

Complaint

IN THE MATTER OF

OLIVE L. RICHARDS DOING BUSINESS AS TIPTEX

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

Docket 5305. Complaint, Apr. 21, 1945—Decision, Dec. 10, 1945

Where an individual engaged in the interstate sale and distribution of a cosmetic preparation designated as "Tiptex"—

Falsely represented, directly and by implication, in advertisements in newspapers and periodicals and in pamphlets, leaflets, circulars and other advertising literature, that her said preparation, when used as directed, would cause the fingernails to be more pliable or more resistant to breaking; would prevent fingernail brittleness and prevent fingernails from splitting, chipping, and peeling; would produce long, strong, break-resisting fingernails, and make the fingernails supple and pliant; and penetrated to and strengthened and lubricated the nail matrix;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby cause purchase of her said product by it:

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.

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

Mr. B. G. Wilson for the Commission.

Haas & Home, of Los Angeles, Calif., for respondent.

COMPLAINT

Fursuant 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 Olive L. Richards, an individual doing business as Tiptex, 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 Olive L. Richards is an individual doing business as Tiptex, with her office and principal place of business located at 1709 West Eighth Street, Los Angeles, California.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the business of selling and distributing a cosmetic preparation designated as "Tiptex."

Respondent causes said preparation when sold to be transported from her said place of business in the State of California to purchasers thereof located in various of the 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 disseminating, and has caused 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 and deceptive misleading statements and representations contained in the false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by insertion in newspapers and periodicals, and by means of pamphlets, leaflets, circulars and other advertising literature are the following:

BUSY HANDS BROKEN NAILS

Fingers that work for a living need not shout the fact by having broken, split or ragged nails * * *.

* * * helps to strengthen the matrix thus helping to make the nails break-resistant so that they can grow long and stay long.

TIPTEX is a penetrating, * * * LIQUID that penetrates to the nail matrix, where it does the most good, * * *.

TIPTEX "THE PERFECT SOLUTION FOR

PERFECT NAILS"

Beautiful, long, strong, break resisting fingernails are the rightful heritage of any normal, healthy person, but like your skin and complexion—if you would keep them beautiful—they demand constant daily care and attention.

Many fastidious women, who have achieved that coveted fingernail loveliness, ascribe the results to their daily morning and evening use of TIPTEX, and acclaim it the "perfect solution" to the problem of otherwise healthy nails, which have a tendency to split, chip or peel.

TIPTEX is not a cream or a polish, but a wax-free liquid, which, when applied around the base and side of the nails, as well as under the nail tips, helps to lubricate the nail bed or matrix. Used every day, TIPTEX tends to promote suppleness and pliancy in the nail body, thus aiding to correct distressing nail brittleness which often is the cause of splitting, peeling, or chipping nails.

* * * TIPTEX helps to lubricate the matrix (which nourishes the nails) thus tends to promote suppleness and pliancy in the nail body * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that said cosmetic preparation designated as "Tiptex" used as directed will cause the fingernails to be more pliable or more resistant to breaking; that said preparation prevents fingernail brittleness and prevents fingernails from splitting, chipping and peeling; that it produces long, strong, break-resisting fingernails and makes the fingernail supple and pliant; and that it penetrates to and strengthens and lubricates the nail matrix.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact the use of respondent's prepa-

ration will not cause the fingernails to be more pliable or resistant to breaking. Said preparation will not prevent fingernail brittleness nor will it prevent fingernails from splitting, chipping or peeling. Its use will not produce long, strong or break-resisting fingernails nor will it make fingernails supple or pliant. Said preparation does not possess any significant penetrating properties and will not penetrate to or otherwise reach the matrix except to a very limited extent. If brought into contact with the matrix by penetration, or otherwise, said preparation will not strengthen or lubricate the matrix.

PAR. 6. The use by the respondent of the foregoing false and misleading advertising, disseminated as aforesaid, 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 such false and misleading representations are true and to induce the purchasing public to purchase substantial quantities of said preparation as a result of such erroneous and mistaken belief.

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 April 21, 1945, issued and subsequently served its complaint in this proceeding upon respondent, Olive L. Richards, an individual doing business as Tiptex, charging her 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, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent 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. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint 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 its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Olive L. Potter, who at the time the complaint herein issued was Olive L. Richards and who stipulated that this proceeding may continue under her present name, is an individual doing business as Tiptex, with her office and principal place of business located at 1015 South Hayworth Avenue, Los Angeles, California. She is now, and for more than two years last past has been, engaged in the business of selling and distributing a cosmetic preparation designated as "Tiptex."

