

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1946, TO JUNE 30, 1946

IN THE MATTER OF

DEARBORN SUPPLY COMPANY¹

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

Docket 3593. Complaint, Sept. 17, 1938—Decision, Jan. 9, 1946

Where a corporation engaged in interstate sale and distribution of its "Mercolized Wax" or "Mercolized Wax Cream," which had reduced the amount of ammoniated mercury used therein from 8.75 percent in 1926, to 6 percent in 1933, 3.1 percent in 1936, 3.007 percent in 1940 and to 1½ percent in 1942—but with no assurance that the content would not in the future be restored to 3 percent or more—and which in its revised and amplified directions for use, enclosed in each package, sufficiently apprised persons examining them of the caution which must be observed in the use of its said preparation, with its approximately 3-percent ammoniated mercury content, if injurious effects were to be averted.

Disseminated false advertisements thereof in interstate commerce in that it failed to set forth precautions to be observed in the use of the preparation and to reveal the injurious effects which were likely to result from its indiscriminate use, in said advertisements, in most of which there was no caution that it should be used only as directed, and in many of which no reference at all was made to the directions, and in which such references as did appear were in no sense cautionary or warning;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its preparation was safe for indiscriminate use, and thereby cause it to purchase substantial quantities thereof, whereby substantial trade was diverted unfairly to it from its competitors:

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. Arthur F. Thomas*, trial examiner.

Mr. Charles S. Cox and *Mr. Donovan R. Divet* for the Commission.

Rogers, Hoge & Hillis and *Mr. L. B. Stoughton*, of New York City, and *Rogers, Woodson & Rogers*, of Chicago, Ill., for respondent.

¹ See for previous findings and orders 29 F. T. C. 648 and 37 F. T. C. 75.

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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 the Dearborn Supply Co., a corporation, 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, Dearborn Supply Co., is a corporation, created and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 2350 Clybourn Avenue, Chicago, Ill.

PAR. 2. Respondent is now and for more than 12 years last past has been engaged in the business of compounding, distributing, and selling a line of cosmetics under various names, some of which are: "Mercolized Wax," "Parker-Belmont Beauty Cream," "Powdered Saxolite," "Powdered Tarkroot," and "Phelactine." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to its customers located in 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 cosmetics 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 its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondent, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, has made many statements and representations concerning the character and nature of said cosmetics and concerning the results obtained from their use. By the means and in the manner aforesaid, the respondent makes, among others, statements concerning its products as hereinafter set forth:

(a) Among, and typical of, the representations made by respondent concerning its product "Mercolized Wax" are the following:

Pure Mercolized Wax.

Pure Mercolized Wax Beautifies the Skin. Bleaches—Cleanses—Nourishes, Softens and Protects.

You will find only Mercolized Wax * * * actually absorbs the discolored outer scales in tiny flake-like particles clearing away the grimy, dirt-laden surface skin.

Free your skin of blemishes and all discolorations that mar its natural loveliness with our Mercolized Wax.

Mercolized Wax brings to you a simple, natural way of beautifying the skin and keeping it young. * * * contains active ingredients that actually absorb the surface skin with all its discolorations and blemishes. * * * Gradually you will notice the new clearness and smoothness of your skin. Soon the entire discolored outer layer of skin will have disappeared and fresh underskin which forms your new complexion appears soft, white and youthfully beautiful. Mercolized Wax brings out the hidden beauty in your skin.

There is only one way to completely beautify a discolored blemished complexion and that one way is to take off the worn-out surface skin by absorbing it with pure Mercolized Wax.

Coarseness, roughness and other blemishes that rob the skin of youthful beauty are dissolved with the surface skin.

Mercolized Wax will convert a faded, worn-out, or discolored complexion into one of captivating loveliness.

It * * * lubricates * * *.

It clears away freckles, tan, oiliness, sunburn or any other blemishes.

Invisible particles of aged skin are freed and all defects such as blackheads, tan, freckles and large pores disappear.

Make yours a beautiful skin with Mercolized Wax Cream.

Is your skin clear, smooth and young looking? It Should be and it Can be. * * * Eagerly and deftly Mercolized Wax Cream goes about its task of flaking off, superficially discolored outer layer of skin, revealing the young, fresh looking underskin. It really helps the skin to renew itself. Your skin emerges from a series of Mercolized Wax Cream applications looking more like its radiant, natural, beautiful self than it has looked in many a day. * * *

Complete renovation of the complexion in from one to three weeks should result from following the above instructions closely.

