

Syllabus

IN THE MATTER OF
SCHENLEY INDUSTRIES, INC. ET AL.CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6048. Complaint, Sept. 24, 1952—Decision, Mar. 2, 1954*

Where a corporation which had caused to be created or acquired, and owned directly through subsidiaries, a large number of subsidiary corporations engaged in the production, sale, and distribution of alcoholic beverages; and four subsidiary members of said corporate subsidiary organization, which was utilized, among other purposes, to facilitate the sale and distribution of alcoholic beverages under various trade-marks, brands, and trade names so that at least some of said respondents should sell or distribute to persons other than those owned or controlled by any of them, i. e., those outside the group, such beverages for public consumption under trade-marks, brands, and trade names which were in competition, except insofar as restricted as below set forth, with similar alcoholic beverages likewise sold or distributed such to persons, under different trade-marks, brands, and trade names, by other similar subsidiary respondents; were engaged in the interstate sale of such beverages to wholesalers or others located throughout the country; constituted collectively, along with their affiliated and subsidiary corporations, one of the largest producers and sellers of alcoholic beverages in the United States, the gross sales of which as such were in excess of \$200,000,000 in 1951; and, in the case of each, were in competition with one or more of the other respondents in such sales, except as hindered, lessened, or suppressed as below set forth—

With intent and effect of restricting and hindering their aforesaid competition in commerce in the sale and distribution of such beverages to persons other than those owned or controlled by any of them, through combination, conspiracy, cooperation, and planned common courses of action, and as part thereof, for more than five years past—

- (a) Raised, fixed, stabilized, or maintained prices;
- (b) Discussed, conferred, and exchanged information by correspondence and otherwise between and among themselves or with other concerns affiliated with or wholly or partly owned or controlled by them, for the purpose or with the effect of establishing or maintaining prices, terms, or conditions of sale or of securing adherence to prices, terms, or conditions of sale;
- (c) Met with one another or with retail liquor dealers or with representatives of retail liquor dealer associations for the purpose or with the effect of reaching agreement as to the employment of resale price maintenance contracts or arrangements; of adjusting or increasing resale prices after tax rate changes; and of reaching agreements as to the use of resale price maintenance contracts or arrangement as a means of fixing, raising, stabilizing, or maintaining prices;
- (d) Used common directors or officers as a means of raising, fixing, stabilizing, or maintaining prices; and
- (e) Policed or enforced, or attempted to police or enforce, illegal resale price maintenance contracts or arrangements:

Consent Settlement

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Held, That such acts and practices constituted unfair acts and practices in commerce and unfair methods of competition therein.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.

Chadbourn, Parke, Whiteside, Wolff & Brophy, of New York City, for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 24, 1952, issued and subsequently served its complaint on the respondents named in the complaint, charging them with the use of unfair methods of competition and/or unfair acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, and 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 answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby (and prior to the commencement of the taking of any testimony herein):

1. Admit all the jurisdictional allegations set forth in the complaint as to them.

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.

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

Counsel supporting the complaint having stated that evidence is not available to support the allegations of the complaint other than those covered by the consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, the said consent settlement was accepted by the Commission on March 2, 1954, 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.

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 Schenley Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its main office and principal place of business at 350 Fifth Avenue, New York, New York.

Respondent Schenley Distillers, Inc., is a wholly owned subsidiary of respondent Schenley Industries, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its main office and principal place of business at 350 Fifth Avenue, New York, New York.

Respondent Schenley Distributors, Inc., is a wholly owned subsidiary of respondent Schenley Industries, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of New York, and has its main office and principal place of business at 350 Fifth Avenue, New York, New York.

Respondent Melrose Distillers, Inc., is a wholly owned subsidiary of respondent Schenley Industries, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and has its main office and principal place of business at 122 East 42d Street, New York, New York.

Respondent Brandy Distillers Corporation is a wholly owned subsidiary of respondent Schenley Industries, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its main office and principal place of business at 350 Fifth Avenue, New York, New York.