PAR. 2. Respondent causes said preparation, when sold, to be transported from her said place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said preparation in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business and until the institution of inquiry concerning the same by this Commission, respondent disseminated and caused the dissemination of false advertisements concerning her said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent disseminated and caused the dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which were 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, misleading and deceptive statements and representations contained in said false advertisements disseminated, as hereinabove set forth, by the United States mails, by insertion in newspapers and periodicals, and by means of pamphlets, leaflets, circulars, and other advertising literature, are the following:

BUSY HANDS BROKEN NAILS

Fingers that work for a living need not shout the fact by having broken, split or ragged nails * * *

* * * * *

* * * helps to strengthen the matrix thus helping to make the nails break-resistant so that they can grow long and stay long.

* * * * *

TIPTEX is a penetrating, * * * LIQUID that penetrates to the nail matrix, where it does the most good, * * *

* * * * *

TIPTEX "THE PERFECT SOLUTION FOR PERFECT NAILS"

Beautiful, long, strong, break resisting fingernails are the rightful heritage of any normal, healthy person, but like your skin and complexion—if you would keep them beautiful—they demand constant daily care and attention.

Many fastidious women, who have achieved that coveted fingernail loveliness, ascribe the results to their daily morning and evening use of TIPTEX, and acclaim it the "perfect solution" to the problem of otherwise healthy nails, which have a tendency to split, chip or peel.

TIPTEX is not a cream or a polish, but a wax-free liquid, which, when applied around the base and side of the nails, as well as under the nail tips, helps to lubricate the nail bed or matrix. Used every day, TIPTEX tends to promote suppleness and pliancy in the nail body, thus aiding to correct distressing nail brittleness which often is the cause of splitting, peeling, or chipping nails.

* * * * *

* * * TIPTEX helps to lubricate the matrix (which nourishes the nails) thus tends to promote suppleness and pliancy in the nail body * * *

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, the respondent has represented, directly and by implication, that her said cosmetic preparation designated "Tiptex," when used as di-

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rected, will cause the fingernails to be more pliable or more resistant to breaking; that said preparation will prevent fingernail brittleness and prevent fingernails from splitting, chipping, and peeling; that it will produce long, strong, break-resistant fingernails and make the fingernails supple and pliant; and that it penetrates to and strengthens and lubricates the nail matrix.

PAR. 5. The aforesaid statements and representations disseminated by respondent are false, misleading, and deceptive. In truth and in fact, the use of respondent's preparation will not cause the fingernails to be more pliable or resistant to breaking and will not prevent fingernail brittleness, or prevent fingernails from splitting, chipping, or peeling. Its use will not produce long, strong, or break-resistant fingernails, nor will it make fingernails supple or pliant. Said preparation does not possess any significant penetrating properties and will not penetrate to or otherwise reach the matrix except to a very limited extent, and if brought into contact with the matrix by penetration or otherwise, it will not strengthen or lubricate the matrix.

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

CONCLUSION

The aforesaid 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 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 a stipulation as to the facts entered into between respondent, Olive L. Potter (formerly Olive L. Richards), 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 respondent 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Olive L. Potter, an individual, trading as Tiptex or under any other name, 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 "Tiptex," or any other preparation of substantially similar composition or possessing substantially similar properties under whatever name or names sold, 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 cause the fingernails to be more pliable or more resistant to breaking.

(b) That said preparation will prevent fingernail brittleness or prevent fingernails from splitting, chipping, or peeling.

(c) That said preparation will produce long, strong, or break-resistant fingernails or make the fingernails supple or pliant.

(d) That said preparation penetrates to the nail matrix in any significant degree, or that if in any manner brought into contact with the matrix it will strengthen or lubricate such matrix.

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 representation prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within sixty (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.