Mercolized Wax Cream keeps your skin young looking. * * * This simple all-in-one cleansing, softening and beautifying cream has been a favorite for over a quarter of a century with lovely women the world over.

This simple all-purpose beauty aid is the only cream necessary for the proper care of your skin.

(b) Among, and typical of, the representations made by respondent concerning its product "Parker-Belmont Beauty Cream" are the following:

Wonderful oxygen cream bleaches skin.

Parker-Belmont Beauty Cream beautifies any skin.

A skillful scientific blending of creams for bleaching, pore-deep cleansing, clearing, softening, lubricating and all-around beautifying.

Parker-Belmont Beauty Cream whitens skin quickly.

Dark skin is lightened and whitened two or three shades.

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This single cream is a blend of all the creams your skin requires.

Parker-Belmont Beauty Cream normalizes a dry to too oily skin. It is soothing to sensitive tissues.

(c) Among, and typical of, the representations made by respondent concerning its product "Powdered Saxolite" are the following:

Saxolite Astringent is a refreshing skin tonic. Smoothes out wrinkles and age lines. Refines coarse pores. Eliminates oiliness.

Gives your skin a fresh, clean, lively appearance.

(d) Among, and typical of, the representations made by respondent concerning its product "Powdered Tarkroot" are the following:

A Tarkroot Beauty Mask revives and refreshes a fatigued, drooping face more quickly and completely than anything else can.

It is beneficial for almost every condition such as age lines, wrinkles, enlarged pores, blackheads and other surface blemishes.

Wrinkles and age lines are smoothed out. Relaxed, sagging contours are pulled up into proper position. The circulation is aroused to nourish the drooping tissues. Pores are purged of all impurities.

Tarkroot Beauty Mask wakes up dull skin!

Tarkroot Face Rester relieves facial fatigue.

The quickest way to renew your complexion is to give yourself a facial pack treatment with Tarkroot Beauty Mask.

Beautify your skin with Tarkroot Face Mask.

Tarkroot performs a four-purpose plan of beautifying by tightening, refining, purifying and stimulating.

(e) Among, and typical of, the representations made by respondent concerning its product "Phelactine" are the following:

Try Phelactine Depilatory, removes superfluous hair gently. Leaves skin smooth, soft and hair-free. Simple to use.

Try Phelactine—the "different" hair remover.

Excellent for removing superfluous hair from your face. Quicker to use.

All of said statements, together with other statements of similar import and meaning, appearing in respondent's advertising literature, disseminated as aforesaid, purport to be descriptive of respondent's products and of their effectiveness in use. In all of its advertising literature, respondent, directly and by inference, through the statements and representations herein set out and through other statements and representations of similar import and effect, represents that the product "Mercolized Wax" is a "wax"; that said preparation absorbs the surface skin and surface discolorations, blemishes, and impurities; that it removes all coarseness, roughness, blackheads, tan, freckles, sunburn, and large pores from the skin, and cleanses, softens, bleaches, lubricates, and protects the skin; that it is a natural way to make the skin beautiful; that it nourishes the skin, helps the skin

renew itself, and is an all-in-one cleansing, softening and beautifying cream and an all-purpose beauty aid.

In the manner aforesaid, respondent represents that the product "Parker-Belmont Beauty Cream" is a skillful, scientific blend of creams for pore-deep cleansing, clearing, softening, lubricating, and all-around beautifying of the skin; that it is an oxygen cream that bleaches the skin, making the skin lighter by two or three shades; and that it is a blend of all the creams a skin requires and that it normalizes either a dry or an oily skin.

In the manner aforesaid, respondent represents that its product "Saxolite Astringent" is a skin tonic which smoothes out wrinkles and age lines, refines coarse pores, eliminates oiliness, giving the skin a fresh, clean, lively appearance.

In the manner aforesaid, the respondent represents that its product "Powdered Tarkroot," when used as a "beauty mask," will revive and refresh a "fatigued" and "drooping" face more quickly and completely than other products, smoothing out wrinkles and age lines, pulling "relaxed" and sagging contours into proper position, purging the pores of all impurities, and arousing the circulation so as to nourish the "drooping" tissues; that said product beautifies the skin by tightening, purifying, refining, and stimulating, and is the quickest way to "renew" the complexion.

