

IN THE MATTER OF

SUPERIOR PRODUCTS CO., DOING BUSINESS AS
S-P LABORATORIES

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

Docket 5188. Complaint, July 14, 1944—Decision, Mar. 4, 1948

Where a corporation engaged in the interstate sale and distribution of cosmetics, drugs, sundries, and household supplies, including its "Trio 3-Purpose Cream," to jobbers and dealers—

Falsely represented through display of said designation, followed by the words "Cold," "Cleansing," and "Texture," or by the words "Cold-Cleansing-Tissue," directly and by implication, that its said preparation nourished the tissues of the skin and improved its texture;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby into the purchase of substantial quantities of said product; and with effect, through distribution of said advertising matter in the form of catalogs or price lists, of placing in the hands of dealers and distributors means for deceiving purchasers as to the results to be obtained from use of said preparation:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

In said proceeding in which the Commission charged respondents, among other things, with false advertising with respect to a "bleach cream" offered by it, in that it failed to reveal facts which were material in the light of the representations made in its said advertisements, and with respect to consequences which might result from the use of the preparation under prescribed or customary conditions due to the fact that it contained about 5 percent of ammoniated mercury and should not be applied to an area larger than the face and neck at any one time; that too frequent use and use over excessive periods should be avoided; that adequate rest periods between treatments should be observed; that it should not be used where the skin is cut or broken; and that a proper patch test should be made in all cases to determine whether the patient is allergic or sensitive thereto:

The Commission made no findings with respect to said charges since it had recently administratively determined that when such a preparation does not contain in excess of 5 percent of ammoniated mercury, it will not seek to require the disclosure in advertising of dangers which may result from the use of such preparation, unless scientific information becomes more specific as to substantial injury therefrom.¹

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Thomas G. Murnane, of Dallas, Tex., for respondent.

¹ Statement released as of Sept. 2, 1947.

Complaint

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 the Superior Products Co., a corporation, doing business as S-P Laboratories, hereinafter referred to as respondent, has violated the provisions of 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, Superior Products Co., is a corporation organized and existing under and by virtue of the laws of the State of Texas, and is doing business as S-P Laboratories, with its principal place of business at 2200 South Lamar Street, Dallas, Tex.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of certain cosmetic and medicinal products, including certain preparations designated as Sue Preé Trio 3-Purpose Cream and Sue Preé Bleach Cream which are sold to retail stores that in turn sell direct to the ultimate purchasers.

In the course and conduct of its business, the respondent causes said preparations, when sold, to be transported from its place of business in the State of Texas to the 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 said preparations 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 has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparations 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 is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparations 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, dissemi-

Complaint

44 F. T. C.

nated and caused to be disseminated as aforesaid by the United States mails and by means of catalogs are the following:

Sue Préé
Presents
BLEACH CREAM
An aid to Beauty

TRIO
3 Purpose Cream
. Cold
. Cleansing
. Texture

Immediately following the last-mentioned advertisement in said catalog is a pictorial representation of two different sized jars of cream with the identical wording on each, to-wit:

TRIO
3 Purpose Cream
by
Sue Préé
Cold Cleansing Tissue

PAR. 4. Through the use of the foregoing statements and representations, respondent has represented and is now representing, directly or by implication, that the preparation designated as Trio 3 Purpose Cream nourishes the tissues and improves the texture of the skin.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact respondent's said Trio 3 Purpose Cream does not nourish the tissues or improve the texture of the skin.

PAR. 6. The advertisement of respondent's bleach cream constitutes a false advertisement for the reason that it fails to reveal facts material in the light of the representations made therein and material with respect to consequences which may result from the use of the preparation to which the advertisement relates under the conditions prescribed in the advertisement or under such conditions as are customary or usual. The said preparation contains approximately 5 percent ammoniated mercury and should not be applied to an area of skin larger than the face or neck at any one time. Too frequent applications and use over excessive periods of time should be avoided. Adequate rest periods between series of treatments should be observed. The preparation should not be used where the skin is cut or broken. In all cases a

proper patch test should be made to determine whether the patient is allergic or sensitive to the preparation.

PAR. 7. By the distribution of its catalog and other advertising matter, respondent supplies to and places in the hands of dealers selling its said preparations a means and instrumentality by and through which such dealers may mislead and deceive the purchasers as to the effect of, and the results to be obtained from the use of said preparations.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that Sue Pree Bleach Cream may be used without ill effects, and into the purchase of substantial quantities of said preparations, because of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondent, be 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 July 14, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Superior Products 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 the respondent's answer thereto, 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 testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on the complaint, answer, testimony, and other evidence, report of the trial examiner and exceptions thereto, and briefs of counsel (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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Superior Products Co., is a corporation organized and existing under the laws of the State of Texas, with its office and principal place of business at 2200 South Lamar Street, Dallas, Tex. It also does business under the trade name "S-P Laboratories" and is engaged in the sale and distribution to jobbers and dealers of a general line of cosmetics, drugs, sundries, and household supplies.