Syllabus

IN THE MATTER OF

WILLIAM M. STONE TRADING AS STONE MANUFACTURING
COMPANY AND OZONE RAY

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

Docket 5307. Complaint, Apr. 23, 1945—Decision, Dec. 21, 1945

Where an individual engaged in the interstate sale and distribution of ozone generating devices designated as "Stone's Ozone-Ray Producer"; through statements in advertisements in newspapers, circulars and other advertising literature—

- (a) Falsely represented, directly and by implication that the beneficial effects consequent upon the breathing of mountain, forest or seaside air are due to the presence of ozone in such air; and that ozone in the air, whether produced naturally or by his devices, is conducive to health;
- (b) Represented that his devices produced certain rays, in addition to ozone, and that both penetrate the flesh, blood and bones of the user, destroying all infections and resulting in the restoration of health; and that ozone, in the concentrations produced by his devices under usual conditions, is an effective germ destroyer;
- (c) Represented that use of the said devices constituted a competent and adequate treatment for arthritis, rheumatism, neuritis, sinus trouble, asthma, ulcers, varicose veins, diabetes, prostate, bladder and kidney trouble, pneumonia, colds, angina pectoris, and for all diseases of infectious origin, and all diseases affecting the blood or the respiratory tract;

The facts being that the presence of ozone in the atmosphere, whether produced by natural phenomena or by his devices, is not conducive to health; the so-called "rays" claimed to be emanated by said devices were no more than a radiation of the general nature of the static electricity which emanates from many electrical devices when in use, and were wholly devoid of therapeutic properties. and would neither penetrate, nor carry ozone into the flesh, blood or bones; neither the "rays" nor the ozone, nor the two combined, would destroy infection in or purify the blood stream of the user of the devices; while ozone is an extremely poisonous gas, and will, in sufficient concentration, kill germs and bacteria, such a concentration would not be produced by his devices under any usual condition, and if breathed by humans, would cause severe injury, if not death; and ozone is without therapeutic value in the treatment of any disease, since it can be breathed safely only in concentrations so minute as to be of no therapeutic significance. and

- (d) Failed to reveal in his said advertisements facts material in the light of the representations made therein or with respect to consequences which might result from the use of said devices under customary or usual conditions, in that ozone is particularly irritating to the mucous membranes of the respiratory organs in concentrations of more than one-half part of ozone to one million parts of air; that no concentrations greater than this should be breathed, since they are capable of causing serious irritations of the respiratory tract, particularly if breathed over an extended period; that the ratio of ozone to air in the atmosphere breathed by users of his devices would vary, since it was influenced by many factors, including the output of the device, size of the room, ventilation, humidity, and proximity of the user to the machine; that breathing in proximity to the machine should be avoided; and that inhalation of excessive amounts of ozone might result in irritation of the respiratory organs;

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(e) Represented that his said devices would destroy any and all odors, including those of the sick room, hospital, restaurant, industry, theatre, glue factory or other building, by oxidation;

The facts being that, while some odors are of such chemical composition that they are susceptible of oxidation by ozone, the extent of their oxidation by the use of his devices would depend upon the quantitative relation of the ozone produced to the amount of atmosphere to be "deodorized" and the intensity of the odor in such atmosphere; oxidizable odors might be present in such concentrations that they could not be more than partially oxidized by the ozone produced by his devices, and the unoxidized remainder might be perceptible; and other odors are so chemically constituted as to be unoxidizable and would not be effected by ozone;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and to induce it by reason thereof, to purchase his said devices:

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. Randolph W. Eranch for the Commission.

Mr. Livy Stipp, of Oregon City, Ore., 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 William M. Stone, an individual, trading as Stone Manufacturing Company and Ozone Ray, 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 William M. Stone is an individual trading as Stone Manufacturing Co. and Ozone Ray with his office and principal place of business located at Oregon City, Oregon.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the business of selling and distributing ozone-generating devices designated as "Stone's Ozone Producer" and "Stone's Ozone-Ray Producer."

In the course and conduct of his said business, respondent has caused said devices, when sold, to be transported from his aforesaid place of business in the State of Oregon 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 said devices 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, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning, his said devices and concerning ozone, 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 devices, and ozone, by various means

for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices 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 means of circulars and other advertising literature are the following:

Ozone * * * is found in the mountains, forests and at the seashore. In this form it is most healthful and stimulating * * * you feel lifted and energized. Nature makes ozone * * * it is pure, sweet and a tonic. That is why you feel so much better when you visit those districts where Ozone abounds.

* * * our Ozone is as healthful as that produced by Nature.

Ray Penetration!

However, we produce something that Nature does not when she forms Ozone * * * certain rays are produced that seem to commingle with the ozone so that the product penetrates.