PAR. 2. Respondent, Schenley Industries, Inc., has caused to be created or acquired, and owns, directly or through subsidiary corporations, a large number of subsidiary corporations engaged in the production, sale and distribution of alcoholic beverages. Among said subsidiaries are the respondents herein, viz: Schenley Distillers, Inc., Schenley Distributors, Inc., Melrose Distillers, Inc., and Brandy Distillers Corporation. This corporate subsidiary organization is utilized, among other purposes, to facilitate the sale and distribution of alcoholic beverages under various trade-marks, brands and trade names, so that at least some of said respondents sell or distribute to persons other than those owned or controlled by any of the respond-

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ents, alcoholic beverages intended for ultimate consumption by the public under trade-marks, brands and trade names which are in competition, except insofar as competition has been restricted and lessened by the acts and practices herein set forth, with similar alcoholic beverages sold or distributed to persons, other than those owned or controlled by any of the respondents under different trade-marks, brands and trade names by other respondents herein, all of whom are subsidiaries of respondent Schenley Industries, Inc.

PAR. 3. Respondents sell or cause to be sold alcoholic beverages to wholesalers or others located throughout the several States of the United States and in the District of Columbia, and said alcoholic beverages, when sold as aforesaid, are transported to said wholesalers or others in states other than the state or place of production or sale of said alcoholic beverages, so that these respondents are now and have been for more than five years last past, engaged in the trade and commerce in said products between and among the various States of the United States and in the District of Columbia.

The respondents named herein and their affiliated and subsidiary corporations are collectively one of the largest producers and sellers of alcoholic beverages in the United States. The gross sales of all members of the Schenley group were in excess of \$200,000,000 in 1951.

PAR. 4. Each respondent has been and now is in competition with one or more of the other respondents named herein, and with others in making, or seeking to make, sales of alcoholic beverages in commerce between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted or suppressed by the combination and practices which they engaged in and which are herein set forth.

For more than five years last past, and continuing to the present time, the respondents hereinbefore named and described have acted for the purpose and with the effect of restricting and hindering competition in commerce in the sale and distribution of alcoholic beverages to persons other than those owned or controlled by any of the respondents, in that they have, through combination, conspiracy, cooperation and planned common course of action, and as part and parcel thereof, done and performed things, acts and practices as follows:

(a) Raised, fixed, stabilized or maintained prices.

(b) Discussed, conferred, and exchanged information by correspondence and otherwise between and among themselves or with other concerns affiliated with or wholly or partly owned or controlled by them for the purpose or with the effect of establishing or maintaining prices, terms, or conditions of sale or of securing adherence to prices, terms, or conditions of sale.

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(c) Met with one another or with retail liquor dealers or with representatives of retail liquor dealer associations for the purpose or with the effect of reaching agreement as to the employment of resale price maintenance contracts or arrangements; of adjusting or increasing resale prices after tax rate charges; of reaching agreements as to the use of resale price maintenance contracts or arrangements as a means of fixing, raising, stabilizing, or maintaining prices.

(d) Used common directors or officers as a means of raising, fixing, stabilizing, or maintaining prices.

(e) Policed or enforced, or attempted to police or enforce, illegal resale price maintenance contracts or arrangements.

CONCLUSION

The aforesaid acts and practices constitute unfair acts and practices and unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Schenley Industries, Inc., a corporation, Schenley Distillers, Inc., a corporation, Schenley Distributors, Inc., a corporation, Melrose Distillers, Inc., a corporation, and Brandy Distillers Corporation, a corporation, directly or indirectly, through their officers, agents, representatives or employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia, of alcoholic beverages, do forthwith cease and desist from entering into, cooperating in carrying out or continuing any combination, conspiracy, cooperation or planned common course of action between any two or more of said respondents engaged in competition in the sale of alcoholic beverages to persons other than those owned or controlled by any of the respondents, or between any one or more of said respondents and any wholly or partly owned subsidiary or affiliated concern not a party hereto, engaged in competition in the sale of alcoholic beverages to persons other than those owned or controlled by any of the respondents, to do or perform any of the following acts or things:

- (1) Raise, fix, stabilize or maintain prices;
- (2) Discuss, confer or exchange information for the purpose or with the effect of establishing or maintaining prices, terms or conditions of sale, or of securing adherence to prices, terms or conditions of sale;

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(3) Exchange information with or meet with any retail liquor dealer or with any representative of any retail liquor dealer association, or others for the purpose or with the effect of reaching agreement as to the employment of any resale price maintenance contract or arrangement, of adjusting or increasing resale prices after tax rate changes, or of reaching agreement as to the use of any resale price maintenance contract or arrangement as a means of raising, fixing, stabilizing or maintaining prices;

(4) Use common directors or officers as a means of raising, fixing, stabilizing, or maintaining prices;

(5) Enter into any resale price maintenance contract or arrangement, or police, enforce, or attempt to police or enforce any such contract or arrangement.

