

Syllabus

IN THE MATTER OF

DUON, INCORPORATED AND DONALD H. MILLER

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914 AND OF SEC. 3 OF AN ACT APPROVED OCT. 15, 1914

Docket 5933. Complaint, Oct. 26, 1951—Decision, Feb. 14, 1952

Where a corporation and its president, engaged in the manufacture and competitive interstate sale and distribution of shampoos and other cosmetic preparations, particularly "Vita Fluff Creme Shampoo", "Criterion Creme Shampoo", and "Custombuilt Creme", through some two hundred jobbers to professional beauty shops and operators, primarily;

- (a) Made and imposed conditions, agreements and understandings that its jobbers, distributors and other parties would not sell, handle or otherwise distribute creme shampoos made and sold by its competitors; and, in order to enforce such conditions and their objectives—
- (b) Required jobbers, by coercive and intimidating means, to purchase and deal in shampoos and cosmetic preparations made and sold by it;
- (c) Policed the sales and activities of jobbers through an identifying code placed upon its products ordered by each, and investigated and checked sales made by them;
- (d) Refused or threatened to refuse shipments of its products to jobbers unless they refrained from selling certain shampoos and cosmetic preparations produced and sold by its competitors;
- (e) Refused or threatened to refuse sale of its "Vita Fluff Creme Shampoo", and at times other cosmetic preparations, unless and until such jobbers bought or agreed to buy certain other products made and sold by it, or unless and until, they purchased through it certain advertising material, viz., calendars;
- (f) Refused to fill orders placed with it by certain of its jobbers when it was discovered that they had sold shampoo and other cosmetic preparations made by its competitors; and,
- (g) Refused or threatened to refuse shipment of its products to jobbers who sub-jobbed or sold its products to jobbers with whom it did not deal directly, because latter dealt in products produced or sold by its competitors;

Which acts, practices and methods lessened competition; prevented its jobbers or distributors from receiving the benefits to be derived from purchasing and selling competitive products sought and purchased from other sources by customers of said jobbers; precluded manufacturing competitors from selling certain of their products to purchasers of said corporation's products; and precluded jobbers and distributors of its products who did not agree to purchase and sell the same exclusively, from purchasing and selling such products; and had the capacity and tendency so to do; to the prejudice of the public; and

With the result that the further effect of aforesaid sales and contracts for sale on the aforesaid conditions, agreements and understandings might be to substantially lessen competition in the line of commerce in which said corporation and individual were engaged, and in that in which the

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customers and purchasers of said corporation's products were engaged; and tend to create a monopoly in said corporation in the manufacture and sale of shampoos and other cosmetic preparations:

Held, That the aforesaid acts constituted a violation of Section 5 of the Federal Trade Commission Act, and Section 3 of the Clayton Act.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gerecke* for the Commission.
Loftin, Anderson, Scott, McCarthy & Preston, of Miami, Fla., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A., Sec. 45) and of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (15 U. S. C. A. Sec. 14), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Duon, Inc., a corporation, and Donald H. Miller, an individual, hereinafter referred to as respondents, have violated the provisions of the aforementioned Federal Trade Commission Act and of Section 3 of the aforementioned Clayton Act, in commerce, as "commerce" is defined in said Acts, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Count I

Federal Trade Commission Act Charges

PARAGRAPH 1. Respondent Duon, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and has its main office and principal place of business at Coral Gables, Florida. This respondent also owns and maintains a plant for the manufacture of its products at Dayton, Ohio.

Respondent Donald H. Miller is president of Duon, Inc., and is now, and has been during the times herein mentioned, in active direction and control of the policies and operations of respondent corporation, and in all things hereinabove and hereinafter alleged has been and is now acting on behalf of, with and through said respondent corporation. Respondent Donald H. Miller has his office and principal place of business at Coral Gables, Florida.