* * * our rays carry the germ destroying Ozone through the body, the flesh, the blood and the bones. When you destroy infection and purify the bloodstream, Nature restores health

* * * the rays can easily penetrate the flesh and destroy the infection.

Pure Ozone is considered one of the greatest destroyers of germs known, * * *

The reader will naturally ask, "Why hasn't Ozone been used for therapeutic purposes if it has these qualities?" Our answer is that it has. It has been used successfully in the treatment of respiratory and infectious diseases for many years.

If you suffer from Arthritis, Rheumatism, Neuritis, Sinus, Asthma, Ulcers, Varicose Veins, Diabetes, Prostatic Gland, Bladder or Kidney trouble, Pneumonia, Colds, Angina or other infectious, blood or respiratory disease and cannot obtain relief, try the Pure Ozone and Ray Machine. It will not injure sound tissue.

PAR. 4. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that the beneficial effects consequent upon the breathing of mountain, forest or seaside air are due to the presence of ozone in such air; that ozone in the air, whether produced naturally or by respondent's devices, is conducive to health; that respondent's devices produce, in addition to ozone, certain rays and that both penetrate the flesh, blood and bones of the user, destroying all infections and resulting in the restoration of health; that ozone, in the concentrations produced by respondent's devices under usual conditions, is an effective germ destroyer; that the use of the said devices constitutes a competent and adequate treatment for arthritis, rheumatism, neuritis, sinus trouble, asthma, ulcers, varicose veins, diabetes, prostate, bladder or kidney trouble, pneumonia, colds, angina pectoris, and for all diseases of infectious origin, and all diseases affecting the blood or the respiratory tract.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent as hereinabove described are false and misleading. In truth and in fact the benefits experienced by those who sojourn in the mountains, or forests, or at the seashore, are in no way attributable to the presence of ozone in the atmosphere. The presence of ozone in the atmosphere, whether produced by natural phenomena or by respondent's devices, is not conducive to health. The so-called "rays" claimed to be

emanated by respondent's devices are no more than a radiation of the general nature of the static electricity which emanates from many electrical devices when in use. They are wholly devoid of therapeutic properties and will neither penetrate nor carry ozone into the flesh, blood or bones. Neither the "rays" nor the ozone, or the two combined, will destroy infection in or purify the bloodstream of the user of the devices. Ozone is an extremely poisonous gas and will, in sufficient concentration, kill germs and bacteria; such a concentration will not, however, be produced by respondent's devices under any usual condition, and such a concentration, if breathed by humans, would cause severe injury if not death. Ozone is without therapeutic value in the treatment of any disease, since it can be breathed safely only in concentrations so minute as to be of no therapeutic significance. The use of respondent's devices is not a competent or adequate treatment for arthritis, rheumatism, neuritis, sinus trouble, asthma, ulcers, varicose veins, diabetes, prostate trouble, bladder ailments, kidney infections, pneumonia, colds, angina pectoris, or any disease of infectious origin or any disease affecting the blood or the respiratory tract or any other disease or ailment.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, are false advertisements for the further reason that they fail to reveal facts, set forth below, which are material in the light of other representations made therein or material with respect to consequences which may result from the use of the devices to which said advertisements relate under such conditions as are customary or usual, namely, that ozone is particularly irritating to the mucous membranes of the respiratory organs in concentrations of more than one-half part of ozone to one million parts of air; that no concentrations greater than this should be breathed, since they are capable of causing serious irritations of the respiratory tract, particularly if breathed over an extended period; that the ratio of ozone to air in the atmosphere breathed by users of respondent's devices will vary, since it is influenced by many factors, including the output of the device, the size of the room, the ventilation, the humidity, and the proximity of the user to the machine; that breathing in proximity to the machine should be avoided; that the inhalation of excessive amounts of ozone may result in irritation of the respiratory organs.

PAR. 7. In the course and conduct of his said business and for the purpose of inducing the purchase of the said devices in commerce, respondent has made, and caused to be made by means of advertising folders and circulars sent through the United States mail to prospective purchasers in various States of the United States, and by other means, representations and claims with respect to the efficacy of his air-treating devices as deodorizers and the manner in which they accomplish this result. Among and typical of the claims and representations so made by respondent are the following:

Ozone is a great oxidizing agent, and one of our machines soon destroys all the noxious stench and smell of the sick room, hospital, the restaurant, theatre, glue factory or other industrial plant.

