

Complaint

43 F. T. C.

IN THE MATTER OF

HASWELL T. BONFIELD AND THEO. TRECKER, TRADING
AS ATHEA RESEARCH & PROCESSING LABORATORY,
AND BERT S. GITTINSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5450. Complaint, June 28, 1946—Decision, Nov. 26, 1946*

Where two individuals engaged in the interstate sale and distribution of a hand lotion designated "Athea," along with their advertising agent; through newspaper and periodical advertisements, and circulars, leaflets, and other advertising material—

- (a) Represented falsely that said product afforded a high degree of protection to the hands of industrially employed individuals by providing a protective mechanical barrier against dirt, grease, grime, and all other foreign elements, and that it would protect the hands from infection and irritation;
- (b) Falsely represented that use thereof would replace the natural oils of the skin which had been removed by strong alkaline soaps;
- (c) Represented falsely that said preparation was highly antiseptic when used as directed, that is, by thoroughly rubbing in a small amount of the product before starting work; and
- (d) Falsely represented that said preparation was manufactured by individuals who possessed complete knowledge of the skin, and that theretofore unused principles of physics and mechanical design were employed in its manufacture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true and thereby to induce purchase of said preparation:

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.

Mr. D. C. Daniel 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 Haswell T. Bonfield and Theo. Trecker, individually and as copartners trading as Athea Research & Processing Laboratory, and Bert S. Gittins, trading under his own name, hereinafter referred to as respondents, have 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. Haswell T. Bonfield and Theo. Trecker are individuals trading and doing business as Athea Research & Processing Labora-

tory, with their principal place of business located at 342 North Water Street, Milwaukee, Wis.

PAR. 2. These respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of a hand-lotion preparation designated "Athea." These respondents cause, and have caused, said product when sold to be transported from the State of Wisconsin to purchasers thereof located in various other States in 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 in the District of Columbia.

PAR. 3. Respondent, Bert S. Gittins, is an individual trading under his own name, with his office and principal place of business located at 739 North Broadway, Milwaukee, Wis.

This respondent operates an advertising agency and as such is engaged in formulating, editing, selling, and disseminating advertising matter. He is the advertising representative or agent of respondents, Haswell T. Bonfield and Theo. Trecker, trading as Athea Research & Processing Laboratory, and prepares and assists in the preparation of advertising material used by said respondents and aids and has aided in the dissemination of such advertising material in connection with the sale and distribution of the product "Athea," including the advertising matter hereinafter set forth.

PAR. 4. In the course and conduct of their aforesaid businesses the respondents have disseminated and are now disseminating, and have caused and are 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. Respondents have also disseminated, and are now disseminating, and have caused and are 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 concerning 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:

Athea Lotion provides protection without suffocation. The natural oils of the skin—so frequently lost through repeated washings in strong alkaline soaps are replaced. Grease and grime cannot become imbedded in the pores and fine

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wrinkles of the skin. A mechanical barrier protects the skin from the chemical irritants in common industrial coolants, cutting and lubricating oils.

Due to its Lanolin and olive oil content, with highly absorbative properties, it protects the skin by penetrating into the pores and preventing dirt from becoming deeply imbedded.

Properly used, Athea Protective Lanolin Hand Lotion helps keep your skin healthy in three important ways: it replaces the natural oils lost through repeated washings with alkalin soaps, tends to keep grime and grease from imbedding deeply into the pores and fine wrinkles of your skin so that this dirt may be removed more easily, and it contains a mechanical barrier to the chemical irritants in the coolants, cutting and lubricating oils you handle in the shop.

* * * its glycerine content is highly antiseptic.

The microscopic particles of this ingredient are flat and overlap one another in such a way that allow the natural "breathing" of the skin.

The foreign irritants, however, cannot penetrate this protective layer and consequently can do no harm to the skin.

Hands that are not used to the harsh work encountered in a factory are particularly susceptible to irritation and infections. How to give maximum protection to these hands * * * is one of today's great problems. Athea Protective Lanolin Hand Lotion will give the protection necessary * * *.

Athea Protective Hand Lotion is manufactured in a cosmetic laboratory where the complete knowledge of the skin is an absolute essential.

This fine dispersion is accomplished by heretofore unused principals of physics and mechanical design of apparatus.

