

IN THE MATTER OF
R. B. SEMLER, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND SEC. 5 OF
AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4773.—Complaint, June 16, 1942—Decision, May 21, 1946

Where a corporation which was engaged in the manufacture and competitive interstate sale and distribution of a two-bodied or floating-oil type hair tonic, sold under the trade name "Kreml," to users such as barber shops and beauty parlors and their suppliers, and to distributors and jobbers who resold to barber shops and retailers, and which occupied a dominating position in the industry, and, due to national advertising in magazines and over the radio, enjoyed so great a public demand for said product that barber shops, dealers, and jobbers were required to stock it or sustain a substantial loss of business—

- (a) Sold and delivered its said product on the condition, agreement, and understanding (1) that the direct purchasers or jobbers and distributors thereof would not use, sell, or in any way distribute similar products of any of its competitors, (2) that said jobbers and distributors or others engaged in the resale or distribution of said product refuse to sell or distribute any of said product to any person or concern who used, sold, or otherwise disposed of any similar competitive product and on the further condition, agreement, or understanding (3) that if such purchasers, jobbers, or distributors (a) should use, sell, or distribute any similar competitive product, or (b) should sell or distribute its said product to any person or concern using or selling any other similar product, such violators of said condition would not be further supplied with, or permitted to handle, any of its said product, but would be deprived of the benefit in their said business of the use or sale of its product thereafter; and
- (b) Carried into effect and enforced said conditions, by (1) placing a distinctive number on the bottles of each separate customer for the purpose of identifying them with him; (2) requiring the exchange of an empty bottle for each bottle of "Kreml" purchased, or explanation of a failure to do so; (3) checking up on sales of their users, jobbers, and distributors by having a representative call upon them to purchase hair tonics of competitors; (4) examining delivery trucks; (5) threatening to refuse, and actually refusing, to sell or permit the sale of "Kreml" to violators of aforesaid conditions; and by various other similar methods;

Effect of which conditions or understandings and the enforcement thereof, had been, and might be, to substantially lessen competition in the sale of two-bodied or floating oil hair tonics between it and its competitors in commerce;

Held, That through use of such acts and practices, corporation had violated and was violating section 3 of the Clayton Act; and

Where said corporation, through statements and depictions in advertisements in newspapers and periodicals, and by radio continuities, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented falsely that application of "Kreml" on the hair and scalp would

Complaint

check excessive falling hair, relieve itching scalp, preserve the wave in the hair, benefit the scalp after exposure to sun and wind, and normalize excessive dryness or oiliness; stop hair loss and prevent baldness; and that it helped keep the hair in a healthy, normal condition:

The facts being that it would not relieve itching scalp except where not caused by a systemic or constitutional condition; and would not preserve the wave in the hair other than that it would not take a permanent or natural wave out of the hair; or benefit the scalp after exposure to sun and wind, beyond its soothing and lubricating effect; and

(b) Falsely represented that water and any greasy preparation are harmful to the hair and produce baldness; and thinning hair at the temples, the crown, or in front meant the hair was starving at the roots, and that application of its preparation would remedy such conditions; and that it would penetrate the hair and scalp;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations and depictions were true, and with capacity and tendency to induce it, because of such belief, to purchase substantial quantities of its said "Kreml":

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

Mr. George W. Williams for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that R. B. Semler, Inc., a corporation, has violated, and is now violating, the provisions of section 3 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, and has been and is using unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act, as amended, hereby issues this, its complaint, against said respondent, and states its charges with respect thereto as follows to wit:

Count I

PARAGRAPH 1. Respondent, R. B. Semler, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 60 Elm Street, New Canaan, Conn.

It is now, and for more than 10 years last past has been, engaged in the business of manufacturing and selling a certain hair tonic

Complaint

42 F. T. C.

known to the trade as a two-bodied or floating-oil hair tonic under the trade name of "Kreml."

In connection with the manufacture and sale of said hair tonic, respondent, R. B. Semler, Inc., has caused, and still causes, said product to be transported from its said principal place of business through and into other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been during the said time, a constant current of trade and commerce in said product between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

In the course and conduct of its business, said respondent has been during all of said time, and now is, in competition with other firms, partnerships, and corporations, and with individuals engaged in the manufacture, sale, and delivery of the same type of hair tonic in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

Said respondent is now and for more than 5 years last past has been one of the largest manufacturers and distributors of said two-bodied or floating-oil hair tonic in the United States, and now occupies a leading and dominant position in said industry. Due to national advertising in magazines and over the radio, the public demand for respondent's product is so great that barber shops, dealers, and jobbers are required to stock it or sustain substantial losses of business.

