

Complaint

IN THE MATTER OF

LEE GOLDSTINE AND LILLIAN GOLDSTINE, TRADING AS
LILEE PRODUCTS COMPANY, AND PAUL GRANT, TRADING AS PAUL GRANT ADVERTISING AGENCYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5281. Complaint, Feb. 14, 1945—Decision, Apr. 29, 1946*

Where two individuals engaged in the interstate sale and distribution of calcium pantothenate medicinal products earlier designated "Lilee Brand Calcium Pantothenate Tablets," and later "Hygea Brand Calcium Pantothenate Products"; and an individual who was their advertising agent—

Falsely advertised the above-described calcium pantothenate products in newspapers, and by circulars and leaflets and otherwise, as being effective in restoring the original color to gray hair and as being an antigray-hair vitamin, through such statements as: "Gray Hair Vitamin No dyes—No drugs—Hair grew out in Natural Color in almost nine out of ten cases just taking one tablet Calcium Pantothenate Vitamin each day." "GRAY HAIR IS YOURS DUE TO LACK OF THIS AMAZING NEW VITAMIN?", "Experiments on men and women from 23 to 35 years of age conducted by Nationally famous women's magazine showed 22 out of 25 persons exhibited positive evidence of return of normal color to hair just taking these 10 Mg. Vitamin tablets," "CALCIUM PANTOTHENATE "The Anti-Gray Hair Vitamin," "

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 thereby induce it to purchase their said products:

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.

Welch & Hoffman, of Chicago, Ill., for respondents.

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 Lee Goldstine and Lillian Goldstine, individuals trading as Lilee Products Co. and Paul Grant, an individual trading as Paul Grant Advertising Agency, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it

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in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Lee Goldstine and Lillian Goldstine are individuals trading and doing business as Lilee Products Co. with their principal place of business located at 2017 South Michigan Avenue, Chicago, Ill.

PAR. 2. These respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a medicinal product designated Lilee Brand Calcium Pantothenate Tablets.

These respondents cause said product, when sold, to be transported from the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia and maintain, and at all times mentioned herein have 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. Respondent Paul Grant is an individual trading as Paul Grant Advertising Agency with his office and principal place of business located at 520 North Michigan Avenue, Chicago, Ill. This respondent operates an advertising agency and as such is engaged in formulating, editing, selling, and distributing advertising matter. He is the advertising representative or agent of respondents Lee Goldstine and Lillian Goldstine, trading as Lilee Products Co., and prepares and assists in the preparation of advertising material used by said respondents and aided in the dissemination of such advertising material, in connection with the sale and distribution of the medicinal product hereinabove designated, including the advertising matter hereinafter set forth.

The said respondent Paul Grant, in addition to being the advertising representative of the respondents, Lee Goldstine and Lillian Goldstine, trading as Lilee Products Co., acts as agents or sales distributor for said respondents, keeps records of all orders received by said respondents and fills orders and ships said product to the purchasers thereof from his place of business.

PAR. 4. In the course and conduct of their aforesaid businesses, the respondent have disseminated, and are now disseminating, and have caused and are now causing the dissemination of false and misleading 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. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dis-

semination 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 said 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:

GRAY HAIR VITAMIN.

No dyes—No drugs—Hair grows out in Natural Color in almost nine out of ten test cases just taking one tablet Calcium Pantothenate Vitamin each day.

GRAY HAIR IS YOURS DUE TO LACK OF THIS AMAZING NEW VITAMIN.

Experiments on men and women from 23 to 55 years of age conducted by Nationally famous woman's magazine showed 22 out of 25 persons exhibited positive evidence of return of normal color to hair just taking these 10 Mg. Vitamin tablets.

CALCIUM PANTOTHENATE "The Anti-Gray Hair Vitamin."

PAR. 5. Through the use of the foregoing statements and representations, and others of the same import not specifically set out herein, respondents represent that the product Lilee Brand Calcium Pantothenate Tablets is effective in restoring the original color to gray hair, and that said preparation is a gray hair vitamin and an anti-gray hair vitamin.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's product will not restore the original color or any color resembling the original color to gray hair. Said product cannot be properly or truthfully represented as a gray hair vitamin or an anti-gray hair vitamin.

PAR. 7. The use by the respondents 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 said product.

PAR. 8. The aforesaid acts and practices of the respondents, 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 February 14, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them 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 respondents' answer thereto, certain facts were stipulated into the record and certain testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said stipulated facts, testimony, and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, stipulated facts, testimony, and other evidence, report of the trial examiner, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); 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.