PAR. 2. Respondent, Duon, Inc., is now, and for more than three years last past, has been engaged in the manufacture of shampoos and other cosmetic preparations, chief among which are products

bearing the trade names "Vita Fluff Creme Shampoo," "Criterion Creme Shampoo," and "Custombilt Creme," and in the sale thereof to and through jobbers to professional beauty shops and operators primarily. Said jobbers, beauty shops and operators are located throughout the several States of the United States and in the District of Columbia. Said products, when sold as aforesaid, are transported from the place of manufacture at Duon's, Inc., plant in Dayton, Ohio, to the purchasers thereof located in States other than the place of manufacture of said products, and there is now and has been for more than three years last past a constant current of trade and commerce in said products 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, as hereinafter and hereinbefore described, said respondent, Duon, Inc., has been for more than three years last past, and is now, in competition in the sale of shampoos and other cosmetic preparations in commerce between and among the various States of the United States, and in the District of Columbia, with other manufacturers and distributors of shampoos and other cosmetic preparations. Sales were made in various States through some two hundred jobbers for use, consumption and resale within the United States. Respondent's total sales in 1949 were in excess of \$350,000.

PAR. 4. For more than three years last past, and continuing to the present time, respondent Duon, Inc., in the sale of and in connection with the sale of shampoos and other cosmetic preparations to and through jobbers, distributors and other parties, has been making and imposing conditions, agreements and understandings that said jobbers, distributors and other parties would not sell, handle or otherwise distribute creme shampoos manufactured and sold by competitors of said respondent.

PAR. 5. Among such conditions, understandings and agreements, but not limited thereto, or in order to effectuate, enforce and carry out such conditions, agreements and understandings referred to in Paragraph Four above, and the purposes and objectives thereof, respondents have done and are doing the following acts, practices and things, among others:

1. Have required and are requiring jobbers, by coercive and intimidating means, to purchase and deal in shampoos and cosmetic preparations manufactured and sold by respondents.
2. Have policed and are policing the sales and activities of jobbers by means of an identifying code placed upon respondents' products ordered by each jobber, and have investigated and are investigating and checking sales made by said jobbers.

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3. Have refused and are refusing, or threatening to refuse, shipments of their products to jobbers unless said jobbers refrain from selling certain shampoos and cosmetic preparations produced and sold by competitors of respondents.

4. Have refused and are refusing, or threatening to refuse, sale of their product "Vita Fluff Creme Shampoo," and at times other cosmetic preparations unless and until said jobbers buy or agree to buy certain other products manufactured and sold by respondents, or unless and until said jobbers purchase through respondents certain advertising material, viz., calendars.

5. Have refused and are refusing to fill orders placed with respondents by certain of their jobbers when said jobbers are discovered to have sold shampoos and other cosmetic preparations manufactured by competitors of respondents.

6. Have refused and are refusing, or threatening to refuse, shipment of their products to jobbers who sub-job or sell respondents' products to jobbers with whom respondents do not deal directly because said jobbers deal in products produced or sold by competitors of respondent Duon, Inc.

PAR. 6. The acts, practices and methods hereinabove set forth in Paragraphs Four and Five are all to the prejudice of the public; have the capacity and tendency to lessen and do lessen competition; tend to prevent and do prevent the jobbers or distributors of said respondents from receiving the benefits to be derived from purchasing and selling competitive products sought by and purchased from other sources by customers of said jobbers; tend to preclude and do preclude manufacturing competitors of shampoos and other cosmetic preparations from selling certain of their products to purchasers of respondents' products, and of precluding jobbers and distributors of respondents' products, who do not agree to purchase and sell respondents' products exclusively, from purchasing and selling respondents' products; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45).

Count II

Clayton Act Charges

PARAGRAPH 1. Paragraphs One to Five, inclusive, of Count I hereof are hereby adopted and made a part of this Count as fully and with the same effect as though here set forth.

PAR. 2. The acts, practices and methods hereinabove set forth in Paragraphs Four and Five tend to prevent and do prevent the job-

bers or distributors of said respondents from receiving the benefits to be derived from purchasing and selling competitive products sought by and purchased from other sources by customers of said jobbers; tend to preclude and do preclude manufacturing competitors of shampoos and other cosmetic preparations from selling certain of their products to purchasers of respondents' products, and of precluding jobbers and distributors of respondents' products who do not agree to purchase and sell respondents' products exclusively, from purchasing and selling respondents' products.

PAR. 3. The further effect of such sales and contracts for sale on such conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondents are engaged and in the line of commerce in which the customers and purchasers of respondents' products are engaged; and tend to create a monopoly in respondents in the manufacture and sale of shampoos and other cosmetic preparations in the manufacture and sale of which respondents have been and now are engaged.

