

Complaint

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IN THE MATTER OF

WALTER M. JAKWAY DOING BUSINESS AS VOGUE
PRODUCTSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5537. Complaint, Apr. 21, 1948—Decision, May 23, 1950*

Where an individual engaged in selling and distributing a preparation designed as "Tuffenail"; in advertisements in periodicals and in circulars, leaflets, pamphlets, and display cards, directly and by implication—

- (a) Represented that said preparation was an effective aid for brittle, splitting, breaking, and chipping nails, would toughen the nails and prevent such conditions;
- (b) Represented that application thereof to the nails constituted a competent and effective treatment for "onychosis," would stimulate nail growth, help nails to grow stronger and keep them strong; and
- (c) Represented that said Tuffenail would penetrate the skin into the flesh of the nail bed and prevent sluggishness of the lymphatic glands;

The facts being that while said product would temporarily soften the cuticle around the nails, it had no other therapeutic property; it would have no effect on onychosis nor on the lymphatic glands, none of which are located at the matrix of the nails; and splitting and brittle nails are not due to lack of stimulation or to sluggish action of said glands at the matrix;

With tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that said advertisements 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. Abner E. Lipscomb*, trial examiner.

Mr. R. P. Bellinger 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 Walter M. Jakway, an individual doing business as Vogue Products, 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 Walter M. Jakway is an individual trading and doing business under the name Vogue Products, with his

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principal place of business located at 1149 North Seward Street, Hollywood, Calif.

PAR. 2. Respondent is now and has been for several years last past engaged in the business of selling and distributing a drug preparation, as "drug" is defined in the Federal Trade Commission Act.

The designation or brand name used by respondent for his said preparation and the formula and directions for its use are as follows:

Designation or brand name:

Tuffenail.

Formula:

	<i>Percent</i>
K I (potassium iodide)-----	3.5
Sulphonated fatty alcohol-----	.1
K O H (potassium hydroxide)-----	.18
Alcohol-----	8.3
Glycerine-----	4.2
Essential oils-----	.1
Metnail yellow-----	.0014
H ₂ O (water) Q. S. to 100 percent.	

Directions:

Use nightly. Wash and dry hands. Apply liberally around the cuticle and under nail tips.

Respondent causes his said preparation, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent, subsequent to March 21, 1938, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation, has disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States Mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements appearing on page 81 of the February 1945 issue of *Movies Magazine*, headed "Tuffenail"; on page 97 of the July 1944 issue of the magazine *Modern Romances*, headed "Tuffenail"; on page 2 of the September 18, 1941, issue of the *Hollywood, Calif., Citizen News*, headed "NOW! America's Most Effective Nail Aid!"; on page 89 of the April 1946 issue of *Movie Life Magazine* headed "Lovelier Nails With Tuffenail"; all of which magazines and the newspaper mentioned herein are distributed by the United States mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and caused the dissemination of advertisements concerning the prepa-

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ration Tuffenail by various other means, including circulars, leaflets, pamphlets, and display cards, and including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce directly or indirectly the purchase of the said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

TUFFENAIL

Scientific, proven aid for Brittle, Splitting or Thin Nails. Acts to tuffen nails and help cuticle.

TUFFENAIL

Tuffenail for healthy, lovely nails. Scientific, proven aid for "onychosis" acts to tuffen nails, prevent brittleness.

NOW! America's Most Effective
Nail Aid

TUFFENAIL

TUFFENAIL, an active complex solution tends to tuffen the nails, stimulate growth, and prevent drying up, brittleness, breaking, splitting and chipping nails.

TUFFENAIL

The Accepted Aid
For

BREAKING
SPLITTING
CHIPPING
BRITTLE
NAILS!

TESTING
LABORATORIES
Vouch For Our Claims
IT'S YOUR GUARANTEE!

Consulting and analytical chemists have examined and tested TUFFENAIL. These are some of the statements in their laboratory reports:

The principle upon which the composition and action of Tuffenail is based is in our opinion scientifically sound. The combination of materials in this product could have no harmful or deleterious affect upon the nails or the most delicate skin.

The claims made for Tuffenail by the distributors; that it is a remarkable aid for splitting, chipping, and breaking nails, we find to be well founded and true.