We also sell a powerful unit for \$125.00 which many people buy. The latter model will air-condition any theater, hospital or large building and destroy all smells and odors.

PAR. 8. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has

represented, directly and by implication that his said devices will destroy any and all odors, including those of the sick room, hospital, restaurant, industry, theater, glue factory or other building, by the oxidation thereof.

PAR. 9. The aforesaid representations so made and disseminated are false and misleading. In truth and in fact while some odors are of such a chemical composition that they are susceptible of oxidation by ozone, the extent of the oxidation of such odors by the use of respondents devices will depend upon the quantitative relation of the ozone produced to the amount of atmosphere to be "deodorized" and the degree of the intensity of the odor in such atmosphere. Oxidizable odors may be present in such concentrations that they cannot be more than partially oxidized by the ozone produced by respondent's devices, and the unoxidized remainder may be perceptible. Other odors are so chemically constituted as to be unoxidizable and will not be affected by ozone.

PAR. 10. The use by respondent of the foregoing false and misleading statements, representations and advertisements with respect to his devices, disseminated as aforesaid, in connection with the sale of his devices, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements were true, and to induce a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's said devices.

PAR. 11. The aforesaid acts and practices of 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 April 23, 1945, issued, and on April 27, 1945, served its complaint in this proceeding upon respondent, William M. Stone, an individual, trading as Stone Manufacturing Company and Ozone Ray, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the issuance of the complaint and the filing of the respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw his answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the 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 complaint 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. The respondent, William M. Stone, is an individual trading as Stone Manufacturing Company and as Ozone Ray, with his office and principal place of business located at Oregon City, Oregon.

PAR. 2. Respondent is now, and has been for more than two years last

past, engaged in the business of selling and distributing ozone-generating devices designated as "Stone's Ozone Producer" and "Stone's Ozone-Ray Producer."

In the course and conduct of his business, respondent has caused said devices, when sold, to be transported from his aforesaid place of business in the State of Oregon 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 said devices 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 respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said devices and concerning ozone, by the United States mails and by various other means in commerce, as "commerce" is defined by the Federal Trade Commission Act; the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said devices, and ozone, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices 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 means of circulars and other advertising literature are the following:

Ozone * * * is found in the mountains, forests and at the seashore. In this form it is most healthful and stimulating * * * you feel lifted and energized. Nature makes ozone * * * it is pure, sweet and a tonic. That is why you feel so much better when you visit those districts where ozone abounds.

* * * our Ozone is as healthful as that produced by Nature.

Ray Penetration!

However, we produce something that Nature does not when she forms Ozone * * * certain rays are produced that seem to commingle with the ozone so that the product penetrates.

Our rays carry the germ destroying Ozone through the body, the flesh, the blood and the bones. When you destroy infection and purify the bloodstream. Nature restores health.

* * * the rays can easily penetrate the flesh and destroy the infection.

Pure Ozone is considered one of the greatest destroyers of germs known, * * *

The reader will naturally ask, "Why hasn't Ozone been used for therapeutic purposes if it has these qualities?" Our answer is that it has. It has been used successfully in the treatment of respiratory and infectious diseases for many years.

If you suffer from Arthritis, Rheumatism, Neuritis, Sinus, Asthma, Ulcers, Varicose Veins, Diabetes, Prostatic Gland, Bladder or Kidney trouble, Pneumonia, Colds, Angina or other infections, blood or respiratory disease and cannot obtain relief, try the Pure Ozone and Ray Machine. It will not injure sound tissue.

PAR. 4. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that the beneficial effects consequent upon the breathing of mountain, forest or seaside air are due to the

