

IN THE MATTER OF

L. R. KALLMAN & COMPANY

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

Docket 4966. Complaint, May 19, 1943—Decision, Apr. 11, 1945

Where a partner in active charge of a family partnership business financed by him, and engaged in interstate sale and distribution of two cosmetic preparations designated "Chin-Up"—more recently "Chin-Ep"—and "Digitite"; through advertisements in newspapers and by circulars and other advertising literature, directly and by implication—

- (a) Represented that the preparation "Chin-Up," or "Chin-Ep," was effective in tightening the throat line, that it eliminated flabbiness and crepiness along the throat line, made loose, flabby skin on the chin and throat line smoother and firmer, and caused a person to have and to retain a youthful throat line; and
- (b) Represented that the preparation designated "Digitite" tightened the skin of the hands and made it firm, and caused the hands to become velvety smooth, and that use thereof would result in the hands having a youthful appearance;

The facts being that while the preparations in question—the active ingredients of which, namely, m-digallic acid in ethyl alcohol together with a fraction of 1% of phenyl carbinol, were the same—during the time they remained on the skin, because of their astringent action, might give a feeling of skin tightness, they would not in fact tighten loose skin or give the skin an appearance of smoothness; they would not in any way affect wrinkles and skin flabbiness due to changes within the skin or deeper tissues, nor would they eliminate or prevent skin crepiness; while their continued use might harden the outer layer of the skin and might or might not, depending upon various circumstances, cause it to be temporarily firmer, such continued use might result in skin irritations and roughness; and said "Chin-Up" or "Chin-Ep" was not effective in tightening the throat line and would not cause a person to have or to retain a youthful throat line, nor would "Digitite" cause the hands to become velvety smooth or give them a youthful appearance;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and thereby into the purchase of substantial quantities of said preparations:

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.

Before *Mr. John L. Hornor*, trial examiner.
Mr. John M. Russell 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 L. R. Kallman, an individual, trading as L. R. Kallman & Company, hereinafter referred to as respondent, has 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. L. R. Kallman, is an individual, trading as L. R. Kallman & Company with his principal office located at 43 East Ohio Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the sale and distribution of two cosmetic preparations, designated "Chin-Up" (also designated "Chin-Ep") and "Digitite." Respondent causes his said preparations, when sold, to be transported from his aforesaid place of business in the State of Illinois to the 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 said preparations 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 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 products by the United States mails and by various other means of 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 products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said products 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 radio continuities, by advertisements in newspapers, and by circulars and other advertising, are the following:

Chin-Up

CHIN-UP

FOR THE YOUNG LINE OF BEAUTY.

You can actually feel your throatline tightening. It's a wonderful sensation. Don't let flabbiness, crepiness, destroy your youthful throat line. Quick, easy, and so effective you can cut down on the applications as time goes on.

You'll never want a chin strap again.

A completely revolutionary astringent mask effective in making loose flabby skin on chin and throatline, firmer, smoother.

See how it helps to keep your throatline and chinline firmer and smoother. Use Chin-ep to help retain a youthful chinline.

Digitite

Three-Minute Hand Treatment.

A revolutionary new beauty aid to help firm the skin! You'll feel the tightening sensation almost immediately . . . and be enchanted by the velvety smoothness and youthful appearance of your hands.

You'll marvel at the economy of Digitite—you need use so little—you can gradually cut down the applications. A few drops a day does the trick.

Non-sticky.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of respondent's said preparation

designated "Chin-Up" and of its effectiveness when used, respondent directly and by implication represents that it is effective in tightening the throat line; that it eliminates and prevents flabbiness and crepiness along the throat line; that it makes loose flabby skin on the chin and throat line smoother and firmer; that it causes a person to have and retain a youthful throat line.

By the use of the statements and representations hereinabove set forth, and others of similar import not specifically mentioned herein which purport to be descriptive of respondent's said preparation designated "Digitite," respondent directly and by implication represents that it tightens the skin of the hands and makes it firm; that it causes the hands to become "velvety" smooth and that its use will result in the hands having a youthful appearance; that it is non-sticky when applied to the hands.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact respondent's said preparation designated "Chin-Up" is not effective in tightening the throat line. It will not eliminate or prevent flabbiness or crepiness along the throat line. It will not make any loose or flabby skin firmer or smoother. It will not cause a person to have or retain a youthful throat line.

