

Complaint

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IN THE MATTER OF
THE LANE DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5389. Complaint, Oct. 11, 1945—Decision, Feb. 25, 1946*

Where a corporation engaged in the interstate sale and distribution of a product designated "Calcium Pantothenate Tablets"; through advertisements in newspapers and periodicals and through circulars, leaflets and other advertising material—including such statement as "Anti-Gray Hair Vitamin," "Start taking this anti-gray hair vitamin today and see gray hair fade away." "Tests by Good Housekeeping Bureau produced positive result of hair color return in 22 out of 25 experimental cases"—

Falsely represented that calcium pantothenate is the anti-gray hair vitamin; and that use of its product containing said vitamin would restore the original natural color to gray hair, prevent falling hair, restore vitality and luster to the hair, improve the condition of the scalp, nourish the hair roots and grow hair on bald heads;

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 to induce it to purchase said product because of such mistaken belief:

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

Mr. Jesse D. Kash for the Commission.

Benesch, Friedlander & Morris, of Cleveland, Ohio, 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 The Lane Drug 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, The Lane Drug Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 397 Phillips Avenue, Toledo, Ohio.

PAR. 2. Respondent is now, and for more than one year last past, has been engaged in the sale and distribution of a vitamin product designated Calcium Pantothenate Tablets.

Respondent causes said product when sold to be transported from the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein, has maintained a course of trade in said product, in commerce, among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product by the United States mails and various other means in commerce as commerce is defined in the Federal Trade Commission Act. Respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of said product in commerce as commerce is defined in the Federal Trade Commission Act.

Among the typical of the false, misleading, and deceptive statements and misrepresentations contained in such false advertisements disseminated and caused to be disseminated, as herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

ANTI-GRAY HAIR VITAMIN

This "anti-gray hair vitamin" calcium pantothenate, showed positive evidence of a return of natural hair color.

Start taking this anti-gray hair vitamin today and see gray hair fade away.

Tests by Good Housekeeping Bureau produced positive result of hair color return in 22 out of 25 experimental cases.

An amazing news Vitamin called Calcium Pantothenate has been found to give miraculous results in many cases of falling hair, scalp conditions, and dull, faded and lifeless hair.

Calcium Pantothenate seems to feed the hair roots, and nourishes them, and is thought to bring back hair, where the condition had previously been given up as hopeless.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that Calcium Pantothenate is the anti-gray hair vitamin; that the use of its product containing this vitamin will restore the original natural color to gray hair, will prevent falling hair, restore the vitality and lustre to the hair, improve the condition of the scalp, nourish the hair roots and grow hair on bald heads.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, Calcium Pantothenate is not an anti-gray hair vitamin and the use of respondent's product containing this vitamin will not restore the original or natural color to gray hair. The use of said product will not prevent falling hair, nor restore the vitality and lustre to the hair, nor improve the condition of the scalp. It will not nourish the hair roots, nor will it grow hair on bald heads.

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

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 October 11, 1945, issued, and subsequently served, its complaint in this proceeding upon the respondent named in the caption hereof, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On November 19, 1945, the respondent filed its answer herein, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Lane Drug Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 397 Phillips Avenue, Toledo, Ohio.

PAR. 2. Respondent is now, and for more than one year last past, has been engaged in the sale and distribution of a vitamin product designated Calcium Pantothenate Tablets.

Respondent causes said product, when sold, to be transported from the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said product, in commerce, among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondent has also disseminated, and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product 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 such false advertisements disseminated and caused to be disseminated, as herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

ANTI-GRAY HAIR VITAMIN

This "anti-gray hair vitamin" calcium pantothenate showed positive evidence of a return of natural hair color.

Start taking this anti-gray hair vitamin today and see gray hair fade away.

Tests by Good Housekeeping Bureau produced positive result of hair color return in 22 out of 25 experimental cases.

An amazing new Vitamin called Calcium Pantothenate has been found to give miraculous results in many cases of falling hair, scalp conditions, and dull, faded and lifeless hair.

Calcium Pantothenate seems to feed the hair roots, and nourishes them, and is thought to bring back hair, where the condition had previously been given up as hopeless.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that Calcium Pantothenate is the anti-gray hair vitamin; that the use of its product containing this vitamin will restore the original natural color to gray hair, will prevent falling

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hair, restore vitality and luster to the hair, improve the condition of the scalp, nourish the hair roots and grow hair on bald heads.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, Calcium Pantothenate is not an anti-gray hair vitamin and the use of respondent's product containing this vitamin will not restore the original or natural color to gray hair. The use of said product will not prevent falling hair, nor restore the vitality and luster to the hair, nor improve the condition of the scalp. It will not nourish the hair roots, nor will it grow hair on bald heads.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce 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 the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Lane Drug 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 medicinal preparation designated as Pantothenate Tablets, or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from:

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 is an anti-gray hair vitamin.

(b) That said preparation will restore the original natural color to gray hair.

(c) That said preparation is a cure or remedy for or will prevent falling hair.

(d) That said preparation will restore vitality and luster to the hair.

(e) That said preparation will improve the condition of the scalp or nourish the hair roots.

(f) That said preparation will grow hair on bald heads.

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

It is further ordered, That 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.

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FEDERAL TRADE COMMISSION DECISIONS

Syllabus

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