

IN THE MATTER OF
MILTON W. FOLDS, JESSIE D. FOLDS, AND JESSIE MAY
FOLDS DOING BUSINESS AS KLEEREX CO.

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

Docket 5332. Complaint, June 11, 1945—Decision, June 6, 1950

Where three partners engaged in the interstate sale and distribution of a medicinal preparation for pimples designated "Kleerex," the ingredients of which were recognized variously as being mildly astringent, antiseptic, antipruritic, and analgesic in nature, and which, as directed, was to be applied nightly, before retiring, with a brush, after washing the face with soap and water, to be followed by a second coating after the face was dry, and to remain on the skin overnight; in advertising in newspapers and by circulars, leaflets, pamphlets and other advertising literature—

Represented that their said Kleerex constituted an effective treatment for pimples and would cause them to dry up and disappear overnight; the facts being that whatever the value thereof might be in masking the unattractive appearance of pimples, in relieving accompanying discomfort, in aiding to reduce the number of organisms on the surface of the skin, or in tending to dry skin surfaces, the preparation would not penetrate through the layers of the skin to the core of the pimple, and thus affect the seat of the infective process and cause pimples to disappear overnight, or at all; and said product was not a competent or effective treatment for said condition;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that said representations were true and thereby into the purchase of substantial quantities of their said preparation, and with capacity and tendency so to do:

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.

As respects stipulated testimony of certain users of said preparation to the effect that it had relieved accompanying itching and pain and that the pimples had subsequently disappeared, such stipulation cannot be accepted as evidence that Kleerex is an effective treatment for pimples, since it is common knowledge, fully supported by the record, that these vary considerably in size, virulence and duration, and that by following simple standards of cleanliness they will, except in unusual situations, disappear within a reasonable time, and there is nothing whatever in said stipulated testimony of the lay witnesses that the disappearance of their pimples was due directly or indirectly to the use of said preparation.

In said proceeding the Commission was further of the opinion—based on the record, including the testimony of the only medical witness in the original proceeding and in a supplemental proceeding (stricken in part by the trial examiner, but restored by the Commission), certain corroborative stipulated

testimony, and the stipulated testimony above referred to as to what certain users would testify—that while said preparation might be a useful adjunct in the treatment of pimples to the extent of relieving some of the accompanying discomfort, concealing to some degree their unattractive appearance, and decreasing the likelihood of further local infection of the area of the skin to which applied, it did not reach the seat of the infection nor cause pimples to disappear, and accordingly did not constitute a competent or effective treatment therefor; and to that extent disagreed with the trial examiner's recommended decision that the charge that the product was not an effective treatment for pimples had not been sustained by the greater weight of the evidence and should be dismissed, and entered the cease and desist order in question to prohibit such a representation.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. B. G. Wilson* for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents.

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 Milton W. Folds, Jessie D. Folds, and Jessie May Folds, copartners trading as Kleerex Co., hereinafter called respondents, have 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. Respondents, Milton W. Folds, Jessie D. Folds, and Jessie May Folds are individuals, operating and doing business as copartners under the trade name of Kleerex Co., with offices and principal place of business at 2005 South Michigan Avenue, Chicago 16, Ill.

PAR. 2. Respondents are now, and have been for more than 2 years last past, engaged in the business of offering for sale, selling and distributing, a medicinal preparation designated "Kleerex." Respondents cause said preparation when sold to be transported from their aforesaid place of business in the State of Illinois to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation, by United States mails and by various other means in commerce as commerce is defined in the Fed-

eral Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing dissemination of, false advertisements concerning their said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation 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 advertisements, disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature are the following:

PIMPLES DISAPPEARED OVERNIGHT

Yes, its true, there is a safe harmless medicated liquid called Kleerex that dries up pimples overnight. Those who followed simple directions and applied Kleerex upon retiring were amazingly surprised when they found their pimples had disappeared. These users enthusiastically praise Kleerex and claim they are no longer embarrassed and are now happy with their clear complexions.

Many (users) report that they had a red sore pimply face one night and surprised their friends next day with a clear complexion.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents said preparation, respondents have represented and now represent that their preparation "Kleerex" is an effective treatment for pimples and will cause pimples to dry up and disappear overnight.