presence of ozone in such air; that ozone in the air, whether produced naturally or by respondent's devices, is conducive to health; that respondent's devices produce, in addition to ozone, certain rays, and that both penetrate the flesh, blood and bones of the user, destroying all infections and resulting in the restoration of health; that ozone, in the concentrations produced by respondent's devices under usual conditions, is an effective germ destroyer; that the use of the said devices constitutes a competent and adequate treatment for arthritis, rheumatism, neuritis, sinus trouble, asthma, ulcers, varicose veins, diabetes, prostate, bladder and kidney trouble, pneumonia, colds, angina pectoris, and for all diseases of infectious origin, and all diseases affecting the blood or the respiratory tract.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent as hereinabove described are false and misleading. In truth and in fact the benefits experienced by those who sojourn in the mountains, or forests, or at the seashore, are in no way attributable to the presence of ozone in the atmosphere. The presence of ozone in the atmosphere, whether produced by natural phenomena or by respondent's devices, is not conducive to health. The so-called "rays" claimed to be emanated by respondent's devices are no more than a radiation of the general nature of the static electricity which emanates from many electrical devices when in use. They are wholly devoid of therapeutic properties and will neither penetrate or carry ozone into the flesh, blood or bones. Neither the "rays" nor the ozone, nor the two combined, will destroy infection in or purify the bloodstream of the user of the devices. Ozone is an extremely poisonous gas and will, in sufficient concentration, kill germs and bacteria; such a concentration will not, however, be produced by respondent's devices under any usual condition, and such a concentration, if breathed by humans, would cause severe injury, if not death. Ozone is without therapeutic value in the treatment of any disease, since it can be breathed safely only in concentrations so minute as to be of no therapeutic significance. The use of respondent's devices is not a competent or adequate treatment for arthritis, rheumatism, neuritis, sinus trouble, asthma, ulcers, varicose veins, diabetes, prostate trouble, bladder ailments, kidney infections, pneumonia, colds, angina pectoris, or any disease of infectious origin or any disease affecting the blood or the respiratory tract or any other disease or ailment.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, are false advertisements for the further reason that they fail to reveal facts, set forth below, which are material in the light of other representations made therein or material with respect to consequences which may result from the use of the devices to which said advertisements relate under such conditions as are customary or usual, namely, that ozone is particularly irritating to the mucous membranes of the respiratory organs in concentrations of more than one-half part of ozone to one million parts of air; that no concentrations greater than this should be breathed, since they are capable of causing serious irritations of the respiratory tract, particularly if breathed over an extended period; that the ratio of ozone to air in the atmosphere breathed by users of respondent's devices will vary, since it is influenced by many factors, including the output of the device, the size of the room, the ventilation, the humidity, and the proximity of the user to the machine; that breathing in proximity to the machine should be avoided; that the inhalation of excessive amounts of ozone may result in irritation of the respiratory organs.

PAR. 7. In the course and conduct of his said business and for the purpose of inducing the purchase of the said devices in commerce, respondent has made, and caused to be made by means of advertising folders and circulars sent through the United States mail to prospective purchasers in various States of the United States, and by other means, representations and claims with respect to the efficacy of his air-treating devices as deodorizers and the manner in which they accomplish this result. Among and typical of the claims and representations so made by respondent are the following:

Ozone is a great oxidizing agent, and one of our machines soon destroys all the noxious stench and smell of the sick room, hospital, the restaurant, theatre, glue factory or other industrial plant.

We also sell a powerful unit for \$125.00 which many people buy. The latter model will air-condition any theater, hospital or large building and destroy all smells and odors.

PAR. 8. By the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that his said devices will destroy any and all odors, including those of the sick room, hospital, restaurant, industry, theatre, glue factory or other building, by the oxidation thereof.

PAR. 9. The aforesaid representations so made and disseminated are false and misleading. In truth and in fact while some odors are of such a chemical composition that they are susceptible of oxidation by ozone, the extent of the oxidation of such odors by the use of respondent's devices will depend upon the quantitative relation of the ozone produced to the amount of atmosphere to be "deodorized" and the degree of the intensity of the odor in such atmosphere. Oxidizable odors may be present in such concentrations that they cannot be more than partially oxidized by the ozone produced by respondent's devices, and the unoxidized remainder may be perceptible. Other odors are so chemically constituted as to be unoxidizable and will not be affected by ozone.

PAR. 10. The use by respondent of the foregoing false and misleading statements, representations and advertisements with respect to his devices, disseminated as aforesaid, in connection with the sale of his devices, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements were true, and to induce a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's said devices.