PAR. 4. The aforesaid acts of respondents constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A., Sec. 45) and of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (15 U. S. C. A. Sec. 14), the Federal Trade Commission on October 26, 1951, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition in violation of the provisions of said Federal Trade Commission Act and with violation of the provisions of section 3 of the aforementioned Clayton Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided for in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding,

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on February 14, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed, and which upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion and order to cease and desist. It is understood that the respondents in consenting to the Commission's entry of said findings as to the facts, conclusion and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.
3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein, in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Duon, Incorporated, is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, and has its main office and principal place of business at Coral Gables, Florida. This respondent also owns and maintains a plant for the manufacture of its products at Dayton, Ohio.

Respondent Donald H. Miller is president of Duon, Incorporated, and as officer of Duon, Incorporated, has his office and principal place of business at Coral Gables, Florida.

PAR. 2. Respondent Duon, Incorporated, is now and for more than three years last past has been engaged in the manufacture of shampoos and other cosmetic preparations, chief among which are products bearing the trade names "Vita Fluff Creme Shampoo, Criterion Creme Shampoo and Custombilt Creme," and in the sale thereof to and through jobbers to professional beauty shops and operators primarily.

PAR. 3. Respondent Duon, Incorporated, is engaged in interstate commerce in the sale or distribution of shampoos and other cosmetic preparations to jobbers and other purchasers located throughout the United States. In the course of its aforesaid sale and distribution of shampoos and other cosmetic preparations respondent, Duon, Incorporated, has shipped and does ship such products to the respective

places of business of its customers located at various points in the United States or in the District of Columbia other than the State of origin of such shipments. Respondent Donald H. Miller has exercised and is exercising active direction and control of the policies and operations of respondent Duon, Incorporated, in interstate commerce, as heretofore and hereinafter set forth.

PAR. 4. In the course and conduct of its said business, as hereinafter and hereinbefore described, said respondent, Duon, Incorporated, has been for more than three years last past, and is now, in competition in the sale of shampoos and other cosmetic preparations in commerce between and among the various States of the United States, and in the District of Columbia, with other manufacturers and distributors of shampoos and other cosmetic preparations. Sales were made in various States through some two hundred jobbers for use, consumption and resale within the United States. Respondent Duon's Incorporated, total sales in 1949 were in excess of \$350,000.

PAR. 5. For more than three years last past, and continuing to the present time, respondent Duon, Incorporated, in the sale of and in connection with the sale of shampoos and other cosmetic preparations to and through jobbers, distributors and other parties, has been making and imposing conditions, agreements and understandings that said jobbers, distributors and other parties would not sell, handle or otherwise distribute creme shampoos manufactured and sold by competitors of said respondent.

PAR. 6. Among such conditions, understandings and agreements, but not limited thereto, or in order to effectuate, enforce and carry out such conditions, agreements and understandings referred to in Paragraph Five above, and the purposes and objectives thereof, respondents have done and are doing the following acts, practices and things, among others:

1. Have required and are requiring jobbers, by coercive and intimidating means, to purchase and deal in shampoos and cosmetic preparations manufactured and sold by respondent, Duon, Incorporated.

2. Have policed and are policing the sales and activities of jobbers by means of an identifying code placed upon respondent Duon's, Incorporated, products ordered by each jobber, and have investigated and are investigating and checking sales made by said jobbers.

3. Have refused and are refusing or threatening to refuse, shipments of Duon's, Incorporated, products to jobbers unless said jobbers refrain from selling certain shampoos and cosmetic preparations produced and sold by competitors of respondent Duon, Incorporated.

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4. Have refused and are refusing, or threatening to refuse, sale of Duon's, Incorporated, product "Vita Fluff Creme Shampoo," and at times other cosmetic preparations unless and until said jobbers buy or agree to buy certain other products manufactured and sold by respondent Duon, Incorporated, or unless and until said jobbers purchase through respondent, Duon, Incorporated, certain advertising material, viz., calendars.

5. Have refused and are refusing to fill orders placed with respondent Duon, Incorporated, by certain of its jobbers when said jobbers are discovered to have sold shampoos and other cosmetic preparations manufactured by competitors of respondent Duon, Incorporated.

6. Have refused and are refusing, or threatening to refuse, shipment of Duon's, Incorporated, products to jobbers who sub-job or sell respondent Duon's, Incorporated, products to jobbers with whom respondent Duon, Incorporated, does not deal directly because said jobbers deal in products produced or sold by competitors of respondent, Duon, Incorporated.