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondents Lee Goldstine and Lillian Goldstine are individuals trading and doing business as Lilee Products Co. and as Hygea Vitamin Co., with their office and principal place of business located at 2017 South Michigan Avenue, Chicago, Ill. Among other things, these respondents were engaged from July 1942 until July 1944 in the sale and distribution of a medicinal product designated "Lilee Brand Calcium Pantothenate Tablets," and from July 1944 until April 1945 were engaged in the sale and distribution of a like medicinal product designated "Hygea Brand Calcium Pantothenate Products."

PAR. 2. In the course and conduct of the aforesaid business, respondents Lee Goldstine and Lillian Goldstine caused their said calcium pantothenate products, when sold, to be transported from the State of Illinois to purchasers located in various other States of the United States and in the District of Columbia, and maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Paul Grant is an individual trading as Paul Grant Advertising Agency, with his office and principal place of business located at 520 North Michigan Avenue, Chicago, Ill. Said respondent conducts an advertising agency and in the conduct of said business is engaged in preparing, editing, selling, and disseminating advertising materials. This respondent was the advertising representative or agent of respondents Lee Goldstine and Lillian Goldstine, trading as Lilee Products Co. and as Hygea Vitamin Co., and prepared and aided and assisted in the preparation and dissemination of the advertising material used by said respondents in connection with the sale and distribution of the aforesaid medicinal products, including the advertising matter hereinafter set forth.

PAR. 4. Respondents have disseminated, and have caused the dissemination of, false advertisements concerning the aforesaid medicinal products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated, and have caused the dissemination of, false advertisements concerning said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products 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 by the United States mails, by advertisements inserted in newspapers, by circulars, leaflets, and other advertising material are the following:

GRAY HAIR VITAMIN

No dyes—No drugs—Hair grew out in Natural Color in almost nine out of ten cases just taking one tablet Calcium Pantothenate vitamin each day.

* * *

GRAY HAIR

IS YOURS DUE TO LACK OF THIS AMAZING NEW VITAMINS?

* * *

Experiments on men and women from 23 to 35 years of age conducted by Nationally famous woman's magazine showed 22 out of 25 persons exhibited positive evidence of return of normal color to hair just taking these 10 Mg. Vitamin tablets.

* * *

CALCIUM PATOTHENATE "the Anti-Gray Hair Vitamin."

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PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import not specifically set out herein, respondents have represented the above-described calcium pantothenate product as being effective in restoring the original color to gray hair and as being an anti-gray-hair vitamin. These statements and representations are false, misleading, and deceptive. In truth and in fact, respondents' product will not restore the original color, or any color resembling the original color, to gray hair, and said product cannot be truthfully represented as an anti-gray-hair vitamin.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive 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 such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs to purchase respondents' said product.

CONCLUSION

The aforesaid acts and practices of respondents 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 respondents, certain stipulated facts, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents Lee Goldstine and Lillian Goldstine, individuals trading as Lilee Products Co., as Hygea Vitamin Co., or under any other name or names, jointly or severally, their representatives, agents, and employees, and respondent Paul Grant, an individual trading as Grant Advertising Agency, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of

the preparation designated "Lilee Brand Calcium Pantothenate Tablets" or "Hygea Brand Calcium Pantothenate Products," or any other **preparation of substantially similar composition or possessing substantially similar properties**, whether sold under the same name or under 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 will restore the original natural color to gray hair or any color resembling the original natural color.

(b) That said preparation is an anti-gray-hair vitamin.

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 of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 above.

It is further ordered, That the respondents shall, within 60 days after the 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.

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IN THE MATTER OF

CALIFORNIA LIMA BEAN GROWERS ASSOCIATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS, APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS, APPROVED JUNE 19, 1936

Docket 4939. Complaint, Apr. 2, 1943—Decision, May 9, 1946

Where a corporation engaged in sale and distribution of lima beans, a substantial portion of which it sold directly to buyers purchasing for their own account, and in shipping such products across State lines pursuant to such sales—

- (a) Paid or granted, directly or indirectly, to such buyers, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, upon purchases made for such buyers' own account:

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

Mr. Edward S. Ragsdale for the Commission.

Redwine & Redwine, of Hollywood, Calif., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent California Lima Bean Growers Association is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 400 South A Street, Oxnard, Calif. The respondent is engaged in the business of selling and distributing lima beans.

PAR. 2. The respondent California Lima Bean Growers Association is now engaged, and for many years prior hereto has engaged, in the business of marketing, selling and distributing lima beans in its own name and for its own account for resale.

PAR. 3. The respondent, in the course and conduct of its said business, sells and distributes a substantial portion of its lima beans directly to buyers. Many of such buyers are located in States other than the State in which respondent is located. Pursuant to said sales and the respondent's instructions, such lima beans are caused to be