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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure

and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, William M. Stone, individually and trading as Stone Manufacturing Company and as Ozone Ray, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondent's devices designated "Stone's Ozone Producer" and "Stone's Ozone-Ray Producer," or any other devices of substantially similar character, 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 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:

(a) that the breathing of atmosphere containing ozone produces beneficial results or is conducive to health;

(b) that respondent's devices produce or emanate penetrating rays, or that any rays produced by said devices have any therapeutic properties or will carry ozone into the body tissues;

(c) that ozone, in the concentration produced by respondent's devices under any usual condition of use, is an effective germicide;

(d) that the use of respondent's devices constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of arthritis, rheumatism, neuritis, sinus trouble, asthma, ulcers, varicose veins, diabetes, prostate trouble, bladder ailments, kidney infections, pneumonia, colds, angina pectoris, or any disease of infectious origin, or any disease affecting the blood or the respiratory tract or any other disease or ailment.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that changes in condition may render the atmosphere in which respondent's devices are operated, irritant to the respiratory organs; that the concentration of ozone should not in any case be allowed to exceed one-half part of ozone to one million parts of air; that breathing near the devices should be avoided, and that the inhalation of excessive amounts of ozone may result in irritation of the respiratory organs; *provided, however*, that such advertisement need contain only the statement, "*Caution: Use and operate only as directed*," if and when the directions for use and operation are attached to the device and contain the revelations required by this paragraph.

3. 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's devices, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

It is further ordered, That the respondent, William M. Stone, individually, and trading as Stone Manufacturing Company and as Ozone Ray, and his 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 respondent's devices designated "Stone's Ozone Producer" and "Stone's Ozone-Ray Producer," or any other devices of substantially similar character, whether sold under the same names, or under any other names, do forthwith cease and desist from representing, directly or by implication:

(a) that the use of said devices will destroy odors unless such representation is limited to odors which, by reason of their composition and degree of concentration, can be oxidized by ozone, and as to these odors, unless such representation is limited to such deodorizing effect as may result from the amount of ozone generated and available for oxidation.

It is further ordered, That the respondent shall, within sixty (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.

Order

IN THE MATTER OF

PHIL HOWE, DAVID A. HOWE, AND JOANNE B. HOWE,
TRADING AS HOWE AND COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4729. Order, December 28, 1945

Modified order, pursuant to provisions of Section 5 (i) of the Federal Trade Commission Act and in accordance with decree below referred to, in proceeding in question, in which original order issued on May 6, 1943, 36 F.T.C. 685, and in which (1) Circuit Court of Appeals for the Ninth Circuit, on April 4, 1945, in *Howe et al. v. Federal Trade Commission*, 148 F. (2d) 561, 40 F.T.C. 889, rendered its opinion, dismissed respondents' petition to review and set aside said order, and granted the Commission's motion to modify the order and to affirm and enforce the same as modified, and entered its decree of enforcement; and (2) respondents, on August 7, 1945, filed their petition for writ of certiorari to the Supreme Court, which was denied on October 8, 1945, 326 U. S. 741—

Requiring (1) respondents, their agents, representatives and employees, in connection with the offer for sale, sale and distribution of their cosmetic preparations in commerce, to cease and desist from using the word "Hollywood," etc. or the words "Favorite of the Stars," etc., to designate or describe their said product, etc.; and (2) respondent Phil Howe, his agents, etc., in connection with offer, etc., of respondents' cosmetic preparations in commerce, to cease and desist from using the words "Carrot," "Avocado," "Honey and Almond," "Turtle Oil," or "Carrot Type" "Avocado Type," to designate the same, etc., or from misrepresenting the composition or qualities or properties of said various preparations; as in said order in detail set out.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on May 6, 1943, the Commission made its findings as to the facts herein and concluded therefrom that the respondents, Phil Howe, David A. Howe and Joanne B. Howe, copartners, trading as Howe and Company, had violated the provisions of the Federal Trade Commission Act, and on May 6, 1943, issued and subsequently served its order to cease and desist upon said respondents.

Thereafter, on July 6, 1943, respondents filed their petition to review and set aside the order to cease and desist in the United States Circuit Court of Appeals for the Ninth Circuit, and the Federal Trade Commission filed a motion to modify said order to cease and desist and to affirm and enforce the same as modified. On April 4, 1945, respondents' petition to review and set aside the cease and desist order was dismissed by said court, and the Federal Trade Commission's motion to modify said order to cease and desist and to affirm and enforce the same, as modified, was granted.

Thereafter, on August 7, 1945, respondents filed their petition for writ of certiorari in the Supreme Court of the United States and said petition was denied on October 8, 1945.

Now, therefore, in conformity with the decree of the United States Cir-