Respondent's preparation designated "Digitite" will not tighten the skin of the hands or make it firm. It will not cause the hands to become velvety smooth or result in the hands having a youthful appearance. It is sticky when first applied to the hands and remains so until it dries.

PAR. 6. The true facts are that the only effect of each of respondent's said preparations designated "Chin-Up" and "Digitite" when used as directed, is a temporary local astringent action upon the skin. Said preparations will have effect only upon the outer horny layer of the skin and neither of them will penetrate beneath this layer of the skin. Both of said preparations will harden and tan the outer layer of the skin, but neither of them will have any effect upon the deeper wrinkles and flabbiness of the skin which are the result of changes therein.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations in said false advertisements, disseminated as aforesaid, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and into the purchase of substantial quantities of respondent's said cosmetic preparations as a result of such erroneous and mistaken beliefs.

PAR. 8. 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 May 19, 1943, issued and subsequently served its complaint in this proceeding on respondent L. R. Kallman, an individual, 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 said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allega-

tions of the 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, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, 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, Lawrence R. Kallman (referred to in the complaint as L. R. Kallman), an individual, is a partner in L. R. Kallman & Company, a copartnership consisting of the said Lawrence R. Kallman, his wife, Mabel P. Kallman, and his son, Donald R. Kallman. The said respondent financed the business carried on by the partnership and is in active charge and direction of its affairs. His principal office and place of business is located at 43 East Ohio Street, Chicago, Ill.

PAR. 2. For more than two years last past respondent has been engaged in the sale and distribution of two cosmetic preparations, one designated "Chin-Up" (more recently called "Chin-Ep"), and the other designated as "Digitite." Respondent causes said preparations, when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparations 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 the aforesaid business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning said preparations 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 has caused the dissemination of, false advertisements concerning said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations 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 aforesaid by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following respecting the preparation designated "Chin-Up" or "Chin-Ep":

CHIN-UP

For the Young
Line of Beauty

You can actually feel your throatline tightening. It's a wonderful sensation. Don't let flabbiness, crepiness destroy your youthful throatline. Quick, easy, and so effective

Findings

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you can cut down on the applications as time goes on. Use it just before your biggest party—use it nightly. You'll never want a chin strap again! (Comm. Ex. 5).

* * * * *

CHIN-EP

For a More Beautiful, More
Youthful-looking Throatline

You've looked for it . . . you've asked for it . . . here it is! A new, completely revolutionary astringent mask. Amazingly effective in making loose flabby skin on your throatline and chinline firmer, smoother! You'll be delighted with the new beauty, the more youthful loveliness you see! Easy to apply, too! Once you use it you'll never be without it! (Comm. Ex. 13).

And the following respecting the preparation "Digitite":

FOR FIRMER,
MORE YOUTHFUL
LOOKING HANDS

use

DIGITITE!

The Amazing Three
Minute Hand Treatment

Not a lotion to *soften* the hands but a completely revolutionary new hand beauty aid to help *firm* the skin. So effective its tightening sensation is felt almost immediately upon application. Then—You'll be delighted with the new loveliness, the new beauty and velvety-smoothness of your hands! They'll be lovely to touch, to behold! A lingering fragrance. Nonsticky. Economical too . . . so marvelously quick and so effective you can gradually cut down the applications. Remember—a few drops a day does the trick! (Comm. Ex. 10).

PAR. 4. Through the use of the statements and representations contained in the advertisements set out above, and in others of similar import not specifically set out herein, all of which purport to be descriptive of respondent's said preparations and their effectiveness in use, respondent represents, directly and by implication, that the preparation "Chin-Up," more lately called "Chin-EP," is effective in tightening the throatline, that it eliminates and prevents flabbiness and crepiness along the throatline, that it makes loose, flabby skin on the chin and throatline smoother and firmer, and that it causes a person to have and to retain a youthful throatline; and that the preparation designated "Digitite" tightens the skin of the hands and makes it firm, that it causes the hands to become velvety smooth, and that its use will result in the hands having a youthful appearance.

