

IN THE MATTER OF

CANUTE CO.¹

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

Docket 5234. Complaint, Oct. 14, 1944—Decision, Mar. 31, 1947

Where a corporation engaged in the interstate sale and distribution of a hair dyeing preparation designated "Canute Water," which (a) consisted of (1) a clear, colorless liquid composed of 1.14 percent silver nitrate, 0.772 percent ammonium hydroxide and 98.008 percent distilled water, and (2) a tablet for use in connection therewith, effect of which was to speed the action of the silver nitrate solution; and which (b) enabled the user through successive applications to make the hair darker than it was before, so that the possessor of white hair might secure a very light blonde shade from a first application or deeper shades through successive applications, continuing to brown or black if desired—

Falsely represented, directly or by implication, through use of the word "water" in its trade name "Canute Water" and use of words "pure," and "colorless and crystal clear" in connection therewith in newspaper and periodical advertisements and in circulars, leaflets, pamphlets, and other advertising literature, that said silver nitrate hair dye was water and clear, colorless and pure;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase 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 or deceptive acts and practices in commerce.

In considering the remedy which might be applied to remove the deception engendered by the use of the term "water" in the trade name for respondent's clear silver nitrate hair dye, the Commission was of the opinion and found that such deception could only be removed by the use of qualifying words in immediate connection with said trade name to indicate that the preparation in question was in fact a silver nitrate hair dye; and further found that the use of the term "pure" to designate or describe said preparation in advertising was misleading and deceptive.

In a proceeding in which the statement by the seller of a hair dye that its preparation "will color hair similar to its original or natural color" was found deceptive by the Trial Examiner in that it implied, contrary to the fact as found by him with respect to red or auburn hair and possibly some other shades, that preparation in question would recolor all gray hair similar to its original natural color, so that, to such extent the charge of the complaint in the proceeding involved had been sustained, and in which the only witness' respondent's president, first testified that hair could be made red through use of preparation in question, and, later, that red

¹The Commission on September 1, 1948 issued an order vacating and setting aside the findings as to the facts, conclusion and order to cease and desist and dismissing finally the complaint.

Complaint

would not come within the demarkation between gray and brown and that it would not reproduce auburn and dark auburn, as he would not distinguish that finely; the Commission was of the opinion that the charge had not been sustained by the greater weight of the evidence in view of said witness' direct testimony that preparation in question would color hair red; and was of the further opinion that the confusing nature of the subsequent testimony was such that the record was not sufficient to support any finding by the Commission on the particular charge as to whether preparation in question would color hair similar to its original or natural color.

In a proceeding in which the complaint charged the seller of a hair dye with falsely, deceptively, and misleadingly stating in its advertisements of its said product that the use of respondent's preparation will keep hair young looking; that hair dyed with said preparation retains its naturally soft texture; that after use of said preparation the hair remains clean and natural to the touch and looks natural in any light; and that no harmful effects will result from its use; the Commission was of the opinion and found that such charges had not been sustained by a greater weight of the evidence.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. W. L. Taggart* for the Commission.

Miller, Mack & Fairchild, of Milwaukee, Wis., 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 Canute Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Canute Co., is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office located at 240 North Milwaukee Street in the city of Milwaukee, State of Wisconsin.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the offering for sale, sale, and distribution of a cosmetic designated "Canute Water." Respondent causes its said product, when sold by it, to be transported from its principal place of business in the State of Wisconsin to the purchasers thereof at their respective points of location in various States of the United States other than the State of Wisconsin, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

Complaint

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PAR. 3. In the course and conduct of its business as aforesaid, respondent has disseminated and is now disseminating, and has caused and is now causing 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 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 inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Gray Hair?

Escape it with Canute Water. If you have gray hair, just wet it with Canute Water. A few applications will completely recolor it, similar to its former natural shade—in one day if you wish. After that attention only once a month will keep it young-looking. Your hair will retain its naturally soft texture and lovely new color even after shampooing, perspiration, curling or waving. It remains clean and natural to the touch and looks natural in any light. Canute Water is pure, safe, colorless and crystal clear—

* * *

29 years without a single injury.

* * *

PAR. 4. By and through the use of the foregoing statements, and others of similar import and meaning but not specifically set forth herein, respondent represents, directly and by implication, that Canute Water is a clear, colorless, pure water; that its use will recolor hair similar to its original or natural color, will keep hair to which it is applied young looking, and that hair dyed with said preparation retains its naturally soft texture; that, after use, the hair remains clean and natural to the touch and looks natural in any light; that for 29 years Canute Water has not resulted in a single injury to anyone.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, Canute Water cannot be said to be pure, when purchased, since it contains ammonium and silver nitrate in addition to water. Said preparation is not clear and colorless in use, since the directions for use provide that thiosulphate be added to the liquid before application to the hair,

which causes the solution to become cloudy and gradually becomes black. The use of said product cannot be depended upon to recolor hair similar to its original or natural color. The use of this preparation will keep the hair young looking only in the sense that gray hair will be darkened. Hair dyed with this preparation is, however, not young looking in other respects nor does it have the appearance of youthful hair. It will not remain clean, but, on the contrary, will become soiled in the same manner as undyed hair. Several applications will tend to coarsen and stiffen the hair to the extent that it will not retain its natural texture and will not feel natural to the touch. Hair dyed with the preparation will not look natural but, on the contrary, has a metallic appearance which is unnatural and looks unnatural. Injuries have resulted from the use of Canute Water during the past 29 years.