TUFFENAIL . . . Aids in Overcoming or Preventing Nail Brittleness . . . It Toughens; Stimulates Nail Growth; Helps Keep Them Pliant and Strong.

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TUFFENAIL

For Peeling, Splitting, Brittle Nails

... It's the new liquid nail conditioner that toughens nails, helps them grow longer and stronger.

... The balanced ingredients of TUFFENAIL penetrate into the pulp where true nail cells are formed . . . TUFFENAIL tends to prevent sluggishness of the lymphatic glands which are directly responsible for the formation of true nail cells . . . TUFFENAIL tends to prevent lamination or peeling of the nail layers.

TUFFEN your NAILS with

TUFFENAIL

A MOST EFFECTIVE AID

for "Onychosis"—

BREAKING, SPLITTING

CHIPPING, PEELING

NAILS

... lack of proper stimulation which causes a sluggish action of the lymphatic glands at the matrix where nail cells are formed, is the principal cause of nail deficiencies. . . .

TUFFENAIL

America's

Most Effective Aid

for

SPLITTING

BREAKING

CHIPPING

BRITTLE NAILS

The smart vogue for longer nails creates Onychosis, nail troubles. TUFFENAIL, the accepted active, complex solution tends to tuffen the nails, stimulate growth, and prevent dehydration and brittleness . . .

Lovelier Nails with

TUFFENAIL

Beautify and strengthen your nails with Hollywood's Tuffenail.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented directly and by implication that Tuffenail is an effective aid for brittle, splitting, breaking, chipping nails and its use will toughen the nails; prevent brittleness, dryness, breaking, splitting and chipping of the nails, or peeling of the nail layers, and that its application to the nails constitutes a competent and effective treatment for onychosis; that its use will stimulate nail growth, and help nails to grow stronger and will keep them strong; that Tuffenail will penetrate the skin into the flesh of the nail bed and will prevent sluggishness of the lymphatic glands.

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PAR. 6. The said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact Tuffenail is not an aid for brittle, splitting, breaking, chipping, nails and its use will not toughen the nails and will not prevent brittleness, dryness, breaking, splitting, and chipping of the nails, nor peeling of the nail layers; its application does not constitute a competent and effective treatment for onychosis; its use will not stimulate the growth of nails, nor will it help nails to grow stronger or to keep strong; Tuffenail will not penetrate the skin and will not prevent sluggishness of the lymphatic glands.

PAR. 7. Respondent's preparation, when used as directed, will have no significant effect on the nails; it will temporarily soften the cuticle around the nails, which represents its sole therapeutic property. Onychosis is a broad term referring to any disease or deformity of the human nails, which may result from conditions local to the nails or from systemic causes, but, regardless of the cause, respondent's preparation would have no effect on onychosis. The use of Tuffenail would have no effect on the lymphatic glands anywhere in the human system. Splitting, brittle nails are not due to lack of proper stimulation, nor to sluggish action of the lymph glands at the matrix, and even if these conditions were due to such causes, respondent's preparation would be wholly ineffective in correcting the same. Medical science teaches that no lymph glands are located at the matrix of the nails.

PAR. 8. The aforesaid acts and practices of 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 April 21, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, Walter M. Jakway, an individual doing business as Vogue Products, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing by respondent of his answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore designated by it, at which hearing testimony was introduced, and a stipulation as to the facts entered into between the respondent and counsel supporting the complaint likewise was read into and made a part of the record in

this proceeding, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent having waived the filing of a recommended decision by the trial examiner, the proceeding regularly came on thereafter for final hearing before the Commission upon the complaint, the answer, testimony, and the stipulation as to the facts; and the Commission, having duly considered the same 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. Walter M. Jakway, hereinafter referred to as the respondent, is an individual who, from 1942 to September 1, 1946, was trading and doing business as Vogue Products. From 1939 until 1942, when respondent Jakway acquired the entire business, Vogue Products was conducted by the respondent in partnership with Frank Bonn, and subsequent to September 1946 the business has been conducted under the same name as a co-partnership composed of respondent Walter M. Jakway, together with William M. Jakway and Jerry W. Jakway. Respondent has continued as the directing head of the business which, since 1948, has been located at 2420 Eads Street, Los Angeles, Calif., and formerly was located at 1149 North Seward Street, Hollywood, Calif.