Provided, That nothing herein contained shall be construed to limit or otherwise affect any right with respect to resale price maintenance contracts or arrangements which any of the respondents may have under Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (Public Law 542, 82d Cong., Chap. 745, Second Session, Approved July 14, 1952).

Provided further, That if as a result of any valid statute or regulation of any State, territory or possession or subdivision thereof, adopted pursuant to the Twenty-first Amendment to the Constitution of the United States, relating to the offering for sale, sale or distribution of alcoholic beverages, respondents, or any of them or one or more of their wholly or partly owned subsidiaries or affiliated concerns, as a condition of doing business in said State, territory, possession or subdivision thereof, engage in acts or practices which, upon a prima facie showing on the record herein (not overcome by answer) may be construed by the Federal Trade Commission as violating any provision of the foregoing order, the Commission agrees that it will reopen this order solely for the purpose of determining whether to alter, modify or set aside such provision and that it will suspend such provision of this order, pending disposition of the issue as to whether such provision should be altered, modified or set aside. This proviso shall be without prejudice to, and nothing herein contained shall be construed to limit or otherwise affect, any defence which may otherwise be available to any respondent in any proceeding to enforce the foregoing order or based on an alleged violation thereof.

It is further ordered, That Bernheim Distilling Co., a corporation, is hereby dismissed from this proceeding.

It is further ordered, That Gibson Distillers, Inc., a corporation, The Straight Whiskey Distilling Company of America, a corporation, and Three Feathers Distributors, Inc., a corporation, are hereby dismissed

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from this proceeding. Provided, however, that the dismissal of these three corporations is without prejudice and is not to be construed in any sense as exempting said corporations from the application of any of the provisions of the order to cease and desist as are applicable to any concern wholly or partly owned or controlled by or affiliated with any one or more of the respondents herein.

It is further ordered, That the respondents shall, within twelve months after the 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.

Schenley Industries, Inc.

By (Sgd) S. B. Becker

SIDNEY B. BECKER,

Executive Vice President.

Schenley Distillers, Inc.

By (Sgd) Milton B. Seasonwein

MILTON B. SEASONWEIN,

Vice President.

Schenley Distributors, Inc.

By (Sgd) E. C. Gassenheimer

E. C. GASSENHEIMER,

Vice President.

Melrose Distillers, Inc.

By (Sgd) Milton B. Seasonwein

MILTON B. SEASONWEIN,

Vice President.

Brandy Distillers Corporation

By (Sgd) Edward K. Dreier

EDWARD K. DREIER,

President.

Date: November 20, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 2nd day of March 1954.

IN THE MATTER OF
PAUL R. DOOLEY, INC. ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6109. Complaint, July 20, 1953, Mar. 2, 1954

Where two corporations and three officers thereof, engaged in the interstate sale and distribution of seven medicinal preparations for external use in the treatment of conditions of the hair and scalp;

In carrying on their business through the use of several methods in connection with the sale of their various preparations, in accordance with which they (1) invited persons, through extensive advertising, to come to their place of business for examination and treatment when certain series of treatments were recommended and, if agreed to, certain of their medicinal preparations were sold to such persons and thus used; (2) sold to persons thus induced to visit their offices home treatment kits, with instructions, consisting of certain of their preparations and a hair brush; and (3) following advertisements which extensively advertised in the places concerned the impending visits of their traveling representatives and invited the public to call upon them for examination and advice, sent to various cities and towns such representatives who recommended purchase of the above-described home treatment kits; directly and by implication through statements and representations in their said advertisements, principally in newspapers and other periodicals—