Respondent merchandises its said product both by direct sales to the user, such as barber shops and beauty parlors, and through the suppliers of such concerns; and also to distributors and to jobbers, who in turn sell to jobbers and retail dealers, respectively. The retail dealers in turn sell to the consuming public.

PAR. 2. The respondent, R. B. Semler, Inc., in the course and conduct of its business, hereinbefore described in paragraph 1, and during the time aforesaid, namely, approximately 10 years, has sold and delivered its said product on the condition, agreement, or understanding (1) that the direct purchasers, for the use aforesaid, or jobbers and distributors thereof, will not use or sell, or in any way distribute, similar products of any of the competitors of respondent, R. B. Semler, Inc., and (2) that said jobbers, distributors, and others engaged in the resale or distribution of said product shall refuse to sell or distribute any of said product to any person or concern who uses or sells, or otherwise disposes of, any such product other than that of said respondent, and on the further condition, agreement or understanding that if such purchasers, jobbers, or distributors (1) should use, sell, or distribute any such product other than that

purchased from, or supplied by, said respondent, R. B. Semler, Inc., namely, Kreml, or (2) should sell or distribute the same to any person or concern using or selling any such product other than that of said respondent, such violators of said condition, agreement, or understanding would not be further supplied with, or permitted to handle, any of said product, but would be deprived of the benefit in their said business of the use or sale of respondent's said product thereafter.

PAR. 3. Said respondent carries into effect and enforces its said condition, agreement or understanding set forth in paragraph 2 hereof by (1) placing on the bottles of each separate customer a distinctive number for the purpose of identifying each bottle of its said product with each customer; (2) by requiring the exchange of an empty bottle for each bottle thereof purchased, or an explanation in the event of a failure to do so; (3) by checking up on the actual sales of their users, jobbers, and distributors, by having a representative call upon them and offering to purchase hair tonics of competitors; (4) by examining delivery trucks; (5) threatening to refuse, and refusing to sell or permit the sale of said products to violators thereof; and by various other methods.

PAR. 4. The effect of the sale of said product on the said conditions, agreements, or understandings set forth in paragraph 2 hereof may be to substantially lessen competition in commerce in the sale and delivery of said product and similar products between respondent and said competitors, or tend to create a monopoly in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia, in said product.

PAR. 5. The aforesaid acts, practices, and methods of respondent constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

Count II

PARAGRAPH 1. Paragraph 1 of count I of this complaint is hereby incorporated in this count, and made a part hereof by reference, and the allegations contained in said paragraph 1 are herein realleged and reaffirmed as though fully set forth.

PAR. 2. In the course and conduct of its business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said

Complaint

42 F. T. C.

preparation 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 its said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its 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 hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets and other advertising literature, are the following:

KREML WILL

1. Remove dandruff scales.
2. Check excessive falling hair.
3. Relieve itching scalp.

* * * * * *

5. Preserve the wave.

* * * * * *

7. Benefit the scalp after exposure to sun and wind.
8. Normalize excessive dryness or oiliness.

KREML WILL NOT

* * * * * *

3. Take out wave.
4. Come off on hats or pillows.

* * * * * *

6. Give hair a greasy appearance.

Kreml will stop hair loss.

Too late for Kreml.

which statement appears in connection with depictions of men having bald heads.

Kreml helps keep the hair in a normal, healthy condition.

Don't use water, use Kreml.

THE WATER SOAK—Soaks his head with water every time he combs it. Water is bad for hair. Washes away natural oils. Dries it out, makes it brittle. Impossible to keep it combed. He needs Kreml.

In connection with this statement appears a picture of a man's head with tousled, unkempt hair.

THE GIGOLO—Plasters down his hair with sticky concoctions that gum it up, make it pasty and tend to clog the scalp pores. He needs Kreml.

In connection with this statement is a picture of a man's head with slick, greasy appearing hair.

THE CUE BALL—Was at one time a water soaker or a gigolo or a bit of both. Now the horse is gone, so there is little use in locking the barn.

In connection with this statement appears a picture of a man's head with only a slight amount of hair.

If your hair is thinning at the temple, at the crown, or in front, it probably means your hair is starved at the roots.

* * * Massage Kreml Hair Tonic into your hair and scalp.