PAR. 2. Respondent Walter M. Jakway, trading as aforesaid, is now and since 1940 has been engaged in the business of selling and distributing a preparation designated as "Tuffenail," which preparation is a "drug" as that term is defined in the Federal Trade Commission Act. The formula and directions for use of said preparation are as follows:

	<i>Percent</i>
K I (potassium iodide)-----	3.5
Sulphonated fatty alcohol-----	.1
K O H (potassium hydroxide)-----	.18
Alcohol-----	8.3
Glycerine-----	4.2
Essential oils-----	.1
Metnail yellow-----	.0014
H ₂ O (water) Q. S. to 100 percent.	

Use nightly. Wash and dry hands. Apply liberally around the cuticle and under nail tips.

Respondent has caused and causes said preparation, when sold, to be transported from his place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of said business, respondent has disseminated and caused the dissemination of advertisements concerning said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly and indirectly its purchase. Such advertisements have included, but are not limited to advertisements appearing in the February 1945 issue of Movies Magazine, the July 1944 issue of the magazine Modern Romances, the September 18, 1941, issue of the Hollywood, Calif., Citizen-News, and the April 1946 issue of Movie Life Magazine. Respondent has disseminated and caused the dissemination of advertisements concerning the preparation "Tuffenail" by various other means, including circulars, leaflets, pamphlets, and display cards, 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.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

TUFFENAIL

Scientific, proven aid for Brittle, Splitting, or Thin Nails. Acts to tuffen nails and help cuticle.

TUFFENAIL

Tuffenail for healthy, lovely nails. Scientific, proven aid for "onychosis" acts to tuffen nails, prevent brittleness.

NOW! America's Most Effective

Nail Aid

TUFFENAIL

TUFFENAIL, an active complex solution tends to tuffen the nails, stimulate growth, and prevent drying up, brittleness, breaking, splitting and chipping nails.

TUFFENAIL

The Accepted Aid

For

BREAKING
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BRITTLE
NAILS!

TESTING

LABORATORIES

Vouch For Our Claims

IT'S YOUR GUARANTEE!

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Findings

Consulting and analytical chemists have examined and tested TUFFENAIL. These are some of the statements in their laboratory reports:

The principle upon which the composition and action of Tuffenail is based is in our opinion scientifically sound. The combination of materials in this product could have no harmful or deleterious effect upon the nails or the most delicate skin.

The claims made for Tuffenail by the distributors; that it is a remarkable aid for splitting, chipping, and breaking nails, we find to be well founded and true.

TUFFENAIL . . . Aids in Overcoming or Preventing Nail Brittleness . . . It Toughens; Stimulates Nail Growth; Helps Keep Them Pliant and Strong.

TUFFENAIL

For Peeling, Splitting, Brittle Nails

. . . It's the new liquid nail conditioner that toughens nails, helps them grow longer and stronger.

. . . The balanced ingredients of TUFFENAIL penetrate into the pulp where true nail cells are formed . . . TUFFENAIL tends to prevent sluggishness of the lymphatic glands which are directly responsible for the formation of true nail cells . . . TUFFENAIL tends to prevent lamination or peeling of the nail layers.

TUFFEN your NAILS with

TUFFENAIL

A MOST EFFECTIVE AID

for "Onychosis"—

BREAKING, SPLITTING

CHIPPING, PEELING

NAILS

. . . lack of proper stimulation which causes a sluggish action of the lymphatic glands at the matrix where nail cells are formed, is the principal cause of nail deficiencies . . .

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SPLITTING

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BRITTLE NAILS

The smart vogue for longer nails creates Onychosis, nail troubles. TUFFENAIL, the accepted active, complex solution tends to tuffen the nails, stimulate growth, and prevent dehydration and brittleness . . .

Lovelier Nails with

TUFFENAIL

Beautify and strengthen your nails with Hollywood's Tuffenail.