- (a) Falsely represented through the use of their said preparations, methods, and treatments by their operators in their places of business and by purchase and use of said preparations in users' homes, that baldness and hair loss would be prevented and overcome; that fuzz and thin hair would be replaced by thick hair; that all local scalp disorders would be prevented and overcome; and that itching of the scalp, dandruff, excessive dryness and oiliness of the scalp would be permanently eliminated;
- (b) Represented, as aforesaid, that no one else had access to the formulas for their preparations through which such alleged results were accomplished; notwithstanding the fact that they were known to others in the same business and there was nothing exclusive about their right to use them;
- (c) Represented, as aforesaid, that baldness was not inherited and in 95% of the cases was due to infections, diseases of the scalp, neglect, and abuse; the facts being that while some cases of baldness may be due to such conditions, most cases are due to hereditary factors and to that extent cannot be prevented; and
- (d) Falsely represented through referring to their operators as "Trichologists" and by other means in their advertising, that said operators had had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair:

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. Earl J. Kolb*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Stephens, Jones, La Fever & Smith, of Los Angeles, Calif., for respondents.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 20, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, 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 answer to said complaint heretofore filed, and which upon the 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 the 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.
4. State that respondent Dooley Hair Experts, Inc., makes no sales or deliveries to customers located outside the State of California.

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 respondents consent may be entered herein in final disposition of this proceeding are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Paul R. Dooley, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of California. This respondent is doing business under the

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 March 2, 1954, 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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fictitious name of Associated Hair Experts and has also done business under the names of S. J. Mueller Associates and Mueller Hair & Scalp Specialists. Said corporation has its principal office in the City of San Diego, California.

Respondent Paul R. Dooley Associates was also a corporation organized and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 3872 Fifth Avenue, San Diego, California. The name of this corporation was originally Mueller Hair Experts, Inc., until it was changed in 1952 to Paul R. Dooley Associates. The name has recently been changed again to Dooley Hair Experts, Inc.

Individual respondents Paul R. Dooley, Eugene P. Dooley, and Constance R. Dooley are officers of the said corporate respondents and in their capacity as said officers they have and do now formulate, direct, and control the policies, acts, and practices of said corporate respondents. Said individual respondents also have their offices and place of business at 3872 Fifth Avenue, San Diego, California. The corporate and individual respondents act and have acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their business, the respondents for several years last past have been engaged in the sale and distribution of various medicinal preparations for external use in the treatment of conditions of the hair and scalp, including sales of such preparations through use of them in connection with treatments administered by respondents, their representatives and employees. Respondents cause said preparations when sold, other than in connection with treatment as aforesaid, to be shipped from their places of business in the State of California to purchasers thereof located in other States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said medicinal preparations in commerce between and among the various States of the United States.

PAR. 3. Respondents have adopted and use several methods in connection with the sale of their various preparations. First, respondents, through extensive advertising, invite persons to come to their place of business for examination and treatment, whereupon certain series of treatments are recommended. If said treatments are agreed to, certain of respondents' medicinal preparations are sold to such persons and used in the process of such treatments. Second, respondents sell home treatment kits with instructions for use to persons induced to visit respondents' said offices by virtue of said advertisements. These kits consist of certain of respondents' medicinal preparations

for the treatment of the hair and scalp and a hair brush. Third, respondents send travelling representatives to various cities and towns, whose visits are extensively advertised in the places to be visited, which advertisements invite the public to call upon said representatives for examination and advice. These representatives recommend purchase of the home treatment kits above described.

PAR. 4. In the course and conduct of their aforesaid business, respondents disseminated and caused the dissemination of advertisements concerning their said preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the sale of their said medicinal preparations; and respondents also disseminated and caused the dissemination of advertisements concerning their said preparations, by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, principally in newspapers and other periodicals, disseminated and caused to be disseminated as hereinabove set forth, are the following:

GOING BALD

Noted hair specialist analyzes scalp troubles free. Demonstrates new methods that stop hair loss, dandruff, grow stronger thicker hair.

The home treatment combines physical and chemical therapy which the individual can easily administer at home.

Because of this new method of home treatment it is no longer necessary to take expensive, troublesome office treatments.

Baldness most commonly results from infections, local disease of the scalp, neglect and abuse. At least 95 percent of today's baldness is not necessary. It isn't inherited—we inherit hair, not baldness. It isn't due to any rare and untreatable disease. It can be prevented.

Consult the Dooley Trichologists. * * * Let us determine the cause of your trouble by scientific methods, then let us help you regain hair and scalp health—and grow thicker, stronger hair. This is accomplished by the use of exclusive formulae, which eliminate dandruff, clogged follicles, itching scalp or any one or all of the 14 local scalp disorders which lead to baldness.

Enjoy thick healthy hair all your life.