PAR. 2. In the course and conduct of its said business, respondent causes its products, when sold, to be transported from its place of business in the State of Texas to the purchasers thereof at their points of location in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce among and between various States of the United States.

PAR. 3. In carrying on its said business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning its preparation "Trio 3-Purpose Cream" by means of 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 preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of such preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as aforesaid, by the United States mails, through the distribution of catalogs or price lists, are as follows:

TRIO
3-Purpose Cream
Cold
Cleansing
Texture

As a part of the advertisement in said catalog is a pictorial representation of two jars of cream, each bearing the wording:

TRIO
3-Purpose Cream
CREAM
by
Sue Préé
Cold-Cleansing-Tissue

PAR. 4. Through the use of the foregoing statements and representations, respondent represents, directly and by implication, that its preparation "Trio 3-Purpose Cream" nourishes the tissues of the skin and improves the texture of the skin. These representations are false, misleading, and deceptive. Respondent's "Trio 3-Purpose Cream" is composed of white mineral oil, water, beeswax, petrolatum, borax, and perfume oil, and it will not, in truth and in fact, nourish the tissues of the skin or improve the texture of the skin.

PAR. 5. The use by respondent of said false, deceptive, and misleading statements and representations disseminated and caused to be disseminated, as aforesaid, has had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations concerning its "Trio 3-Purpose Cream" are true, and into the purchase of substantial quantities of said preparation, because of said erroneous and mistaken belief; and further, by the distribution of said advertising matter to dealers and distributors, respondent supplies to and places in the hands of said dealers and distributors a means and instrumentality by and through which they may mislead and deceive purchasers as to the effect of, and the results to be obtained from, the use of said preparation.

CONCLUSION

The aforesaid acts and practices of respondent 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.

No findings of fact have been made pursuant to the charges in the complaint concerning a "bleach cream" containing 5 percent ammoniated mercury because the Commission has recently administratively determined that when such a preparation does not contain in excess of 5 percent ammoniated mercury it will not seek to require the disclosure in advertising of dangers which may result from the use of such preparation, unless scientific information becomes more specific as to substantial injury therefrom.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before an examiner of the

Order

44 F. T. C.

Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and the briefs of counsel, 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 respondent, Superior Products Co., trading as S-P Laboratories or under any other name, 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 "Trio 3-Purpose Cream," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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, that its said preparation will nourish the tissues of the skin or that it will in any way improve the texture of the skin.

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

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

NATHANIEL COLBERT, FORMERLY KNOWN AS NATHANIEL GOLDBERG, TRADING AS NORTH EASTERN RADIO CO. AND AS MIDWEST RADIO SERVICE CO.

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

Docket 5127. Complaint, Feb. 4, 1944—Decision, Mar. 8, 1948

Where a large business concern, which was established under a trade name including the words "Midwest Radio" some 25 years ago, since which time it had advertised and sold radios extensively in the United States under the name "Midwest"; and had become well and favorably known to a substantial portion of the radio purchasing public in the United States; and thereafter an individual, who had been associated with it as service manager of its place of business in New York City, and became its authorized service representative in said city in June 1938, when it closed its New York place of business, at about which time he began the operation of his own business—

- (a) Adopted, as one of his two trade names, one which included the words "Midwest Radio Service," and continued to make use thereof after the complete severance of relations between him and the aforesaid concern some 2 years later, and featured the words in his trade name and in much of his advertising, and represented thereby that he was connected with aforesaid corporation and that the radios and radio parts sold by him were its products; notwithstanding the fact that since said severance of relations he had had no connection with said corporation or its products; and
- (b) Represented through letters, circulars, folders, and other advertising material and advertisements in periodicals, telephone directories, and other publications, that he was a radio engineer, had radio engineers in his employ, and maintained a radio laboratory; the facts being that while he had certain testing equipment in his place of business, he did not maintain a laboratory, and neither he nor any of his employees was a radio engineer;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his identity and business status, and his products, and thereby to cause it to purchase substantial quantities thereof:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

In said proceeding in which the complaint also charged that respondent falsely and misleadingly represented that his prices were factory or manufacturer's prices, and that the repaired radios sold by him were factory rebuilt radios, and would give new radio performance, the Commission was of the opinion and found that such additional charges were not sustained by the evidence.

Before *Mr. W. W. Sheppard*, trial examiner.

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

Mr. Abraham J. Halprin, of New York City, for respondent.