PAR. 6. The advertisements disseminated by respondent constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations therein contained in the following respects. The use of the statement "pure, safe, colorless, and crystal clear" as descriptive of respondent's product is misleading and deceptive in that it is not revealed in said advertising matter that, before the preparation is applied to the hair, a quantity of thiosulphate must be added which causes the liquid to become cloudy and progressively darker in the course of a short time and when applied to the hair the liquid is not clear and colorless, but, in fact, is cloudy and becomes darker in the course of application. Said advertisements constitute false advertisements for the further reason that they fail to reveal, in connection with the use of the word "water" as a part of the trade name "Canute Water," that said preparation is not, in fact, water, as such word is ordinarily understood, but is water to which silver nitrate and ammonia have been added, and in addition to which, thiosulphate must also be added before the preparation is used. This falsity is enhanced by the use of such words as "pure," "clear," and "colorless" in connection therewith and by the clear and colorless appearance of the preparation when sold.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to its said product 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 false statements, representations, and advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the

purchasing public has been and is induced to purchase respondent's said product.

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 October 14, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Canute Co., a corporation, charging it 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, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint, and oral argument of counsel; 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, Canute Co., is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office located at 240 North Milwaukee Street in the city of Milwaukee, State of Wisconsin.

PAR. 2. Respondent is engaged in the sale and distribution of a cosmetic preparation for use in dyeing the hair, which is designated "Canute Water." The respondent began the use of this trade name for its hair-dye preparation in 1914. Since that time there have been some changes in the formula, the last change being made about 1938. Respondent causes said preparation, when sold by it, to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained,

Findings

a course of trade in said preparation 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 said business since 1938, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said preparation by 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 preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

GRAY HAIR?

Escape it
with

CANUTE WATER

If you have gray hair, just wet it with Canute Water. A few applications will completely recolor it, similar to its former natural shade * * * in one day, if you wish. After that, attention only once a month will keep it young-looking.

Your hair will retain its naturally soft texture and lovely new color even after shampooing, perspiration, curling or waving. It remains clean and natural to the touch and looks natural in any light.

Canute Water is pure, safe, colorless, and crystal clear.

Proved harmless at one of America's Greatest Universities.

No skin test is needed.

28 years without a single injury.

PAR. 4. By and through the use of the foregoing statements and others of similar import and meaning not specifically set forth herein, respondent represents, directly and by implication, that Canute Water is a clear, colorless, pure water; that its use will recolor the hair similar to its original or natural color; that it will keep hair to which it is applied young-looking; that hair dyed with said preparation retains its naturally soft texture; that after its use the hair remains clean and natural to the touch and looks natural in any light; and that no harmful effects will result from its use.

PAR. 5. Respondent's preparation, Canute Water, is a silver-nitrate hair-dye preparation. This preparation consists of two items—a silver-nitrate solution in liquid form and a package of tablets for use in connection therewith. The solution is a clear, colorless liquid com-

posed of silver nitrate, 1.14 percent; ammonium hydroxide, 0.772 percent; and distilled water, 98.008 percent. The tablet used in connection therewith is composed of sodium thiosulfate or what is commonly known as as "hypo." The active ingredient in this preparation for dyeing hair is the silver nitrate. The use of the sodium-thiosulfate tablet speeds the action of the silver-nitrate solution.

In preparing respondent's hair preparation for use, one sodium-thiosulfate tablet is placed in a prescribed quantity of the solution, where it remains until the tablet is dissolved—a period of approximately 5 minutes. The solution is then stirred and immediately applied to the hair with a small brush. The liquid when mixed with the tablet is a clear solution. About 2 minutes after stirring, the solution becomes straw colored, gradually darkening until it presents a deep brown color in about 20 minutes, and continuing thereafter to gradually darken until a jet black is reached.

On application of this preparation to the hair, each application makes the hair darker than it was previously, and the user will get a very light blonde shade from the first application on white hair. Each succeeding application will make it a deeper blonde, continuing to brown or black if desired. Respondent's preparation does not penetrate the hair or have any effect upon the natural pigment of the hair. Its action is to form a thin metallic coating on the outer surface of the hair and it does not penetrate below the surface of the scalp. As the hair grows out, it is necessary to apply the preparation from time to time on the new growth.

PAR. 6. The Commission finds that the use of the term "water" in the trade name for respondent's preparation, constitutes a representation that respondent's preparation, Canute Water, is in fact water. This deception is further accentuated by the use in various advertising of the following statement: "Pure, colorless, and crystal-clear." Respondent's preparation, as hereinabove found, is a silver-nitrate hair-dye preparation and not water as such word is ordinarily understood. The Commission has given consideration to the remedy which might be applied to remove the deception engendered by the use of the term "water" in the trade name for respondent's preparation and is of the opinion, and so finds, that such deception can only be removed by the use of qualifying words in immediate connection with such trade name to indicate that respondent's preparation is a silver-nitrate hair dye. The Commission further finds that the use of the term "pure" in the context of advertising to designate or describe respondent's preparation, Canute Water, is misleading and deceptive.