In the manner aforesaid, the respondent represents that its product "Phelactine" is "different" from other hair removers; that it is quicker and simpler to use, removing superfluous hair gently, leaving the skin smooth, soft, and hair free.

PAR. 5. Respondent's representations and implications as to the value and usefulness of said products are false or grossly exaggerated and greatly exceed those which might truthfully be made for said products. In truth and in fact the product "Mercolized Wax" is not a wax and said product does not absorb the surface skin and surface discolorations, blemishes, and impurities; it does not remove all coarseness, roughness, blackheads, tan, freckles, sunburn, and large pores from the skin; it does not cleanse, soften, bleach, lubricate, and protect the skin; it is not a natural way to make the skin beautiful; and it does not nourish the skin, help the skin to renew itself, and it is not an all-in-one cleansing, softening, and beautifying cream or an all-purpose beauty aid. In truth and in fact the product "Parker-Belmont Beauty Cream" is not a skillful or scientific blend of creams, nor is it efficacious for pore-deep cleansing, clearing, softening, lubricating, and for all-around beautifying of the skin; it is not an oxygen cream and it will not bleach the skin, making it two or three

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shades lighter and it is not a "blend of all the creams" the skin requires, nor does it normalize either a dry or an oily skin. In truth and in fact the product "Saxolite Astringent" is not a skin tonic nor will it smooth out wrinkles or age lines, refine coarse pores, eliminate oiliness nor does it normalize either a dry or an oily skin. In truth and in fact the product "Tarkroot Beauty Mask" when used as a "beauty mask" will not revive and refresh a "fatigued" and "drooping" face more quickly and completely than will other products; nor will it smooth out wrinkles and age lines or pull "relaxed" and sagging contours into the proper position or purge the pores of all impurities, and it will not arouse the circulation so as to nourish the "drooping" tissues or beautify the skin by tightening, purifying, refining, and stimulating and it is not the quickest way to, nor does it, "renew" the complexion. In truth and in fact the product "Phelactine Depilatory" is not different from any number of hair removers on the market and is no quicker or simpler to use and it does not remove superfluous hair gently, leaving the skin smooth, soft, and hair free.

In truth and in fact the product "Mercolized Wax" has a tendency to cause removal of the surface skin but leaves the skin with deeper hues and blemishes than those present originally and constant and continuous use of this product not only accentuates the blemishes present in the surface skin but may, under certain conditions, be harmful to the user thereof because of the ingredients from which said product is composed.

PAR. 6. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic.

PAR. 7. There are among the competitors of the respondent many who distribute and sell cosmetics in said commerce who do not in any manner misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 8. The use of each and all of the false and misleading representations and implications made and used by the respondent in designating and describing its said products and their effectiveness when used, and said false advertisements as hereinabove alleged, has had and now has a tendency and capacity to and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said representations and implications are true. As a result of such erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade in said commerce has been diverted unfairly to the respondent from its

competitors who truthfully advertise their respective products and the effectiveness thereof when used, and thereby injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, SECOND SUPPLEMENTAL FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 17, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Dearborn Supply Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On October 26, 1938, the respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent and W. T. Kelley, chief counsel for the Commission, subject to the approval of the Commission, might be taken as the facts in the proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such 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 without the presentation of argument or the filing of briefs. Thereafter, the proceeding regularly came on for hearing before the Commission upon the complaint, answer, and stipulation (the stipulation having been approved, accepted and filed); and the Commission, having duly considered the matter, on August 15, 1939, made its findings as to the facts and its conclusion based thereon and issued its order requiring the respondent to cease and desist from the practices charged in the complaint.

Subsequently the respondent filed a petition with the Commission requesting that certain portions of the stipulation, findings as to the facts, and order to cease and desist be modified or set aside; and the Commission, having duly considered such petition, on October 16, 1939, issued its order modifying the stipulation, findings as to the

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facts, and order to cease and desist by striking therefrom certain portions with respect to the harmful potentialities of respondent's cosmetic preparation designated "Mercolized Wax," and directing that the proceeding be reopened solely for the purpose of taking testimony in support of and in opposition to the allegations of the complaint with respect to the injurious effects which might result from the use of such preparation. In all other respects the stipulation, findings as to the facts, and order to cease and desist were left in full force and effect. Thereafter, hearings were held before trial examiners of the Commission theretofore duly designated by it, at which hearings testimony and other evidence were introduced in support of and in opposition to such allegations of the complaint, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding came on for hearing before the Commission on such testimony and other evidence, report of the trial examiners upon the evidence, briefs in support of and in opposition to such allegations of the complaint, and oral argument; and the Commission, having duly considered the matter, on July 14, 1943, issued its supplemental findings as to the facts and conclusion and supplemental order to cease and desist.