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PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented directly and by implication that Tuffenail is an effective aid for brittle, splitting, breaking, chipping nails and its use will toughen the nails; prevent brittleness, dryness, breaking, splitting and chipping of the nails, or peeling of the nail layers, and that its application to the nails constitutes a competent and effective treatment for onychosis; that its use will stimulate nail growth, and help nails to grow stronger and will keep them strong; that Tuffenail will penetrate the skin into the flesh of the nail bed and will prevent sluggishness of the lymphatic glands.

PAR. 6. The said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. On the basis of the stipulated facts contained in the record, the Commission finds that Tuffenail is not an aid for brittle, splitting, breaking, chipping nails and its use will not toughen the nails and will not prevent brittleness, dryness, breaking, splitting, and chipping of the nails, nor peeling of the nail layers; its application does not constitute a competent and effective treatment for onychosis; its use will not stimulate the growth of nails, nor will it help nails to grow stronger or to keep strong; Tuffenail will not penetrate the skin and will not prevent sluggishness of the lymphatic glands.

Respondent's preparation, when used as directed, will have no significant effect on the nails; it will temporarily soften the cuticle around the nails, which represents its sole therapeutic property. Onychosis is a broad term referring to any disease or deformity of the human nails, which may result from conditions local to the nails or from systemic causes, but, regardless of the cause, respondent's preparation would have no effect on onychosis. The use of Tuffenail would have no effect on the lymphatic glands anywhere in the human system. Splitting, brittle nails are not due to lack of proper stimulation, nor to sluggish action of the lymph glands at the matrix, and even if these conditions were due to such causes, respondent's preparation would be wholly ineffective in correcting the same. Medical science teaches that no lymph glands are located at the matrix of the nails.

PAR. 7. The use by the respondent of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that said advertisements are true, and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparation.

CONCLUSION

The aforesaid acts and practices of 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, the answer of respondent, testimony, and stipulation as to the facts (filing of recommended decision by the trial examiner having been waived), and the Commission having made its findings as to the facts and, based solely on the statements appearing in said stipulation, its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Walter M. Jakway, individually and trading under the name of Vogue Products, or any other name, and his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the preparation designated "Tuffenail," or any other preparation 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 by implication:

(a) That said preparation is an effective aid for brittle, splitting, breaking, or chipping nails, or that Tuffenail has any significant effect on the nails in excess of acting to temporarily soften the cuticle around the nails;

(b) That said preparation will prevent brittleness, dryness, breaking, splitting, or chipping of the nails or peeling of the nail layers;

(c) That said preparation is a competent or effective treatment for onychosis or that its use will stimulate nail growth, toughen, or strengthen the nails or keep them strong;

(d) That said preparation will penetrate the skin into the flesh of the nail bed or will prevent sluggishness of the lymphatic glands.

(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 of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement

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which contains any of the representations prohibited in paragraph 1 hereof.

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

Syllabus

IN THE MATTER OF

STANLEY WEINSTEIN DOING BUSINESS AS GENERAL
TACK COMPANY

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

Docket 5688. Complaint, Aug. 12, 1949—Decision, May 23, 1950

By virtue of the established practice of imprinting or otherwise labeling or marking products of foreign origin and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely upon such marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, and when products composed in whole or substantial part of imported articles are offered and sold in the channels of trade in commerce throughout the United States, they are purchased and accepted as and for products wholly of domestic manufacture and origin, unless imprinted, labeled or marked in a manner which informs purchasers of their foreign origin.

There has been and is among members of the buying and consuming public a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from those of foreign manufacture or origin and from those which are in substantial part made of materials or parts of foreign manufacture or origin.

Where an individual engaged in purchasing, in bulk quantities, thumb tacks which had been imported from Belgium and other foreign countries, plainly stamped with the country of origin, and in plating, enameling, or lacquering the same, and mounting them on boards wrapped in cellophane, and thereafter packing them in his own containers for shipment—

Sold said products without any imprinting, labeling or marking upon the boards upon which they were mounted or the wrappers or cartons in which packed, and upon which in all cases there appeared his trade name and the words "Jersey City, New Jersey";

With tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false belief that said thumbtacks were wholly of domestic manufacture and origin, and thereby into the 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 and deceptive acts and practices in commerce.

Mr. Morton Nesmith for the Commission.

Mr. Saul Rubin, of New York City, for respondent.