

Complaint

IN THE MATTER OF

THE NIX COSMETICS COMPANY, ETC.

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

Docket 5291. Complaint, Mar. 9, 1945—Decision, Feb. 8, 1950

Where a corporation engaged in the interstate sale and distribution of a cosmetic preparation which it designated as "Nanette Hormone Cream," to retailers and previously direct to consumers through the mails; in advertisements in newspapers and cards, folders, and circulars which it first published over its own name and address, and later supplied to retailers for publication over their names and paid for through the granting of advertising allowances—

Represented that a woman's breasts which lacked normal growth and size because of insufficient estrogenic substances in her body would be developed and increased in size by the use as directed of its said preparation;

The facts being that the amount of synthetic estrogenic substance made available thereby was insufficient to bring about any substantial physiological changes even in the relatively few cases in which such underdevelopment was due to lack of estrogenic substance; and that in the very large percentage of cases, in which such underdevelopment is caused by other conditions, use of stilbestrol, a synthetic substance and the active ingredient in said preparation, would not be effective to bring about any improvement, regardless of the amount used;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its 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.

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

Mr. B. G. Wilson for the Commission.

Mr. Clinton Robb and *Mr. H. E. Manghum*, of Washington, D. C., 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 the Nix Cosmetics Co., a corporation, trading as Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. and Nanette, 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:

Complaint

46 F. T. C.

PARAGRAPH 1. The respondent, the Nix Cosmetics Co. is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its office and principal place of business at 162 Madison Avenue, Memphis, Tenn.; and trades and does business under the names Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. and Nanette.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of a cosmetic preparation designated as "Nanette Cosmetic Cream," in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes its said preparation, when sold, to be shipped from its said place of business in the State of Tennessee 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 said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its said preparation, respondent has disseminated and is now disseminating, and has caused and is now causing 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 also disseminated and is now disseminating, and has caused and is now causing 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 said preparation in commerce as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading statements representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by means of newspapers having a general circulation, cards, folders, and circulars are the following:

Beautify BUST
without massage?

Amazing new Nanette Cream contains recognized scientific estrogens (female sex hormones) which may be needed if your Bust is undernormal, flat, due to lack of supply of sufficient estrogenic substances. Nanette cream vanishes, requires no tiresome MASSAGE. No matter what you have tried now try NANETTE Cream on guarantee of complete Satisfaction or money back. 30-day jar sent in

plain wrap postpaid for \$2.00 or C. O. D. plus postage. Write today for new Nanette Cosmetic Cream. P. O. Box 717, Dept. Memphis, Tenn.

PAR. 4. Through the use of the foregoing representations and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly and by implication, that said preparation designated "Nanette Cosmetic Cream" used as directed, will develop and increase the size of a woman's breasts which lack normal growth and size because of insufficient estrogenic substances.

PAR. 5. The foregoing statements and representations disseminated by the respondent in the manner aforesaid, are false, misleading, and deceptive. The active ingredient in said preparation is stilbestrol, a synthetic substance. The directions for use provide that one-half teaspoonful of the preparation shall be applied to the breasts at bedtime and remain over night. While the use of stilbestrol, administered in adequate dosage, may increase the size of women's breasts, when underdevelopment is the result of a lack of estrogenic hormones in the body, not all cases of underdeveloped breasts are caused by such deficiency, in which cases the use of stilbestrol in any amount would not be effective. In cases where underdevelopment is the result of a lack of estrogenic hormones, the use of respondent's preparation will be of no value and will not result in developing or increasing the size of the breasts as the amount of the synthetic estrogenic substance made available to the body is not in sufficient amount to accomplish this result.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements 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 said statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

PAR. 7. 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 March 9, 1945, issued and subse-

Findings

46 F. T. C.

quently served upon the respondent, the Nix Cosmetics Co., a corporation, its complaint in this proceeding, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondent's answer, testimony, and other evidence were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer thereto, the testimony and other evidence, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, the Nix Cosmetics Co., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 162 Madison Avenue, in the city of Memphis, State of Tennessee. Said respondent trades and does business under the names Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. and Nanette.

PAR. 2. The respondent is now, and for a number of years last past has been, engaged in the sale and distribution of a cosmetic preparation presently designated as "Nanette Hormone Cream." Said preparation is sold to retail dealers for resale to the public. Prior to about May 1944 the preparation was sold under the designation "Nanette Cosmetic Cream," and it was then sold directly to consumers through the mail.

The respondent causes its said cosmetic preparation, when sold, to be shipped from the respondent's place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

The respondent's volume of business in the aforesaid preparation is substantial. For the year 1944 its sales of the product amounted to between \$15,000 and \$20,000.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements; and for the purpose of inducing, and which are likely to induce, the purchase in commerce of said preparation, the respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination, by various means, of certain advertisements. Included among the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by means of newspapers having a general circulation, and through the use of cards, folders, and circulars, are the following:

Beautify BUST
without massage?

Amazing new Nanette Hormone Cream contains recognized scientific estrogens (female sex hormones) which may be needed if your Bust is undernormal, flat, due to lack of supply of sufficient estrogenic substances. Nanette Hormone Cream vanishes, requires no tiresome MASSAGE. No matter what you have tried now try NANETTE Hormone Cream on guarantee of complete satisfaction or money back.

