

## Complaint

## IN THE MATTER OF

## BERNARD SINGERMAN TRADING AS PIXACOL COMPANY

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

*Docket 5329. Complaint, June 4, 1945—Decision, Apr. 15, 1946*

Where an individual engaged in the interstate sale and distribution of a medicinal preparation designated "Pixacol"—

- (a) Falsely represented through statement in newspaper advertisements "Pixacol had brought results to psoriasis sufferers when everything else has failed," that said product constituted an effective treatment or cure for psoriasis; when in fact its only value in treatment of said ailment was limited to the removal of scales and crusts created thereby; and
- (b) Failed to reveal in its said advertisements facts material in the light of such representation and with respect to the consequences which might result from the use of the preparation under prescribed or usual conditions in that the preparation contained substances which were irritating to the skin and particularly irritating to the mucous membranes and eyes, by reason whereof care should be exercised in applying it to the skin and its use discontinued if irritation resulted, and it should not be allowed to come in contact with the eyes or any mucous membrane;

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 that use of said preparation would produce no harmful results, and thereby to induce the purchase of substantial quantities thereof:

*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. Randolph Preston*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Bernard Singerman, an individual, trading as Pixacol Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that 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 Bernard Singerman is an individual, trading as Pixacol Co., with his office and principal place of business located at Cleveland, Ohio. Respondent's mailing address is box 3583.

## Complaint

42 F. T. C.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a medicinal preparation designated Pixacol.

Respondent causes said product when sold to be transported from the State of Ohio to purchasers thereof located in various 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 the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product 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 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 said false advertisements disseminated and caused to be disseminated, as herein set forth, by the United States mails and by advertisements inserted in newspapers are the following:

Pixacol has brought results to psoriasis sufferers when everything else failed. \* \* \*

Pixacol has brought relief to psoriasis sufferers when everything else has failed.

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 the product Pixacol constitutes an effective treatment or cure for psoriasis, and will prevent its recurrence.

PAR. 5. The foregoing statements and representations are false and misleading. In truth and in fact, respondent's product is not an effective treatment or cure for psoriasis. Its use will not correct the underlying condition which causes psoriasis and will not prevent its recurrence.

PAR. 6. The respondent's advertisements disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations and material with respect to consequences which may result from the use of

the preparation to which the advertisements relate under the conditions prescribed in such advertisements or under such conditions as are customary and usual. In truth and in fact, said preparation contains substances which are irritating to the skin. It should not be allowed to come into contact with the eyes or any mucous membrane of the body; and if irritation results, the use of said preparation should be discontinued.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements disseminated as aforesaid has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that said preparation is safe for all persons to use, and to induce the purchasing public to purchase substantial quantities of respondent's preparation as a result of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 4, 1945, issued and subsequently served its complaint in this proceeding upon respondent, Bernard Singerman, trading as Pixacol Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation was entered upon the record at a hearing before an examiner of the Commission duly designated by it, in Cleveland, Ohio, on November 14, 1945, whereby it was stipulated and agreed by and between counsel for the Federal Trade Commission and counsel for the respondent that the statement of facts entered upon the record might 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 Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a trial examiner's report upon the evidence.

## Findings

42 F. T. C.

Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, answer, and stipulation, said stipulation having been approved and accepted; 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, Bernard Singerman, is an individual, trading as Pixacol Co., with his office and principal place of business located at Cleveland, Ohio. Respondent's mailing address is box 3583.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated "Pixacol."

Respondent causes said product, when sold, to be transported from the State of Ohio to purchasers thereof located in various 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 the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product by the United States mails and by various 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 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 said advertisements disseminated and caused to be disseminated as herein set forth, by the United States mails and by advertisements inserted in newspapers, are the following:

Pixacol has brought results to psoriasis sufferers when everything else has failed. \* \* \*

Pixacol has brought relief to psoriasis sufferers when everything else has failed.

PAR. 4. Through the use of the foregoing statements and representa-

249

## Order

tions, respondent represents that the product Pixacol constitutes an effective treatment or cure for psoriasis.

PAR. 5. The foregoing statements and representations are false and misleading. In truth and in fact, respondent's product is not an effective treatment or cure for psoriasis and will not correct the underlying conditions which cause psoriasis and will not prevent its recurrence; its only value in the treatment of psoriasis would be limited to the removal of scales and crusts caused by psoriasis. Said preparation contains substances which are irritating to the skin unless properly applied and are particularly irritating to the mucous membranes of the body and to the eyes.

PAR. 6. These advertisements, disseminated by respondent as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of such representations and material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. Because of the irritant qualities of said preparation, as set out above, care should be exercised in applying it to the skin and its use discontinued if irritation results, and it should not be allowed to come in contact with the eyes or any mucous membranes of the body.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that the use of said preparation will produce no harmful results, and to induce the purchasing public to purchase substantial quantities of respondent's preparation as a result of such erroneous and mistaken belief.

## 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, the answer of the respondent, and a stipulation as to the facts entered into upon the record between counsel for the Federal Trade Commission and counsel for

respondent, which provides, among other things, that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and which waives the filing of a report upon the evidence by the trial examiner; 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 Bernard Singerman, an individual, trading as Fixacol Co., or under any other name, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of Pixacol 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 directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

a. That said preparation constitutes a cure or effective treatment for psoriasis or will prevent its recurrence.

b. That said preparation will correct the underlying condition which causes psoriasis or has any value in the treatment of psoriasis in excess of its action in removing the scales and crusts caused by psoriasis.

2. 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 fails to reveal that said preparation should not be allowed to come into contact with the eyes or any mucous membranes of the body, and that if irritation results from its use on the skin, it should be discontinued; 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.

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 said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof and in the respective subparagraphs thereof or which fails to comply with the requirements set forth in paragraph 2 hereof.

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

Commissioner Mason not participating.

Complaint

42 F. T. C.

## IN THE MATTER OF

CARROLL E. LINDSEY, GORDON T. ROU, AND LAKELAND  
HIGHLANDS CANNING COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 14, 1914,  
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 5383. Complaint, Sept. 25, 1945.—Decision, Apr. 15, 1946*

Where a corporation and two individuals, its president and secretary-treasurer, engaged in canning and in buying, selling, and distributing fruit juices and other fruit products (1) through intermediaries or brokers who acted as their agents in negotiating the sale of their products at prices and upon terms fixed by them and whom they paid commissions or brokerage fees for such services; and (2) to "direct buyers," who purchased in their own name and for their own account for resale, to whom they invoiced and shipped the products purchased, and from whom they collected the purchase price thereof—

Paid or granted, directly or indirectly, to such direct buyers, located in other States, to whom they sold and distributed a substantial portion of their products, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof:

*Held*, That such paying or granting by them of commissions, brokerage, etc., to buyers upon purchases made for such buyers' own account, was violative of subsection (c) of section 2 of the Clayton Act, as amended.

*Mr. Edward S. Ragsdale* for the Commission.

*Reeves, Allen & Johnson*, of Tampa, Fla., for respondents.

## COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Carroll E. Lindsey is an individual residing in Highland City, Fla. He is now president of Lakeland Highlands Canning Co., and has been an officer of that company since some time after June 19, 1936. After becoming an officer, and at the present time and for some time past as president, respondent Lindsey has exercised and still exercises a substantial degree of authority and control over the business conducted by said company, including the direction of its distribution and sales policies.