Thereafter, the respondent filed in the United States Circuit Court of Appeals for the Seventh Circuit its petition for a review of said supplemental order to cease and desist, and after hearing and considering said cause the said court on December 23, 1944, entered its decree vacating and setting aside said supplemental order to cease and desist, without prejudice to the right of the Commission to reopen the proceeding and to offer additional proof. On January 9, 1945, the Commission issued and subsequently served upon the respondent its order reopening the proceeding for the purpose of allowing the Commission and the respondent to adduce evidence with respect to the contents of such of respondent's advertisements as were material in the proceeding. Thereafter, evidence in said respect was adduced in the proceeding, and subsequently the proceeding again came on for hearing before the Commission on the record, including evidence adduced subsequent to the Commission's order of January 9, 1945, briefs filed on behalf of the Commission and the respondent, and oral argument; and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its second supplemental findings as to the facts and its conclusion drawn therefrom, such findings and conclusion being supplementary to the original findings as to the facts and conclusion issued on August 15, 1939.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The preparation here involved is a cosmetic preparation, formerly designated by respondent as "Mercolized Wax" but now designated by it as "Mercolized Wax Cream." The preparation is and has been sold and distributed by respondent in interstate commerce. The specific ingredient of the preparation which forms the subject of the present inquiry is ammoniated mercury. When respondent first put the preparation on the market, in 1926, the amount of ammoniated mercury used was 8.75 percent, which was continued until January 1933 at which time the amount was reduced to approximately 6 percent. In July 1936 the percentage was again reduced to 3.1 percent, and in January 1940 a further reduction was made to 3.007 percent.

PAR. 2. During the course of the hearings a number of expert witnesses were introduced, both on behalf of the Commission and on behalf of respondent, and a substantial volume of testimony was taken. The witnesses included physicians, dermatologists, pathologists, and pharmacologists, and all of them appear to have been thoroughly qualified in their respective fields. In addition to the oral testimony, respondent also introduced in evidence reports showing the results of certain experiments and tests performed both on human beings and on animals to ascertain the effect of the external application of ammoniated mercury. After careful consideration of the entire record, the Commission finds that the following facts are established by the evidence.

PAR. 3. The effects produced by the external application of ammoniated mercury to the human body fall into two classifications, local effects and systemic effects. With respect to the local effects, it is recognized by medical and scientific opinion that the principal property of ammoniated mercury is that of an irritant. The action of the drug is keratolytic—that is to say, its tendency is to break down and separate the tissues of the outer layer of the skin, and in consequence, it promotes or hastens the exfoliation or peeling off of the outer layer. While the drug appears to have been in somewhat more general use among physicians and dermatologists in the past than at present, it is still used and prescribed frequently for certain skin disorders.

Whether harmful effects may be expected to result from the application to the skin of a preparation containing ammoniated mercury is dependent upon a number of factors, including the amount of ammoniated mercury in the preparation, the frequency of application, the length of the period over which the treatment extends, the duration

of the rest period between series of treatments, the area of the skin to which the preparation is applied, the condition of the skin, particularly with respect to whether it is cut or broken, and the sensitivity or reaction of the patient. Where the amount of ammoniated mercury is excessive, the application frequent, the period of use extended, proper rest periods not observed, or the area large, the use of ammoniated mercury is likely to result in erythema, oedema, inflammation, irritation, or other manifestations of dermatitis, and this is particularly true where the skin is already cut or broken at the time of the application. While these results are much more likely to occur in the case of those persons who are allergic or sensitive to ammoniated mercury, the factor of allergy or sensitivity is not always controlling. In more than a negligible number of instances such results occur even where no prior sensitivity existed. In some cases this is due to the fact that the use of ammoniated mercury causes the development of a condition of sensitivity where none existed previously.