PAR. 3. Through the use of the foregoing statements, representations, and depictions and others of similar import and meaning not specifically set out herein, the respondent represents, directly and by implication, that the application of its preparation on the hair and scalp will remove dandruff scales, check excessive falling hair, relieve itching scalp, preserve the wave in the hair, benefit the scalp after exposure to sun and wind, and normalize excessive dryness or oiliness; that when applied to the hair and scalp said preparation will not take out the wave in the hair; that said preparation is not greasy, will not give the hair a greasy appearance, and will not come off on hats or pillows; that said product will stop hair loss and prevent baldness; that the said preparation helps keep the hair in a healthy, normal condition; that water and any greasy preparation are harmful to the hair and that the use of water and grease on the hair will produce baldness; that thinning of the hair at the temples, at the crown, or in front means the hair is starving at the roots and that the application of respondent's preparation will remedy such condition; that said preparation will penetrate the hair and the scalp and will thereby benefit the hair.

PAR. 4. The foregoing statements, representations, and depictions are grossly exaggerated, false, and misleading. In truth and in fact, the application of respondent's preparation on the hair and scalp, as directed, will not remove dandruff scales, check excessive falling hair, relieve itching scalp, preserve the wave in the hair, or benefit the scalp after exposure to sun and wind, and it will not normalize excessive dryness or oiliness. The use of said preparation will tend to take the wave out of the hair. Said preparation is greasy, will tend to give the hair a greasy appearance, and will come off on hats and pillows. The use of said preparation will not stop hair loss, and will not prevent baldness nor will it help keep the hair in a normal condition. Water and greasy preparations are not necessarily harmful to the hair and the use of water and greasy preparations will not cause baldness. Thinning of the hair is not necessarily indicative of starv-

Findings

42 F. T. C.

ing hair roots, and if this condition should exist, the respondent's preparation would have no therapeutic value in the treatment thereof. Said preparation will not penetrate the scalp or the hair.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and depictions disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does mislead and deceive substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and depictions are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, so induced, to purchase substantial quantities of respondent's preparation.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public 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, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 16th day of June 1942, issued and subsequently served its complaint in this proceeding upon the respondent, R. B. Semler, Inc., a corporation, charging it with the violation of the provisions of section 3 of said Clayton Act and also with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting certain of the material allegations of fact set forth in said complaint and denying others, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the offices of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, R. B. Semler, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 60 Elm Street, New Canaan, Conn.

Respondent is now, and for more than 10 years last past has been, engaged in the business of manufacturing or producing and in the sale and distribution of a certain hair tonic known to the trade as a two-bodied or floating oil hair tonic, under the trade name of "Kreml."

In connection with the manufacture or production and sale of said hair tonic, respondent, R. B. Semler, Inc., has caused, and still causes, said product to be transported from its said place of business in the State of Connecticut through and into other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been during the said time, a constant current of trade and commerce in said product between and among the various States of the United States and Territories thereof and the District of Columbia.

In the course and conduct of its business, as aforesaid, said respondent has been during all of said time, and now is, in competition with other firms, partnerships, and corporations, and with individuals engaged in the manufacture or production and sale and delivery of the same type of hair tonic in commerce between and among the various States of the United States and Territories thereof and the District of Columbia.

Said respondent is now, and was for more than 5 years preceding the issuance of said complaint, one of the largest manufacturers, producers, or distributors of said two-bodied or floating oil hair tonic in the United States, and now occupies a leading and dominant position in said industry. Due to national advertising in magazines and over the radio, the public demand for respondent's product is so great that barber shops, dealers, and jobbers are required to stock it or sustain a substantial loss of business.

Respondent merchandises its said product by both direct sales to the users, such as barber shops and beauty parlors, and to the suppliers of said concerns, and also to distributors and to jobbers, who in turn resell to barber shops and retailers. The retail dealers in turn sell to the consuming public.

Findings

42 F. T. C.

PAR. 2. The respondent, R. B. Semler, Inc., in the course and conduct of its said business, during the time aforesaid has sold and delivered, and is now selling and delivering, its said product on the condition, agreement, and understanding (1) that the direct purchasers or jobbers and distributors thereof will not use, sell, or in any way distribute similar products of any of the competitors of respondent and (2) that said jobbers and distributors or others engaged in the resale or distribution of said product shall refuse to sell or distribute any of said product to any person or concern who uses, sells, or otherwise disposes of any similar product not manufactured, sold, or distributed by respondent, and on the further condition, agreement, or understanding that if such purchasers, jobbers, or distributors (*a*) should use, sell, or distribute any similar product other than that purchased from, or supplied by, said respondent, or (*b*) should sell or distribute respondent's said product to any person or concern using or selling any similar product other than that of said respondent, such violators of said condition, agreement, or understanding would not be further supplied with, or permitted to handle, any of respondent's said product, but would be deprived of the benefit in their said business of the use or sale of respondent's said product thereafter.