PAR. 5. The formula for the preparation "Chin-Up" was not changed when the name of the product was changed to "Chin-Ep." The ingredients in the preparations "Chin-Up" and "Digitite" are the same, but one contains a higher percentage of the active ingredients than the other. The active ingredient in both preparations is m-digallic acid in ethyl alcohol. Both preparations also contain a fraction of one percent of phenyl carbinol. Respondent furnishes to purchasers of said preparations at their various

locations throughout the United States advertising copy and newspaper mats, and makes it a practice to reimburse dealers who purchase said preparations for all or a portion of the cost of publishing in newspapers the advertising mats or other advertisements containing representations similar to and based upon those supplied by respondent.

PAR. 6. The aforesaid preparations will have a temporary local astringent action upon the skin, but they will not have any effect upon any part of the skin except its outer layer. During the time these preparations remain on the skin, because of their astringent action, they may give to the user a feeling of skin tightness but they will not in fact tighten loose skin or give the skin an appearance of smoothness. Wrinkles and skin flabbiness due to changes within the skin or deeper tissues cannot be corrected or affected in any way by said preparations, nor will said preparations eliminate or prevent skin crepiness. The continued use of the preparations may harden the outer layer of the skin and may or may not, depending upon various circumstances, cause the outer layer of the skin to be temporarily firmer. Such continued use, however, may result in skin irritations and roughness. The preparation "Chin-Up" or "Chin-Ep" is not effective in tightening the throatline and will not cause a person to have or to retain a youthful throatline. The preparation "Digitite" will not cause the hands to become velvety smooth or give to the hands a youthful appearance.

PAR. 7. The use by respondent of the false, misleading, and deceptive statements and representations contained in the aforesaid false advertisements disseminated, as heretofore found, has had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and into the purchase of substantial quantities of respondent's said preparations as a result of such erroneous and mistaken beliefs.

CONCLUSION

The acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint, 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 Lawrence R. Kallman, individually, and as a copartner in L. R. Kallman & Company, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "Chin-Up" or "Chin-Ep" and "Digitite," or any preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, 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 the preparation "Chin-Up" or "Chin-Ep" is effective in tightening the throatline; that it will eliminate or prevent flabbiness or crepiness along the throatline; that it will cause a person to have or to retain a youthful throatline; that it will make any loose or flabby skin smoother; or that it will make the skin firmer, in excess of possibly affording temporary firmness to the outer layer of the skin.

(b) That the preparation "Digitite" will tighten the skin of the hands; that it will cause the skin of the hands to be smoother or velvety smooth; that it will give to the hands a youthful appearance; or that it will cause the skin to be firmer, in excess of possibly affording temporary firmness to the outer layer of the skin.

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 the aforesaid preparation, which advertisement contains any of the representations prohibited in paragraph 1 above.

It is further ordered, That the respondent shall, within 60 days after 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.

Complaint

IN THE MATTER OF
JOSEPH SPERLING, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5113. Complaint, Jan. 10, 1944—Decision, Apr. 11, 1945*

Where a corporation engaged in buying and making ladies' fur coats and garments and in the sale thereof to purchasers in several states and the District of Columbia—Represented that certain fur coats were made from leopard peltries, through statements on tags affixed thereto and in radio continuities and newspaper and other advertisements including, as typical, the statement “ * * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats * * * Choose this long wearing and flattering fur”;

The facts being that the garments in question were not made from leopard pelts but from South American spotted cat pelt, garments of which are practically indistinguishable by the purchasing public from the long highly esteemed and more costly leopard and, when not designated South American spotted cat, are readily believed to be and accepted as leopard;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, on account of which belief it purchased a substantial volume thereof:

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. Carrel F. Rhodes for the Commission.

Mr. Fulton Brylawski, of Washington, D. C., for respondent.

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 Joseph Sperling, Inc., a corporation, hereinafter referred to as respondent, has 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. Respondent, Joseph Sperling, Inc., is a corporation, organized under the laws of the State of Delaware, with its principal office and place of business located at 709 13th Street, N. W., Washington, D. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in buying, making and selling ladies' fur coats and garments.

Respondent causes its said products when sold, to be transported from its place of business in the District of Columbia to purchasers thereof located in the several States of the United States and in the District of Columbia. Respondent maintains, and for several years last past has maintained, a course and current of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. South American Spotted Cat pelts and garments made therefrom resemble but are not equal in quality nor comparable in value to