PAR. 7. The acts, practices and methods hereinabove set forth in Paragraphs Five and Six are all to the prejudice of the public; have the capacity and tendency to lessen and do lessen competition; tend to prevent and do prevent the jobbers or distributors of said respondent Duon, Incorporated, from receiving the benefits to be derived from purchasing and selling competitive products sought and purchased from other sources by customers of said jobbers; tend to preclude and do preclude manufacturing competitors of shampoos and other cosmetic preparations from selling certain of their products to purchasers of respondent Duon's, Incorporated, products, and of precluding jobbers and distributors of respondent Duon's, Incorporated, products, who do not agree to purchase and sell respondent Duon's, Incorporated, products exclusively from purchasing and selling respondent Duon's, Incorporated, products.

PAR. 8. The further effect of such sales and contracts for sale on such conditions, agreements and understandings as hereinabove set forth may be to substantially lessen competition in the line of commerce in which the respondents are engaged and in the line of commerce in which the customers and purchasers of respondent Duon's, Incorporated, products are engaged; and tend to create a monopoly in respondent Duon, Incorporated, in the manufacture and sale of shampoos and other cosmetic preparations in the manufacture and sale of which respondents have been and are now engaged.

CONCLUSION

PAR. 9. The aforesaid acts of respondents constitute a violation of section 5 of the Federal Trade Commission Act as amended, and of the provisions of section 3 of the hereinabove mentioned act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

ORDER TO CEASE AND DESIST

I. *It is ordered*, That the respondents, Duon, Incorporated, a corporation, and Donald H. Miller, an individual, directly or indirectly, through the officers, agents, representatives and employees of Duon, Incorporated, or otherwise, in connection with the offering for sale, sale and distribution of shampoos and other cosmetic preparations in commerce, as Congress has defined "commerce" in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or entering into contracts of sale, or distributing or entering into contracts for the distribution, of shampoos and other cosmetic preparations through or with jobbers, distributors or others, on the condition, agreement or understanding that the said jobbers, distributors or others shall not sell or distribute or otherwise deal in all or certain shampoos and cosmetic preparations manufactured, sold or distributed by competitors of respondent Duon, Incorporated.

2. Enforcing or continuing in operation or effect any conditions, agreement or understanding in or in connection with any existing sale or distribution contract, or other arrangement, to the effect that the purchaser, jobber, distributor or other party to the contract or arrangement shall not handle, sell, distribute or trade in shampoos and cosmetic preparations manufactured and distributed by competitors of respondent Duon, Incorporated.

3. Cancelling, or directly or by implication threatening the cancellation of any contract or franchise or selling agreement with respondent Duon's, Incorporated, jobbers, distributors, or others because of the failure or refusal of such jobbers, distributors or others to purchase or deal exclusively in said products sold and distributed by respondent Duon, Incorporated.

4. Refusing or threatening to refuse sale of one or more of respondent Duon's, Incorporated, products to jobbers or distributors or others, unless or until said jobbers or other parties purchase or agree to purchase through respondent Duon, Incorporated, certain other products or advertising material, viz., calendars.

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5. Refusing or threatening to refuse to fill orders placed with respondent Duon, Incorporated, by jobbers or distributors, or others, until and unless said jobbers, distributors or others agree to stop selling certain or all products produced by respondent Duon's, Incorporated, competitors.

6. Enforcing or attempting to enforce any policy of requiring dealers in respondent Duon's, Incorporated, products to refrain from dealing in or handling its competitors' products by refusing or threatening to refuse shipment of respondent Duon's, Incorporated, products to jobbers or distributors because they sub-job respondent Duon's, Incorporated, products.

7. Intimidating, coercing or persuading jobbers or distributors, potential jobbers or distributors, or attempting to intimidate, coerce or persuade jobbers or distributors, or potential jobbers or distributors to sell, handle or deal in respondent Duon's, Incorporated, products exclusively by directly or indirectly informing or notifying such jobbers or distributors, or causing any of them to be informed or notified that if they sell or otherwise deal in such products of a competitor or competitors of respondent Duon, Incorporated, as are competitive with the products sold and distributed by respondent Duon, Incorporated, they will be refused the opportunity to buy, job or distribute respondent Duon's, Incorporated, products; will not have their orders for respondent Duon's, Incorporated, products filled; shipment of respondent Duon's, Incorporated, products to its customers will be refused; they would otherwise be put to a financial or competitive disadvantage; or by using any like or similar means, method or policy to the same end.