PAR. 3. Said respondent carried into effect and enforced its said condition, agreement, or understanding set forth in paragraph 2 hereof (1) by placing on the bottles of each separate customer a distinctive number for the purpose of identifying each bottle of said product with each customer; (2) by requiring the exchange of an empty bottle for each bottle thereof purchased or an explanation in the event of a failure to do so; (3) by checking up on the actual sales of their users, jobbers, and distributors by having a representative call upon them and offering to purchase hair tonics of competitors; (4) by examining delivery trucks; (5) by threatening to refuse, and actually refusing, to sell or permit the sale of said products to violators thereof, and by various other similar methods.

PAR. 4. The Commission finds that the effect of the sale of said product on the said conditions or understandings and of the enforcement thereof as hereinabove set forth has been, is, and may be to substantially lessen competition in the sale of two-bodied or floating oil hair tonics between respondent and said competitors in commerce between and among the several States of the United States and Territories thereof and in the District of Columbia.

PAR. 5. In the course and conduct of its said business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning its 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 has caused the dissemination of, false advertisements concerning its said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its 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 hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

KREML WILL

* * * * *

2. Relieve itching scalp.

* * * * *

4. Preserve the wave.

* * * * *

6. Benefit the scalp after exposure to sun and wind.

* * * * *

Too late for Kreml.

which statement appeared in connection with depictions of men having bald heads.

Kreml helps keep the hair in a normal, healthy condition.

Don't use water, use Kreml.

THE WATER SOAK—Soaks his head with water every time he combs it. Water is bad for hair. Washes away natural oils. Dries it out, makes it brittle. Impossible to keep it combed. He needs Kreml.

In connection with this statement appeared a picture of a man's head with tousled, unkept hair.

THE GIGOLO—Plasters down his hair with sticky concoctions that gum it up, make it pasty and tend to clog the scalp pores. He needs Kreml.

In connection with this statement is a picture of a man's head with slick, greasy appearing hair.

THE CUE BALL—Was at one time a Water soaker or a gigolo or a bit of both. Now the horse is gone, so there is little use in locking the barn.

In connection with this statement appeared a picture of a man's head with only a slight amount of hair.

Findings

42 F. T. C.

If your hair is thinning at the temple, at the crown, or in front it probably means your hair is starved at the roots.

* * * Massage Kreml Hair Tonic into your hair and scalp.

PAR. 6. Through the use of the foregoing statements, representations, and depictions and others of similar import and meaning not specifically set out herein, the respondent represented, directly and by implication, that the application of its preparation on the hair and scalp will check excessive falling hair, relieve itching scalp, preserve the wave in the hair, benefit the scalp after exposure to sun and wind, and normalize excessive dryness or oiliness; that said product will stop hair loss and prevent baldness; that the said preparation helps keep the hair in a healthy, normal condition; that water and any greasy preparation are harmful to the hair and that the use of water and grease on the hair will produce baldness; that thinning of the hair at the temples, at the crown, or in front means the hair is starving at the roots and that the application of respondent's preparation will remedy such condition; and that said preparation will penetrate the hair and scalp.

PAR. 7. The foregoing representations and advertisements are exaggerated, false, and misleading. In truth and in fact, said hair tonic will not stop hair loss, will not check falling hair, and will not relieve itching scalp beyond affording relief from itching when such itching is not caused by a systemic or constitutional condition. While said preparation will not take the permanent or natural wave out of the hair, it will not preserve such wave. Said preparation will not benefit the scalp after exposure to sun and wind beyond its soothing and comforting effect. It will not normalize excess dryness or oiliness of the hair, will not prevent baldness, and will not help keep the hair in a normal condition. Water and greasy preparations are not harmful to the hair, and the use of water and greasy preparations will not cause baldness. Thinning of the hair is not indicative of starving hair roots, and said preparation will have no beneficial effect if such condition exists.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and depictions, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and depictions are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, so induced, to purchase substantial quantities of respondent's preparation.