With respect to the percentage of ammoniated mercury which may safely be used in a cosmetic preparation, the evidence does not afford an absolute and precise answer. The Commission finds from the evidence, however, that the danger point is around 3 percent to 5 percent, the other factors being favorable.

PAR. 4. With respect to the inquiry as to whether harmful systemic results follow the external use of ammoniated mercury, the answer turns upon two points: first, whether the drug is absorbed into the system, and second, if absorption does take place, whether the effect is cumulative. That some degree of absorption does take place is established by the record. Whether the amounts absorbed accumulate in the body depends largely upon the efficiency of the organs of elimination, particularly the renal organs. If these organs are functioning efficiently, the amount which will be retained in the system may be regarded as negligible. Conversely, if the organs of elimination are not functioning effectively, substantial amounts of the drug are likely to be retained in the system. In such event, the principal danger is to the kidneys, particularly in those cases where a nephritic condition is present. The effect of ammoniated mercury in such cases is to aggravate the nephritis.

PAR. 5. During recent years respondent has revised and amplified its directions for the use of its preparation, and the directions now enclosed in each package of the preparation read as follows:

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DO NOT RUB IN

DIRECTIONS

for using

MERCOLIZED WAX CREAM

as a

BLEACH AND SKIN BEAUTIFIER

Before you retire for the night, wash the face with warm water and soap. Rinse well and pat dry with a soft towel. Then apply a thin film of Mercolized Wax Cream, smoothing it on evenly. Do not rub it in the skin or get it near the eyes or cuts. The next morning wash it off with soap and water. Continue nightly applications for 30 days. After a few applications the outer, darker, duller skin begins to flake off, which lasts for a few days, exposing a lighter, younger, fairer skin. Bleaching activity follows and continues with the application of Mercolized Wax Cream.

If irritation or redness of the skin appears after a few applications, discontinue using Mercolized Wax Cream for a day or two and apply Parker Belmont Beauty Cream or any good cold cream. Then reapply Mercolized Wax Cream.

CAUTION

Mercolized Wax Cream is different from ordinary cold creams, cleansing creams, etc. It is for adults and is medicated. It should not be used recklessly or applied on an area of the body larger than face and neck at one time. Use it according to the above directions. Continued use for a prolonged period of time may cause local irritation or inflammation. One jar usually gives sufficient bleaching effect to last for a period of two months. Therefore the complete treatment should not be repeated oftener than every three months. Where nephritis exists this product should not be used.

Hypersensitivity (Allergy)

Some people are hypersensitive to one or more substances such as foods, pollens, chemicals, etc. To determine sensitivity to Mercolized Wax Cream before using as a bleach or freckly lightener—apply a thin layer to the unbroken skin at the elbow crease or side of neck, covering an area the size of a twenty-five cent piece, 24 hours before you intend to use Mercolized Wax Cream. If following this test there appears at the site of the application redness, burning, itching, or small blisters within 24 hours, you are sensitive to the ingredients of Mercolized Wax Cream and should not use it.

The Commission is of the opinion that, in view of the reduction in the ammoniated mercury content of respondent's preparation to approximately 3 percent, these directions are sufficient in substance to apprise persons examining them of the precautions which must be observed in the use of the preparation if injurious effects are to be avoided. However, respondent's advertisements, all of which were disseminated in interstate commerce, failed to set forth these precau-

tions and likewise failed to reveal the injurious effects which are likely to result from the indiscriminate use of the preparation. Moreover, most of the advertisements failed to contain any statement cautioning the public that the preparation should be used only as directed. Many of the advertisements made no reference at all to the directions. This is established not only by some of the advertisements introduced in evidence (Commission's Exhibits 11, 12, 13, 14) but also by the testimony of respondent's general manager, who testified that it was not until April 1940 that respondent adopted the regular policy of making some reference in the advertisements to the directions. None of the advertisements used in 1938 contained such reference and only occasionally during 1939 did the advertisements refer to the directions. And at least one of the advertisements used after April 1940 contained no such reference (Respondent's Exhibit 5, Advertisement 7).

Most of the references to the directions which did appear in respondent's advertisements were in no sense cautionary or warning statements. Among and typical of such references were the following:

Don't let dull, unattractive skin mar your beauty when you can quickly remove this unsightly outer layer using Mercolized Wax Cream as Directed.

