

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-

cuit Court of Appeals for the Ninth Circuit, and pursuant to the provisions of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist:

It is ordered, That the respondents, Phil Howe, David A. Howe, and Joanne B. Howe, individually and trading as Howe and Company, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Hollywood," or any abbreviation or simulation thereof, to designate or describe any product which is not in fact manufactured in Hollywood, California (the term "Hollywood, California," as used herein, means the entire city of Los Angeles, California, and those adjacent or contiguous independent municipalities which are generally regarded as comprising the Los Angeles metropolitan area, such as Culver City, Burbank, Beverly Hills, Glendale and Santa Monica); or otherwise representing, directly or by implication, that any product is manufactured in Hollywood, California, when such is not the fact.

2. Using the words "favorite of the Stars," or any other words of similar import, to designate or describe respondents' products; or otherwise representing, directly or by implication, that respondents' products are recognized by leading motion picture actresses as possessing superior cosmetic properties.

It is further ordered, That respondent Phil Howe, individually and trading as Howe and Company, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

3. Using the word "Carrot" or the words "Carrot Type," or any other word or words of similar import, to designate or describe any product which does not in fact contain the juice, extract, or other content of carrots.

4. Using the word "Avocado" or the words "Avocado Type," or any other word or words of similar import, to designate or describe any product which does not in fact contain the juice, extract, or other content of avocados.

5. Using the words "Honey and Almond" or "Honey and Almond Type," or any other words of similar import, to designate or describe any product which does not in fact contain honey and the extract or other content of almonds.

6. Using the words "Turtle Oil" or "Turtle Oil Type," or any other words of a similar import, to designate or describe any product which does not in fact contain turtle oil.

7. Representing, directly or by implication, that respondents' product designated "Creme Moderne" penetrates the skin.

8. Representing, directly or by implication, that respondents' product formerly designated "Cleansing Cream, Carrot Type" induces a natural lubrication of the skin.

9. Representing, directly or by implication, that respondents' product formerly designated "Creme Nocturne, Tissue Type" nourishes the skin or tissues, or corrects skin dryness.

10. Representing, directly or by implication, that respondents' product formerly designated "Creme Nocturne, Avocado Type" supplies vitamins or other nourishment to the skin, stimulates dormant or inactive muscles, or rebuilds tissues.

11. Representing, directly or by implication, that any of respondents' products contains ingredients which it does not in fact contain, or that any of such products possesses properties which it does not in fact possess.

It is further ordered, That the respondents shall, within thirty (30) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