8. Requiring or causing any jobber or distributor, or other dealer, to do any of the acts or engage in any of the practices forbidden by the foregoing paragraphs of this order.

II. *It is further ordered*, That the respondents, Duon, Incorporated, a corporation, and Donald H. Miller, an individual, directly or indirectly through the officers, agents, representatives and employees of Duon, Incorporated, or otherwise, in connection with the offering for sale, sale and distribution of shampoos and other cosmetic preparations in commerce, as "commerce" is defined in the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 14, 1914, commonly known as the Clayton Act, to forthwith cease and desist from:

1. Selling or entering into contracts for sale or distributing or entering into contracts for the distribution of shampoos and other cosmetic preparations through or with jobbers, distributors or others, on the

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condition, agreement or understanding that the said jobbers, distributors or others shall not sell or distribute or otherwise deal in all or certain shampoos and cosmetic preparations manufactured, sold or distributed by competitors of respondent Duon, Incorporated.

2. Enforcing or continuing in operation or effect any condition, agreement or understanding in or in connection with any existing sale or distribution contract, or other arrangement, to the effect that the purchaser, jobber, distributor or other party to the contract or arrangement shall not handle, sell, distribute or trade in shampoos and cosmetic preparations manufactured and distributed by competitors of respondent Duon, Incorporated.

III. *It is further ordered*, That the respondents, Duon, Incorporated, and Donald H. Miller, an individual, shall, within sixty (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.

DUON, INCORPORATED,
By its President, DONALD H. MILLER.
(sgd) Donald H. Miller,
DONALD H. MILLER,
(sgd) Donald H. Miller,

Date: January 9, 1952.

LOFTIN, ANDERSON, SCOTT, MCCARTHY, AND PRESTON

By: (sgd) DANIEL P. S. PAUL
Attorneys for Respondents.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 14th day of February, 1952.

IN THE MATTER OF
AR-EX COSMETICS, INC. ET AL.

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

Docket 5411. Complaint, Dec. 27, 1945—Decision, Feb. 19, 1952

The symbol "RX" is, and for a long time has been, in practically universal use by physicians as a part of their directions to pharmacists for the filling of their prescriptions, and it is also used to an extent by pharmacists to indicate that their establishments compound physicians' prescriptions.

While the Commission was unable to find from the record in the instant matter that the use by respondents of said symbol in connection with the advertisement and sale of their cosmetics or soap had the capacity or tendency to induce the beliefs alleged in the complaint, namely, that "each parcel is individually compounded in accordance with a specific prescription therefor", it may well be that the use of said symbol has become so firmly associated in the minds of a substantial number of the public with physicians and their prescriptions that its use in connection with or reference to cosmetics and, perhaps, other products as well, may have the capacity and tendency to engender an erroneous belief of some sort concerning the relationship of a physician to the product.

Where a corporation and the individual who was its president and treasurer, engaged in the interstate sale and distribution of their "Ar-Ex" cosmetics and soap, including their "Cold Cream", "Dry Skin" preparation, "Chap Cream", "Deodorant Cream", "Face Powder", "Indelible Lipstick", "Special Formula (Non-Permanent) Lipstick", "Creme Rouge", "Compact Rouge", "Skin Lotion", "Cosmetic Hose", and "Soap for Dry Skin"; in advertising their said products—

- (a) Falsely represented that they were free from all allergens and irritants; when in fact they contained ingredients which were known to have caused allergic reactions, including skin irritations, in some people;
- (b) Falsely represented that their "Cosmetic Hose" was virtually spot-proof, splash-proof and water-proof; and
- (c) Falsely and misleadingly represented that their "Special Formula Lipstick" had been recommended by Consumers Research, on the basis of a statement in the December 1940 issue of its Bulletin that "lipsticks of the non-permanent variety guaranteed by the distributor to be free from bromo-fluorescein compounds, are available from Ar-Ex Cosmetics, Inc. * * *";

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true, and into the purchase of substantial quantities of respondents' said products by reason 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 practices in commerce.

As respects the charge in the complaint that respondents' use of the symbol "RX" had long been used on the heading on physicians' prescriptions, and had become firmly associated in the minds of many persons with physicians