PAR. 5. The foregoing statements are grossly exaggerated, false and misleading. In truth and in fact, respondents' said preparation is not a competent or effective treatment for pimples. Its use will not dry up or otherwise cause pimples to disappear overnight or at all.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to respondents' said preparation, 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 and representations are true, and into the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public, and constitutes unfair and

deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 11, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Milton W. Folds, Jessie D. Folds, and Jessie May Folds, doing business as copartners under the name of Kleerex Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by the respondents of their answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter there came on to be heard a motion filed on May 8, 1947, by counsel supporting the complaint and the answer thereto of respondents, and the Commission on October 30, 1947, ordered that this proceeding be reopened for the taking of further testimony in support of and in opposition to one of the charges of the complaint. Subsequently, additional testimony was introduced before the trial examiner and duly recorded and filed in the office of the Commission. This proceeding thereafter came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, recommended decision and supplemental recommended decision of the trial examiner, and the exceptions filed thereto, and briefs filed in support of and in opposition to the complaint (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. Respondents, Milton W. Folds, Jessie D. Folds, and Jessie May Folds, are individuals doing business as copartners under the trade name of Kleerex Co., with offices and principal place of business at 2005 South Michigan Avenue, Chicago 16, Ill.

PAR. 2. Respondents are now, and have been for more than 2 years last past, engaged in the business of offering for sale, selling, and distributing a medicinal preparation designated "Kleerex." Respond-

ents cause said preparation when sold to be transported from their aforesaid place of business in the State of Illinois to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said preparation, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

PIMPLES DISAPPEARED OVERNIGHT

Yes, it's true, there is a safe harmless medicated liquid called Kleerex that dries up pimples over night. Those who followed simple directions and applied Kleerex upon retiring were amazingly surprised when they found their pimples had disappeared. These users enthusiastically praise Kleerex and claim they are no longer embarrassed and are now happy with their clear complexions.

Many (users) report that they had a red sore pimply face one night and surprised their friends next day with a clear complexion.

PAR. 4. Through the use of the foregoing statements and representations, respondents have represented and now represent that their preparation "Kleerex" is an effective treatment for pimples and will cause pimples to dry up and disappear overnight.

PAR. 5. Pimples are low inflammatory lesions of the skin, the local cause of which is a specific germ, usually a staphylococcus or a streptococcus. The staphylococcus and streptococcus belong to a group of organisms called the cocci, a term used to designate small round organisms. The streptococcus usually occurs either in what appear to be chains, or sometimes in clusters, of organisms, and staphylococci,

which are pus-producing organisms, form in clumps or clusters. Ranging in size from scarcely visible bumps to the proportions of boils, pimples are surrounded by an area of redness depending on the size of the core or central seat of the infective process present underneath the layers of the skin. Pimples frequently occur at the time of puberty or adolescence and when present in great numbers give rise to a condition called acne. The course or duration of pimples varies greatly in individual cases.

The primary treatment for pimples is the washing of the affected area with soap and water. In addition to the use of preparations designed for local application, regimens designed to build up the patient's general health may be adopted, ultraviolet light may be used, and occasionally vaccines prepared from cultures of the specific organism causing the infection are utilized in the treatment of pimples.

The directions for use of the respondent's product call for one coating to be applied nightly before retiring with a brush after washing the face with soap and water. After the first coat is allowed to dry, it is directed that a second coating be applied and allowed to remain on the skin overnight. The active ingredients of the respondent's product are prepared calamine, spirits of camphor, resorcin, and distilled extract of witch hazel. Such ingredients are recognized variously as being mildly astringent, antiseptic, antipruritic, and analgesic in nature. When used in combination in the proportions present in Kleerex, such ingredients have a tendency to dry up surface lesions, to decrease the number of organisms on the surface of the skin, and to relieve pain or itching. The preparation, however, will not penetrate through the layers of the skin to the core of the pimple. In addition, Kleerex may be applied in such manner as to leave a pink colored residue sufficient to mask small pimples from view, but it is not effective in concealing larger or severe inflammations.

PAR. 6. After Dr. Scott, a physician, the single scientific witness called by counsel supporting the complaint, had testified on September 25, 1946, to the foregoing among other things, it was stipulated between counsel that two other physicians available as witnesses on behalf of respondents would testify to substantially the same effect as had Dr. Scott, if called as witnesses by respondents in this proceeding. Also called as witnesses on behalf of respondents were one of the respondents, who is a registered pharmacist, and another graduate pharmacist associated with respondents in an executive capacity. Their testimony was similar in material respects to that adduced by the scientific witness called by counsel supporting the complaint. It was further stipulated that five members of the purchasing public,

if called as witnesses in this proceeding, would testify that after having used Kleerex, as directed, on pimples, they received relief from accompanying itching and pain and that the pimples subsequently disappeared. Subsequently, at a hearing held in this proceeding on May 25, 1948, Dr. Scott again appeared as a witness and adduced additional testimony relating to the therapeutic properties of Kleerex.