PAR. 5. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondents represent that said product affords a high degree of protection to the hands of industrially employed individuals by providing a protective mechanical barrier against dirt, grease, grime, and all other foreign elements and will protect the hands from infection and irritation; that the use of said product will replace the natural oils of the skin which have been removed therefrom by strong alkaline soaps used in washing the hands; that said preparation is highly antiseptic; that said preparation is manufactured by individuals possessing complete knowledge of the skin and that heretofore unused principles of physics and mechanical design are employed in the manufacture of said product.

PAR. 6. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said product will not afford any significant protection to the hands of the industrially employed individuals. It will not provide a protective barrier against dirt, grease, grime and other foreign elements which contact the hands of such individuals. The natural oils of the skin will not be replaced by the use of said product. The product is not antiseptic when used as directed, that is, by thoroughly rubbing in a small amount of the product before starting work. Its use will not protect the hands from

infection and irritation. The individuals manufacturing said product do not possess complete knowledge of the skin and no heretofore unused principles of physics and mechanical design are used in its manufacture.

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 June 28, 1946, issued and thereafter served its complaint in this proceeding upon the respondents, Haswell T. Bonfield and Theo. Trecker, individually and as copartners trading as Athea Research & Processing Laboratory and Bert S. Gittins, trading under his own name, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After issuance of the said complaint and the filing of his answer thereto by respondent Haswell T. Bonfield, all of the respondents tendered for filing an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. By order duly entered, the Commission permitted the filing of said answer on the part of all of said respondents. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and admission 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. Haswell T. Bonfield and Theo. Trecker are individuals trading and doing business as Athea Research & Processing Laboratory, with their principal place of business located at 342 North Water Street, Milwaukee, Wis.

PAR. 2. These respondents are now, and for more than three years last past have been, engaged in the sale and distribution of a hand lotion preparation designated "Athea." These respondents cause, and have caused said product when sold to be transported from the State of Wisconsin to purchasers thereof located in various other States in 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 in the District of Columbia.

PAR. 3. Respondent, Bert S. Gittins, is an individual trading under his own name, with his office and principal place of business located at 739 North Broadway, Milwaukee, Wis.

This respondent operates an advertising agency and as such is engaged in formulating, editing, selling and disseminating advertising matter. He is the advertising representative or agent of respondents Haswell T. Bonfield and Theo. Trecker, trading as Athea Research & Processing Laboratory, and prepares and assists in the preparation of advertising material used by said respondents and aids and has aided in the dissemination of such advertising material in connection with the sale and distribution of the product "Athea," including the advertising matter hereinafter set forth.

PAR. 4. In the course and conduct of their aforesaid businesses the respondents have disseminated and are now disseminating, and have caused and are 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. Respondents have also disseminated, and are now disseminating, and have caused and are 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 concerning 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:

Athea Lotion provides protection without suffocation. The natural oils of the skin—so frequently lost through repeated washings in strong alkaline soaps are replaced. Grease and grime cannot become imbedded in the pores and fine wrinkles of the skin. A mechanical barrier protects the skin from the chemical irritants in common industrial coolants, cutting and lubricating oils.

Due to its Lanolin and olive oil content, with highly absorptive properties, it protects the skin by penetrating into the pores and preventing dirt from becoming deeply imbedded.

Properly used, Athea Protective Lanolin Hand Lotion helps keep your skin healthy in three important ways: it replaces the natural oils lost through repeated washings with alkaline soaps, tends to keep grime and grease from imbedding deeply into the pores and fine wrinkles of your skin so that this dirt may be removed more easily, and it contains a mechanical barrier to the chemical irritants in the coolants, cutting and lubricating oils you handle in the shop.

* * * its glycerine content is highly antiseptic.

The microscopic particles of this ingredient are flat and overlap one another in such a way that allow the natural "breathing" of the skin.

The foreign irritants, however, cannot penetrate this protective layer and consequently can do no harm to the skin.

Hands that are not used to the harsh work encountered in a factory are particularly susceptible to irritation and infections. How to give maximum protection to these hands * * * is one of today's great problems. Athea Protective Lanolin Hand Lotion will give the protection necessary * * *.

Athea Protective Hand Lotion is manufactured in a cosmetic laboratory where the complete knowledge of the skin is an absolute essential.

This fine dispersion is accomplished by heretofore unused principals of physics and mechanical design of apparatus.

PAR. 5. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondents represent that said product affords a high degree of protection to the hands of industrially employed individuals by providing a protective mechanical barrier against dirt, grease, grime, and all other foreign elements and will protect the hands from infection and irritation; that the use of said product will replace the natural oils of the skin which have been removed therefrom by strong alkaline soaps used in washing the hands; that said preparation is highly antiseptic; that said preparation is manufactured by individuals possessing complete knowledge of the skin and that heretofore unused principles of physics and mechanical design are employed in the manufacture of said product.