In solicitation of orders for the preparation to be sent by mail "in plain wrap," the advertisements were formerly published by the respondent over its own name and address, but they are now supplied to the various retail dealers for publication over such dealer's names and are paid for by the respondent through the granting of advertising allowances.

PAR. 4. Through the use of the foregoing statements and representations, the respondent has represented, and now represents, that a woman's breasts which lack normal growth and size because of insufficient estrogenic substances in her body will be developed and increased in size by the use, as directed, of said preparation Nanette Hormone Cream (formerly sold as Nanette Cosmetic Cream).

PAR. 5. The active ingredient in the respondent's preparation is stilbestrol, a synthetic substance. The directions for use provide for one-half teaspoonful of the preparation to be applied to the breasts at

Order

46 F. T. C.

bedtime and to remain overnight, thus providing for the application once a day of approximately one-sixth of a milligram of stilbestrol.

The record discloses that while the use of stilbestrol, administered in adequate dosage, may temporarily increase the size of a woman's breasts when they are underdeveloped because of a lack of estrogenic substances, a very large percentage of underdeveloped breasts are caused by conditions other than a lack of estrogenic substances, and that in such cases the use of stilbestrol will not be effective to increase the size of the breasts regardless of the amount used. The record further discloses that in any event the amount of synthetic estrogenic substance made available to the body by the respondent's preparation, when used as directed, is insufficient to bring about any substantial physiological changes, and that even in cases where underdevelopment of breasts is due to a lack of estrogenic substances the use of this preparation, as directed, will not develop or materially increase the size of the breasts.

PAR. 6. The Commission is of the opinion, therefore, and finds, that the respondent's representations concerning its preparation, as set forth in paragraphs 3 and 4 were and are false, deceptive, and misleading, and that the advertisements containing said representations have been and are false advertisements.

PAR. 7. The use by the respondent of said false advertisements 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 the statements and representations made therein are true and to induce such portion of the public, because of such erroneous and mistaken belief, to purchase the respondent's preparation.

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, the respondent's answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondent,

ent and oral argument not having been requested); 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, the Nix Cosmetics Co., a corporation, directly or trading as Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. or Nanette, or trading under any other trade name or through any corporate device, and said respondent's officers, agents, representatives and employees, in connection with the offering for sale, sale or distribution of the cosmetic preparation known as Nanette Hormone Cream, formerly designated as Nanette Cosmetic Cream, 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:

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 by implication, that said preparation, when used as directed, will develop or substantially increase the size of women's breasts.

2. Disseminating, or causing to be disseminated, 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 preparation, any advertisement which contains the representation prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, the Nix Cosmetics Co., 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 which it has complied with this order.

IN THE MATTER OF

ARLENE WEBER ET AL. TRADING AS WEBER
TYPEWRITER MECHANICS SCHOOL

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

Docket 5453. Complaint, July 11, 1946—Decision, Feb. 8, 1950

Where an individual engaged in the interstate sale and distribution, by mail, of a course of study and instruction in typewriter repairing, which she advertised in magazines of national circulation and through circular letters—

- (a) Represented falsely through the use of the word "school" in her trade name and in her advertising and lesson material, that she operated a school devoted to the teaching of the trade of typewriter repairing, and employed a faculty of teachers and maintained facilities for the supervisions of such a course, and for review of the work of purchasers thereof and the testing of purchasers' proficiency in the subjects covered;

The facts being that her business consisted solely of the sale of 18 separate pamphlets, which were designated "lessons," described the work of typewriter repairing, and might all be purchased at once upon the payment of \$35;

- (b) Represented, directly or by implication, that she had operated a typewriter and supply business for over 20 years, and that she was a bonded factory distributor; when in fact she had been engaged in the business concerned for less than 3 years, and had no connection with typewriter manufacturers;
- (c) Represented falsely through the issuance of so-called diplomas to those who had purchased said 18 pamphlets, that the purchaser, as certified thereby, had completed the course and been tested, or had passed examinations therein, and was eligible to become a student dealer and service man; and was thereby assured of such employment; and
- (d) Represented falsely that the lessons offered by her constituted a simple or practical home-study course which might be mastered by correspondence; that many of her students owned their own business, while many others were engaged as repairmen; that repair shops were over-crowded with work; that one-fourth of all inquiries received by her were from soldiers at army camps; that the health or age of the student constituted no handicap to the successful completion of the course; and that a purchaser of her course of study would acquire therefrom the equivalent of 20 years of experience in typewriter repair work, and would acquire secrets in connection therewith which are not available to the average experienced repairman; and
- (e) Represented falsely that the vocation of typewriter repairman would assure a large income and permanent employment; that she would positively enable a person to earn from \$15 to \$50 a day by becoming his own boss; that, among other things, a student was required to make tracings of certain mechanical parts, and to mail them in for comment, and that such tracings were desirable in mastering the course; and that engineers of all of the leading manufacturers of typewriters had participated in the construction of the model machine on which the lessons were based, and that consequently the