The trial examiner has concluded that the allegation of the complaint that Kleerex is not a competent or effective treatment for pimples is not sustained by the greater weight of the evidence. The trial examiner assigns as the reason therefor an affirmation by Dr. Scott in response to a question propounded at the subsequent hearing by the trial examiner, expressing agreement with a statement that, among other effects, the four principal ingredients of Kleerex, when used in combination in the proportions in which they appear in such product, have the tendency to dry up pimples. The trial examiner infers therefrom that Kleerex, if used as directed, for a sufficient period of time, will cause pimples to dry up and that said product therefore constitutes an effective treatment for this condition.

In the opinion of the Commission, the aforesaid conclusions of the trial examiner are erroneous. Dr. Scott previously had described the drying action variously as being limited to "obtaining to dry up somewhat the actual secretion of the skin," or as having an effect of drying or tending to dry the skin, and in reference to pimples said that he considered Kleerex to have a tendency to dry them up. During the course of the second hearing, the witness stated it to be his opinion also that Kleerex, when used as directed, is not an effective treatment for pimples, and assigned as one of the reasons for such opinion the fact that respondents' preparation will not cause pimples to disappear. His testimony as rendered during the original hearing to the effect that Kleerex will not penetrate the core or inner area of the pimple beneath the layers of the skin is not controverted in the record, and is in effect corroborated by the testimony of the two medical witnesses which was introduced into the record by respondent pursuant to stipulation between counsel. Moreover, the statement by Dr. Scott that Kleerex will not cause pimples to disappear is not expressly controverted by any competent evidence.

Whatever its value may be in masking the unattractive appearance of pimples, in relieving accompanying discomfort, in aiding to reduce the number of organisms on the surface of the skin, or in tending to dry skin surfaces, it plainly appears that the use of Kleerex as directed will not affect the seat of the infective process and that it will not cause pimples to disappear overnight or at all, and the Commission

898

Order

accordingly is of the view that respondents' product is not a competent or effective treatment for pimples.

It is therefore concluded that the statements in respondents' advertising which represent that Kleerex is an effective treatment for pimples and that it will cause pimples to disappear are false and misleading, and that the advertisements wherein such statements have been made constitute false advertisements.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations with respect to respondents' said preparation 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 and representations are true, and into the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices, 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 answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision and supplemental recommended decision of the trial examiner, and the exceptions filed thereto, and briefs filed in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That Milton W. Folds, Jessie D. Folds, and Jessie May Folds, individually and doing business under the name of Kleerex Co., or under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product Kleerex, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the

same name or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of 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 by implication—

That said product will cause pimples to disappear or constitutes an effective treatment for pimples.

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 of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph (1) hereof.

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

OPINION OF THE COMMISSION

AYRES, *Commissioner*.

The respondents are charged with false and misleading advertising by representing that their preparation "Kleerex" is an effective treatment for pimples and will cause pimples to dry up and disappear overnight. The trial examiner recommended an order which would require respondents to cease and desist from representing that their product will remove pimples overnight, and recommended dismissal of the charge that the product is not an effective treatment for pimples.

Only one medical witness testified and his testimony supports the allegations of the complaint. His testimony was based upon his knowledge of the therapeutic properties of the several ingredients of Kleerex and not upon actual use or clinical tests of the product itself. The original testimony of the medical witness was corroborated by the stipulated testimony of two doctors offered by respondents. It was also stipulated that if certain persons specifically named and others who had used respondents' product in treating themselves were called as witnesses, they would testify in substance as follows:

That each was afflicted with pimples, that the cause thereof was unknown to the witness, that each used Kleerex in accordance with the printed directions accompanying the package of Kleerex, that after using Kleerex as directed, upon application each received relief from

itching and accompanying pain, that the colored covering of Kleerex concealed the blemishes and the pimples disappeared, but not overnight.

After the original testimony was taken the trial examiner filed a recommended decision. Thereafter the Commission ordered the proceedings reopened for the taking of testimony concerning the charge that Kleerex is not a competent or effective treatment for pimples. During this supplemental proceeding the only witness called was the medical witness who had originally testified, and he was questioned specifically as to whether or not in his opinion Kleerex is an effective treatment for pimples. In this additional testimony he did not contradict or qualify any of his previous testimony, but added his specific opinion that Kleerex is not an effective treatment for pimples. The trial examiner struck this question and answer. That ruling was reversed by the Commission on March 28, 1949, for reasons set out in an opinion which accompanied the order.¹ This testimony of the medical witness, therefore, stands as a part of the record and no rebuttal evidence has been offered.