PAR. 7. In his report, the trial examiner has found that the statement by respondent that its preparation "will color hair similar to its

original or natural color" is deceptive in that it implies that respondent's preparation will recolor all gray hair similar to its original natural color and that to this extent this charge of the complaint has been sustained. This conclusion of fact by the trial examiner is based upon his finding that respondent's preparation will not recolor hair red or auburn and possibly some other shades or colors. The only witness called to testify in the proceeding was the president of respondent corporation. This witness definitely testified that hair can be made red through the use of respondent's preparation. Later the witness testified that red would not come within the demarkation between gray and brown and that said preparation would not reproduce auburn and dark auburn, as he would not distinguish that finely. In view of the direct testimony that respondent's preparation will color hair red, the Commission is of the opinion, and so finds, that this charge of the complaint has not been sustained by the greater weight of the evidence. It is the further opinion of the Commission that the confusing nature of the subsequent testimony is such that the record herein is not sufficient to support any finding by the Commission on this particular charge of the complaint as to whether respondent's preparation will color hair similar to its original or natural color.

PAR. 8. The Commission is of the opinion, and so finds, that the charges of the complaint that the following statements are false, deceptive, and misleading have not been sustained by a greater weight of the evidence: that the use of respondent's preparation will keep hair young looking; that hair dyed with said preparation retains its naturally soft texture; that after use of said preparation the hair remains clean and natural to the touch and looks natural in any light; and that no harmful effects will result from its use.

PAR. 9. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations and advertisements disseminated as aforesaid with respect to its said preparation, which designate and describe said preparation as "water" and as "pure" has a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and to cause the purchase of respondent's preparation by a substantial portion of the purchasing public.

CONCLUSION

The 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, answer of the respondent, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Canute Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its preparation, Canute Water, or any other preparation of substantially similar composition or possessing substantially similar properties, 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 respondent's preparation is water or anything other than a hair dye, or which advertisement uses in the context thereof the term "pure" to designate or describe respondent's preparation, Canute Water.

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 respondent's cosmetic preparation which advertisement contains any of the representations prohibited in paragraph 1 hereof.

3. Using the term "Canute Water" as a brand or trade name, or the term "water" as a part of such brand or trade name, to designate or describe respondent's hair-dye preparation without clearly and conspicuously stating in immediate connection and conjunction therewith that said preparation is a silver-nitrate hair dye.

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

Syllabus

IN THE MATTER OF
NATIONAL RETAIL LIQUOR PACKAGE STORES
ASSOCIATION, INC., ET AL.¹

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

Docket 4168. Complaint, June 20, 1940—Decision, Apr. 9, 1947

Where a corporate membership association, the members of which consisted of some 29 state, county, municipal, and local associations of retail dealers in wine, spirits and liquors, and which was engaged, among other things, in promoting the country-wide organization of such retail liquor dealers' associations—

Entered into, continued and carried out an agreement, understanding, combination and conspiracy with (1) its member associations of retail liquor dealers, engaged in interstate purchase and sale of wines, spirits and liquors, and which constituted so large and influential a group in the trade as to be able to influence the flow of said products within, to, and from the various states and localities in which the dealers concerned were located, carried on collectively a volume of trade and commerce which amounted to an important part of that of the United States in said products, and did a substantial part of all the retail liquor business in the large and important trade area in which the membership did business; and (2) with others to act as a medium or central agency to fix and maintain uniform prices for wines, spirits and liquors when sold by manufacturers, importers, and wholesalers, and to fix and maintain uniform prices and to eliminate competition in the sale and distribution of said products by the retail liquor dealers who comprised the membership of the various member associations, and by others who were not members; and In furtherance of the aforesaid agreement, etc., acted as a medium or central agency and cooperated with and assisted said associations, the members, and others to—

(a) Fix and maintain uniform prices for the resale of wines, spirits and liquors by retail liquor dealers who comprised the membership of the various member associations;

¹ The Commission on July 23, 1942, issued an order dismissing complaint as to respondent Phil Taylor, as follows:

This matter, as to respondent Phil Taylor, coming on to be heard by the Commission on the record, and it appearing that respondent Phil Taylor was president of respondent Louisville Retail Liquor Package Stores Association only from April 1937 until on or about November 23, 1937, when he resigned as such president and when he resigned also from said association as a representative of T. P. Taylor Drug Stores, a member thereof; that since the last-mentioned date he has had no connection with said Louisville Retail Liquor Package Stores Association; and that said Louisville Retail Liquor Package Stores Association did not become a member of respondent National Retail Liquor Package Stores Association until May 15, 1939; and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same is hereby dismissed as to said respondent Phil Taylor.

The complaint was also dismissed in the cease-and-desist order (see p. 401) as to a large number of other respondents joined in the proceeding.