, the English translations being as follows:

NO MORE GRAY HAIRS. The imperial preparation Zenaida will return your hair to original color whether it was blond, red, black or chestnut * * *. It does not stain the clothing, hands, nor the scalp. * * * Dr. H. A. Pietri Company * * *.

Without gray hair you will look ten years younger. Don't miss the opportunities of life. Imperial Zenaida Preparation will restore to your hair the appearance of its natural color. * * * Dr. H. A. Pietri Company * * *.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondent represents and has represented, directly and by implication, that the said preparation will restore the hair of the user to its original color and will restore to the hair the appearance of its natural color and that it will not stain clothing, hands or the scalp. The use of the trade name, Dr. H. A. Pietri Company in connection with her preparation serves as a representation that said preparation is the prescription of a member of the medical profession by the name of Dr. H. A. Pietri or is made under the supervision of a member of the medical profession by that name and is offered for sale by him.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact, respondents preparation is a dye and its only action is that of a dye. While this preparation will impart a color to the hair it does not restore the original color or any color nor does it restore the appearance of any color. The color imparted by this preparation does not have the appearance in many respects, of a natural color, and this is particularly true as to hair which was originally of a light shade. Said preparation will stain clothing, hands and scalp if contacted by it. H. A. Pietri is not a member of the medical profession. Respondent's preparation is not the prescription of a member of the medical profession by the name of Dr. H. A. Pietri and is not made under the supervision or offered for sale by a member of the medical profession by that name.

PAR. 6. The use by respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

PAR. 7. 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 March 31, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Sylvia Pietri, an individual, trading as Dr. H. A. Pietri Company, charging her with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On May 1, 1944, 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, Sylvia Pietri, is an individual, trading as Dr. H. A. Pietri Company, with her office and principal place of business at 620 West 141st Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a lead acetate hair dye designated as "Zenaida."

Respondent causes her said preparation, when sold, to be shipped from her 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.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in her said preparation 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 her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation by 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 causing the dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading 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 by means of other advertising material are the following, all in Spanish language, the English translations being as follows:

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NO MORE GRAY HAIRS. The imperial preparation Zenaida will return your hair to original color whether it was blond, red, black or chestnut * * *. It does not stain the clothing, hands, nor the scalp. * * * Dr. H. A. Pietri Company * * *.

Without gray hair you will look ten years younger. Don't miss the opportunities of life. Imperial Zenaida Preparation will restore to your hair the appearance of its natural color. * * * Dr. H. A. Pietri Company * * *.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondent represents and has represented, directly and by implication, that the said preparation will restore the hair of the user to its original color and will restore to the hair the appearance of its natural color and that it will not stain clothing, hands, or the scalp. The use of the trade name "Dr. H. A. Pietri Company" in connection with her preparation serves as a representation that said preparation is the prescription of a member of the medical profession by the name of Dr. H. A. Pietri or is made under the supervision of a member of the medical profession by that name and is offered for sale by him.

PAR. 5. The foregoing representations are false, misleading, and deceptive. In truth and in fact, respondent's preparation is a dye and its only action is that of a dye. While this preparation will impart a color to the hair, it does not restore the original color or any color nor does it restore the appearance of any color. The color imparted by this preparation does not have the appearance in many respects of a natural color, and this is particularly true as to hair which was originally of a light shade. Said preparation will stain clothing, hands, and scalp if contacted by it. H. A. Pietri is not a member of the medical profession. Respondent's preparation is not the prescription of a member of the medical profession by the name of Dr. H. A. Pietri and is not made under the supervision or offered for sale by a member of the medical profession by that name.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

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 admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the 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, Sylvia Pietri, an individual, trading as Dr. H. A. Pietri Company, or trading under any other name or names, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of her preparation designated as "Zenaida," or any other preparation of 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, 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 by implication:

(a) That said preparation will restore the hair of the user to its original color or the appearance of its natural color.

(b) That said preparation will not stain the clothing, hands, or scalp.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That said respondent, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the preparation designated "Zenaida," or any other preparation of substantially similar composition or possessing substantially similar properties, whether under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Doctor" or any abbreviation or simulation thereof, in the trade name or designation of her said business; or representing, directly or by implication, that said preparation is made under the supervision of or offered for sale by a member of the medical profession.

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.

IN THE MATTER OF
WOELFEL STUDIO, ET AL.

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

Docket 4649. Complaint, Mar. 10, 1942¹—Decision, Feb. 7, 1945

Where a number of individuals engaged as "operators" in the competitive interstate sale and distribution to members of the consuming public of colored enlargements or miniatures of photographs and snapshots, produced by one W. at his Chicago studio and purchased by them from him along with frames therefor; together with various other individuals, who as "crew managers," "road managers," "proof passers," "delivery men," "salesmen" and "sales agents," assisted them in selling and distributing said products to the public—

- (a) Employed trade names such as "United Art Company," "Atlas Portrait Company," "Modernistic Art Company," "Windsor Studio," "Superior Artists Association," "Royal Art Studios," "Real Art Portrait Company," "Windsor Portrait Service," "American Art Association," "Modern Art Company," "Central Art Company," and "National Art Association," and, with the consent and active assistance of said W., made use of the Chicago address of his studio as the address of the businesses conducted by them under such trade names, and used said names and address on their contract forms, order blanks, and credentials; and

Where said W., with authority so to do—

- (b) Received and opened mail addressed to the trade names used by such "operators," answered such of the complaints as he could handle, by writing letters on behalf of said operators on their trade-name stationery kept in his office and signing them with the trade name to which the complaint was addressed; and forwarded such as he could not handle, to the operator to whom it was addressed;

Notwithstanding the fact that none of said operators or their aforesaid employees owned or operated any art studio or place of business at said Chicago address or at any other place, or had in his employ any persons skilled in producing the products they sold; nor the fact that the business operations indicated were conducted solely by said W., who possessed the equipment and employed the personnel necessary for making the products sold by him to said operators and by them and their sales agents to the consuming public;

With the result that purchasers were led to believe that they were dealing with sales agents of an actual art studio, etc. and confused the character of the said operators' business with that of organizations of similar name which, like the studio in question, were actually conducting an art studio; and said operators, through the use of such trade names and business address, obtained prestige with purchasers and, along with said W., and his office manager, who conducted collections as below described, were enabled to evade liability to purchasers for their representations and sales methods; and

Where a collection agency under the designation "States Finance Co.," conducted by said office manager as part of the plan for selling and distributing said products with respect to which (1) the operators made it a practice to have purchasers execute notes for any balance due—usually upon printed forms bearing the trade name of the operator and the aforesaid Chicago address—which, through understanding

¹ Amended.