¹ The opinion of the Commission, by Commissioner Ayres, on the appeal in question under rule XX of the Commission's Rules of Practice, from the trial examiner's ruling, after setting forth the material facts, noted that the trial examiner's basis for his ruling was twofold, namely, "that the representations shown to have been made by the respondents with reference to their product Kleerex afforded no basis for the question; and, second, if it had, the witness could not have been permitted to answer over objection, as it called for an expression of opinion upon an ultimate issue of fact."

As to the first ground, noting that the examiner in effect held that the charge in the complaint that respondents had, among other things, represented their preparation as "an effective treatment for pimples" was unsupported, the opinion states that the complaint alleged and the answer admitted that respondents advertised their preparation in the language set forth in the findings, on p. 902, supra, captioned "Pimples disappeared overnight" and expressed the view that "it is difficult to see how respondents could have more plainly represented their preparation to be 'an effective treatment for pimples' than in the advertisement" in question, and was therefore of the further view that the trial examiner's ruling on said point was without foundation.

As to the second ground stated by the trial examiner, namely, that the question called for an expression of opinion upon an ultimate issue of fact, as involved in *United States v. Spaulding* (293 U. S. 498), and certain other following decisions of the Federal courts, and in the Commission's decision on the appeal from certain rulings of the trial examiner in D. 5358, *L. Heller & Son, Inc. et al.*, decided on August 25, 1950, the opinion states in part:

In the present proceeding the medical expert had, prior to the stricken question and answer, expressed his opinions upon the therapeutic properties, both singly and in combination, of the various ingredients of "Kleerex" with reference to pimples, and subsequent to the stricken question and answer had given the reasons for his opinion that it is not an effective treatment for pimples. It is apparent that in answering the stricken question the medical expert had answered from a medical standpoint upon the usual and ordinary meaning of the words in which inquiry was made. The answer required no legal interpretations or construction. The stricken question dealt with one of several ultimate issues of fact in the proceeding, but it was also subsidiary in the decision of the whole case.

The decision of the appeal by the Commission in docket 5358 presents a situation quite different from that in the present proceeding. That proceeding involved failure to mark with the name of the country of origin certain products alleged to be in substantial part

The stipulation that users of Kleerex would testify that it has relieved itching and accompanying pain and that the pimples had subsequently disappeared, cannot be accepted as evidence that Kleerex is an effective treatment for pimples. It is common knowledge, fully supported by the record, that pimples vary considerably in size, virulence, and duration, and that by following simple standards of cleanliness they will, except in unusual situations, disappear within a reasonable time. There is nothing whatever in the stipulated testimony of the lay witnesses that the disappearance of their pimples was due directly or indirectly to the use of "Kleerex."

We must then rely upon the expert testimony to determine whether or not Kleerex is an effective treatment for pimples. The only medical witness who testified on the point said that Kleerex is not an effective treatment for pimples and gave in appropriate detail the reasons for the opinion. His testimony on this specific point is not disputed by any evidence in the record, and most of his statements concerning the therapeutic effects of this product are fully corroborated by evidence offered by respondents.

Pimples are low, inflammatory lesions of the skin and they vary in size from almost invisible bumps up to boils. There are various theories indicating that pimples might be caused by the sebaceous glands, by some disfunction of the hormone balance, by exposure to dust, dirt or grime, or by other causes, and that the period of puberty or adolescence is usually accompanied by the appearance of pimples. Fun-

of foreign origin. The questions ruled upon had to do with whether the products of partly foreign and partly domestic origin were in fact foreign or domestic articles, whether articles of foreign origin should be marked to show such origin, and whether the failure to mark such goods is fair to the public. The answers to these questions were not based upon specialized fields of knowledge, nor could the answers by the witnesses assist in resolving the issues in the case.

In the present proceeding the issue of whether respondents' preparation is an effective treatment for pimples is purely a medical question which can be determined by the Commission only upon the basis of the testimony of medical experts. If the stricken question had been carefully avoided and only the facts subsidiary to it developed, these also would necessarily have been simply medical opinions. The answer stricken merely drew together these subsidiary opinions into a medical opinion upon the therapeutic effectiveness of respondents' preparation in treating pimples. Opposing counsel were free to explore fully and reveal whatever weaknesses there were, if any, in the basis and reasons for the opinion expressed. Since the question had to be decided upon the basis of medical opinion, the mere fact that it was couched in the precise language of the complaint when the equivalent opinion might be otherwise elicited should not be, and in the view of the Commission is not, controlling.