PAR. 6. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said product will not afford any significant protection to the hands of the industrially employed individuals. It will not provide a protective barrier against dirt, grease, grime and other foreign elements which contact the hands of such individuals. The natural oils of the skin will not be replaced by the use of said product. The product is not antiseptic when used as directed, that is, by thoroughly rubbing in a small amount of the product before starting work. Its use will not protect the hands from infection and irritation. The individuals manufacturing said product do not possess complete knowledge of the skin and no heretofore

unused principles of physics and mechanical design are used in its manufacture.

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.

CONCLUSION

The aforesaid acts and practices of the respondents, 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents, Haswell T. Bonfield and Theo. Trecker, individually and as copartners trading as Athea Research & Processing Laboratory or trading under any other name or names, and Bert S. Gittins, trading under his own name, or trading under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the hand lotion preparation "Athea" or any product 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:

(1) Disseminating or causing to be disseminated any advertisement by means of United States mail or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That said preparation will afford significant protection to the hands of industrially employed individuals;

(b) That said preparation will provide a protective barrier against dirt, grease and other foreign elements which contact the hands of industrially employed individuals;

(c) That the use of said preparation will replace the natural oils of the skin;

(d) That said preparation will protect the hands from infection or irritation;

(e) That the product is antiseptic when a small amount thereof is rubbed into the skin of the hands;

(f) That the individuals manufacturing said preparation possess complete knowledge of the skin;

(g) That heretofore unused principles of physics and mechanical design are used in the manufacture of said preparation.

(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 in commerce as "commerce" is defined in the Federal Trade Commission Act of said hand lotion preparation "Athea," which advertisements contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents and each of them shall, within 60 days after 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.

IN THE MATTER OF
JACOB SIEGEL COMPANY

MODIFIED ORDER TO CEASE AND DESIST AND SUPPORTING AND DISSENTING
OPINIONS AND MEMORANDUM IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3403. Order, December 5, 1946¹

Order, in proceeding in question, in which (1) original cease and desist order issued April 28, 1943, 36 F. T. C. 563; (2) the Circuit Court of Appeals for the Third Circuit on November 30, 1944, in *Jacob Siegel Co. v. Federal Trade Commission*, affirmed said order, though regarding as "far too harsh" its prohibition against the use of respondent's trade name "Alpacuna" for the coats involved, and on September 20, 1945, adhered to its said decision, all as reported in 150 F. (2d) 751, 39 F. T. C. 714; (3) the Supreme Court on March 25, 1946, 327 U. S. 608, 66 Supreme Court 758, 42 F. T. C. 902, for the reasons set forth, remanded the case for the Commission to consider and determine whether qualifying language or some change of name short of excision would eliminate the deception found by it to lurk therein; and (4) said Court of Appeals, on May 23, 1946, 42 F. T. C. 907, remanded the case to the Commission for further proceedings in conformity with the Supreme Court's opinion—

¹ The complaint, findings, conclusion and original order to cease and desist are reported in 36 F. T. C. 563.

The findings, as set out at pages 569 to 572, are as follows:

PARAGRAPH 1. The respondent, Jacob Siegel Co., is a corporation, organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 317 North Broad Street, Philadelphia, Pa. Respondent, is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of men's clothing, including certain overcoats and topcoats designated by respondent as "Alpacuna" coats.

PAR. 2. In the course and conduct of its business, respondent causes and has caused its coats, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various 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 its coats 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 business respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with individuals and firms, engaged in the sale and distribution of overcoats and topcoats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In 1929 respondent, in cooperation with certain textile specialists, developed a certain fabric for use in the making of men's overcoats. This fabric, designated by respondent as "Alpacuna" fabric, has a face or pile which is composed of approximately 50 percent alpaca, 20 percent mohair, and 30 percent wool. The fibers making up this face are worked into a cotton backing. Of the entire fabric (face and backing) the face comprises approximately 70 percent and the cotton backing 30 percent.

Respondent states that its purpose in using the under surface or backing was to duplicate as nearly as possible the natural coat of the animals supplying the fibers, the backing representing the skin of the animal and the fibers representing the hairs or wool growing from the skin. The reason given for the use of a cotton rather than a worsted backing is that the former is more finely and closely woven, and that this makes possible the obtaining of a denser face of hair and wool fibers than would be permitted by a