CONCLUSION

Through the use of the acts and practices described in paragraphs 2 and 3 herein, the respondent has violated, and is now violating, section 3 of the act of Congress of the United States, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

The acts and practices of the respondent described in paragraphs 5, 6, and 7 are all to the prejudice and injury 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits certain of the material allegations of fact set forth in the complaint and denies certain others and states that it waives all intervening procedure and further hearings 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 section 3 of that certain act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, and the provisions of the Federal Trade Commission Act:

I. *It is ordered*, That the respondent, R. B. Semler, Inc., 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, and distribution of hair tonic under the trade name of "Kreml" in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling or distributing Kreml Hair Tonic or any similar product to any purchaser, jobber, or distributor on the condition, agreement, or understanding—

a. That such purchaser, jobber, or distributor will not use, sell, or distribute any similar product produced or distributed by any competitor of the respondent;

b. That any such purchaser, jobber, or distributor engaged in the resale or distribution of respondent's product shall refuse to sell or

Order

42 F. T. C.

distribute said product to any purchaser who uses, sells, or distributes any similar product not produced by the respondent;

c. That such purchasers, jobbers, or distributors will not be supplied with, or permitted to handle, respondent's product if they use, sell, or distribute any similar product not supplied by the respondent or sell or distribute respondent's product to any purchaser who uses or distributes any similar product not produced by the respondent or who has violated such condition, agreement, or understanding.

2. Enforcing or attempting to enforce, by any of the following means, any condition, agreement, or understanding that a purchaser, jobber, or distributor will not use, sell, or distribute any similar product produced or distributed by any competitor of the respondent or sell respondent's product to any purchaser who uses or distributes competitive products or who has violated its agreement with the respondent:

a. Placing on the bottles or containers any number or other means of identification which identifies respondent's product with the customer purchasing same.

b. Requiring the exchange of an empty bottle for each bottle purchased or an explanation in the event of a failure to do so.

c. Checking up on actual sales of the users, jobbers, or distributors of its products.

d. Examining delivery trucks.

e. Threatening to refuse or refusing to sell or permit the sale of respondent's product to any customer who violates such condition, agreement, or understanding.

f. Confining users, jobbers, or distributors of respondent's products to the use, purchase, sale, or distribution of respondent's products.

II. *It is further ordered*, That the respondent, R. B. Semler, Inc., 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 its hair tonic known as "Kreml" 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 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 advertisement represents, directly or through inference, that Kreml or any other of respondent's preparations of substantially similar com-

372

Order

position or possessing substantially similar properties, under whatever name or names sold, will—

a. Check falling hair or relieve itching scalp beyond affording relief when such itching is not caused by a systemic or constitutional condition.

b. Preserve the wave in the hair, provided, however, that this prohibition shall not be construed so as to prohibit the representation that the use of the preparation will not take the permanent or natural wave out of the hair.

c. Benefit the scalp after exposure to sun and wind beyond its soothing and lubricating effect.

d. Normalize excessive dryness or oiliness of the hair, prevent baldness, or help keep the hair in a normal condition.

e. Penetrate the hair or scalp.

2. 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 advertisement represents, directly or through inference—

a. That water or greasy preparations are harmful to the hair or that the use of water or greasy preparations will cause baldness.

b. That thinning of the hair is indicative of starving hair roots or that Kreml or any other of respondent's preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, will have any beneficial effect if such condition exists.

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 of Kreml, or any other of respondent's preparations as described in subparagraph 1 of paragraph II hereof, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in subparagraphs 1 and 2 of paragraph II and the respective subdivisions thereof.

III. *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 is complying with said order.

Complaint

42 F. T. C.

IN THE MATTER OF

LOUIS GARTNER TRADING AS HAWTHORNE CANDY
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5287. Complaint, Mar. 5, 1945—Decision, May 29, 1946*

Where an individual engaged in the competitive interstate sale and distribution of assortments of candy and merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasing public, a typical assortment consisting of 160 pieces of candy and 15 articles of merchandise together with a 160-hole push card, for use in sale and distribution of aforesaid products under a plan by which, at a cost of 1 cent, the chance selection of certain numbers and last sale in first two sections of the card entitled the customer to choice of "small winners," and number 100 and last sale on card received "BIG WINNERS"—

Sold such assortments to wholesalers, jobbers, and retailers, by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance or sale of a chance to procure merchandise at less than its normal retail price, and under which whether or not a purchaser received one of the articles in question—some of which had a normal retail value in excess of 1 cent—and a piece of candy, or a piece of candy alone, was determined wholly by lot or chance; and thereby—

Supplied to and placed in the hands of others means of conducting a lottery in the sale of merchandise, contrary to an established public policy of the United States Government, and in competition with many who did not use methods involving chance or otherwise contrary to public policy;

With the result that many purchasers were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said products in preference to those of said competitors; and with tendency and capacity thereby unfairly to divert trade in commerce to him from his said competitors, to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and his competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Harry M. Kroon, 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 Louis Gartner, an