The conclusion here should not be interpreted as indicating that the Commission considers the type of question discussed to be particularly suitable or desirable, for it is of the utmost importance that the bases of and reasons for opinions expressed by medical experts should be fully developed. However, there is no reason to believe that the stricken question and answer unfairly prejudiced respondents, and this question and answer may properly assist in determining the merits of the proceeding. These are important considerations here.

The trial examiner's ruling therefore has been reversed.

damentally, however, it appears that pimples are due directly to a local germ infection. No treatment is recognized as an effective cure. In their general treatment the primary step is cleanliness achieved by thorough washing with soap and water. Various kinds of preparations may also be used for local application and sometimes treatment includes the use of ultraviolet light and occasionally vaccines made from cultures of the specific organisms which cause the pimples.

The ingredients of Kleerex are mildly astringent and antiseptic and tend to relieve pain and to alleviate itching. When used over a period of time the product tends to dry up some of the actual secretion on the skin and probably decreases the number of infecting organisms occurring on the surfaces of the skin. The product leaves a pinkish powder deposited on the skin which might be sufficient to cover and thereby conceal small blemishes, but which would not be sufficient to conceal larger or very bad inflammations. The product does not penetrate deeply enough into the layers of the skin to have any effect on the core of pimples, or the seat of the infection.

Based on the foregoing characteristics of pimples and the effects of the ingredients of Kleerex, which were fully disclosed by the testimony of the medical witness and corroborated by the stipulated evidence of respondents, the medical witness expressed the opinion that Kleerex is not an effective treatment for pimples because the ingredients of the preparation do not actually cause pimples to disappear. He stated that if used over a period of time the product might be of some benefit in the treatment of pimples along with other measures such as hygienic and general measures to build up the health of the individual, but that it will not in itself constitute an effective treatment for pimples. The medical witness agreed that when used as directed Kleerex gives relief from itching and accompanying pain and that pimples disappear in time and the blemishes are concealed by the covering provided by the product, but he said that pimples would not disappear as a result of using Kleerex.

Based on this record the Commission is of the opinion that Kleerex may be a useful adjunct in the treatment of pimples to the extent of relieving some of the accompanying discomfort, concealing to some degree their unattractive appearance, and decreasing the likelihood of further local infection of the area of the skin to which applied. It is further of the opinion, however, that Kleerex does not reach the seat of the infection, and does not cause pimples to disappear and, accordingly, that it does not constitute a competent or effective treatment for them. To this extent the Commission has disagreed with the trial examiner's recommended decision, and has caused the accompanying order to cease and desist to be entered.

IN THE MATTER OF
MARTIN J. GOLDSTEIN AND ISABEL GOLDSTEIN TRADING AS REALFLEX PRODUCTS CO.

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

Docket 5413. Complaint, Jan. 7, 1946—Decision, June 14, 1950

Where the words "Champion," "Goodyear," and "Eveready" had been used for many years in the corporate names and as trade names for the spark plugs and other automotive products made by well known companies, and the products of such companies had become well and favorably known to the purchasing public, members of which had developed a preference for them; and thereafter two partners, engaged in the interstate sale and distribution of ignition cable sets or, as sometimes referred to, spark plug cable sets, for use on automobiles—

- (a) Adopted and used the trade names and marks of well and favorably known concerns for their own said products, including the trade names "Champion," "Goodyear," and "Eveready," which they printed and made use of, along with the familiar picture of the winged foot in conjunction with the name Goodyear, on cards and in price lists and other advertising literature, and represented thereby that their said products were made by well known concerns;

When in fact said concerns did not make or have any connection with the spark cable sets sold by them, and aforesaid partners' use of said trade names was without the consent or approval of such concerns; and

- (b) Represented that their sets were made with new cables of the same quality as those used on Government planes in combat through stating in circulars distributed among prospective customers, "Spark Plug Cable Sets Made with the Identical 7 M. M. Stainless Steel Conductor—High Tension Cable Being Used To-day by the U. S. Government Exclusively on all War Planes in Actual Combat";

The facts being that when, due to wartime restrictions, said individuals were unable to purchase new cable directly from manufacturers, they purchased and used large quantities of cable which had been rejected for use on combat planes because of being obsolete or otherwise not meeting Government specifications, and also cable known as scrap material, some containing marks or scars indicating that it had been previously 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 it to purchase substantial quantities of their said products; and with the result of placing in the hands of purchasers of their products for resale a means or instrumentality whereby they could mislead and deceive the purchasing public as to the true facts in regard to said products:

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.