(Respondent's Ex. 5, Advertisement 2)

Use as directed to help your skin acquire a fresher, fairer, more attractive appearance.

(Respondent's Ex. 5, Advertisement 5)

When applied as directed, Mercolized Wax Cream flakes off dull surface skin in tiny, invisible particles and reveals the lighter lovelier underskin.

(Respondent's Ex. 5, Advertisement 10)

Ugly summer tan faded by using as directed Mercolized Wax Cream.

(Respondent's Ex. 7)

Use Mercolized Wax Cream as directed and enjoy new beauty.

(Respondent's Ex. 7)

Start using Mercolized Wax Cream tonight as directed for a fairer and prettier complexion.

(Respondent's Ex. 7)

These statements do not constitute warnings of danger if the preparation is not used as directed. Instead, they relate to the efficacy of the preparation, and are in the nature of promises or assurances that if used as directed the preparation will accomplish the results claimed in the advertisements.

The Commission therefore finds that respondent's advertisements constituted false advertisements in that they failed to reveal facts material in the light of the representations made therein, and material with respect to consequences which may result from the use of the preparation under the conditions prescribed in the advertisements or under such conditions as are customary or usual.

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PAR. 6. The use by respondent of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation was safe for indiscriminate use, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such preparation as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to respondent from its competitors.

PAR. 7. While the record indicates that on September 1, 1942, respondent again changed the formula for the preparation and reduced the ammoniated mercury content thereof from 3 percent to 1½ percent, there is no assurance that such content will not in the future be restored to 3 percent or more.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

SECOND SUPPLEMENTAL ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, briefs on behalf of the Commission and the respondent, and oral argument, and the Commission having made its second supplemental findings as to the facts and its conclusion that the respondent has, in respect of the matters set forth in such findings, violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Dearborn Supply Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's cosmetic preparation designated "Mecolized Wax" or "Mecolized Wax Cream," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from:

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 fails to reveal that said preparation should not be applied to an area

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of the skin larger than the face and neck at any one time, that too frequent applications and use over excessive periods of time should be avoided, that adequate rest periods between series of treatments should be observed, that the preparation should not be used where the skin is cut or broken, and that in all cases a proper patch test should be made to determine whether the patient is allergic or sensitive to the preparation; provided, however, that such advertisement need contain only the statement, "CAUTION: USE ONLY AS DIRECTED," if, and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain warnings to the above effect.

2. 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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in paragraph 1 hereof.

This order shall not be construed as applicable to any preparation in which the ammoniated mercury content is substantially less than 3 percent.

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

Complaint

IN THE MATTER OF
MARVEL EQUIPMENT MANUFACTURERS, INC.

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

Docket 5372. Complaint, Aug. 28, 1945—Decision, Jan. 22, 1946

Where a corporation engaged in interstate sale and distribution of machinery and industrial equipment, including railway switch heaters intended to keep switches free from snow and ice; through statements in letters, circulars, folders, and other advertising literature, directly and by implication—

- (a) Falsely represented that it had an engineering department and engineers in its employ to supervise the installation of its switch heaters;
- (b) Falsely represented that its switch heaters had been installed for use on their switches by the Pennsylvania Railroad Company, New York Central Railroad Company, New York, New Haven & Hartford Railway Company, and the Long Island Railroad Company;
- (c) Falsely represented that the heaters installed on the railroad switches shown in the pictures displayed by it in its aforesaid matter were its switch heaters, when in fact they were competitive products; and
- (d) Made use of the name "Manufacturers" in its corporate name and thereby, and through use of the words "Interior View of Factory" and its name and address following a picture of a factory interior, and depictions in other advertising of factory buildings shown under the heading "Manufacturing Home of Marvel Products," represented that it owned, operated, or controlled a plant or factory wherein the products offered for sale by it were made;

When in fact it did not own, operate or control any such plant; all the products sold and offered for sale by it were manufactured in plants owned, operated, and controlled by others; and it was not a manufacturer, with which a substantial portion of the purchasers of the products herein involved prefers to deal, rather than with distributors;

With tendency and capacity to mislead and deceive a substantial portion of such purchasers into the purchase of substantial quantities of its products:

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

Mr. Joseph C. Callaway for the Commission.

Alster, Berger & Wald, of Chicago, Ill., 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 Marvel Equipment Manufacturers, Inc., a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be