If your scalp can still grow "fuzz" come to the Dooley clinic for free examination.

Are you worried about baldness? Thin hair? Dandruff? Itching scalp? Excessively dry or oily hair? Better get professional advice now and save your hair before it's too late.

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PAR. 5. The formulas for respondents' preparations as furnished by them are as follows:

No. 22:

Eurosol	40
Alkolave	750
Australian Tea Tree Oil	2%
Distillata to 1,000.	

No. 11:

Eurosol	30
Salicylic Acid	5
Tincture Cantharides	40
Alcohol to 1,000.	

No. 14:

Salicylic Acid	2
Oxyquinoline Sulfate	1
Alcohol	64
Distillata to 100.	

No. 65:

Oleoresin Capsicum	25 gr.
Menthol	5 dr.
Olive Oil	4 oz.
Castor Oil	1 dr.
Mineral oil to make one quart.	

No. 50:

Oleoresin Capsicum	30 gr.
Methyl Salicylate	5 gr.
Olive Oil (Squibb)	4 oz.
Castor Oil	1 dr.
Mineral oil to make 1 qt.	

No. 24:

Eurosol	20
Castor Oil	40
Tincture Cantharides	100
Alcohol (grain)	500
Alkolave to 1,000.	
Menthol dr	5

No. 60:

Salicylic Acid	6
Glycerine	60
Alkolave to make 1,000.	
Australian Tea Tree Oil	2%

PAR. 6. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, respondents have represented directly and by implication that through the use of their said preparations, methods and treatments by their operators in their places of business and by purchasers of said preparations in their homes, baldness and hair loss will be prevented and overcome; that hair and scalp health will be regained in all instances;

that fuzz and thin hair will be replaced by thick hair; that all local scalp disorders will be prevented and overcome; that itching of the scalp, dandruff, excessive dryness and oiliness of the scalp will be permanently eliminated and that no one else has access to the formulas for their preparations through which these results are accomplished. Respondents have also represented directly and by implication that baldness is not inherited and in 95 percent of the cases is due to infections, disease of the scalp, neglect and abuse. By referring to their operators as "Trichologists" and by other means in said advertising, respondents have represented directly and by implication that their operators have had competent training in dermatology, and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

PAR. 7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth, and in fact, regardless of the exact formulas or methods of application and whether used alone or in conjunction with heat, massage, combing, brushing, shampooing or any other manner of treatment of the hair and scalp, respondents' preparations will have no effect in either preventing or overcoming baldness or hair loss; will not cause hair and scalp health to be regained in all instances. While some cases of baldness may be due to infections, local disease of the scalp, neglect and abuse, most cases are due to hereditary factors and to that extent cannot be prevented; said preparations will not cause "fuzz" and thin hair to be replaced by thicker hair; will not prevent or overcome all local scalp disorders; and will not permanently eliminate itching of the scalp, dandruff or excessive dryness or oiliness of the scalp. Respondents' formulas are known to others in the same business, and there is nothing exclusive about respondents' right to use them. None of the individual respondents nor any of respondents' operators have undergone competent training in dermatology or any other branch of medicine pertaining to diagnosis or treatment of scalp disorders affecting the hair.

PAR. 8. The use by the respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, 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 such statements and representations are true and to induce a substantial portion of the purchasing public to visit respondents' office for the purpose of obtaining examination and treatment and to purchase respondents' preparations hereinabove referred to, because of such erroneous and mistaken belief, engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of respondents as hereinabove found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents Paul R. Dooley, Inc., a corporation, Dooley Hair Experts, Inc., a corporation, and the officers of said corporations, and Paul R. Dooley, Eugene P. Dooley and Constance R. Dooley, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale or sale of treatments of the hair and scalp in which the various medicinal preparations as set out in the findings herein or any other preparation of substantially similar composition or possessing substantially similar properties are used, or in connection with the sale, offering for sale or distribution of the various medicinal preparations as set out in the findings herein, for use in the treatment of the hair and scalp, or of any other preparations of substantially similar composition or possessing substantially similar properties, 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 the use of said preparations, alone or in conjunction with, the methods of treatments by respondents or their employees in respondents' places of business or that the use of said preparations by purchasers in their homes will:

(1) Have any effect in preventing or overcoming baldness or hair loss;

(2) Cause hair or scalp health to be regained in all instances;

(3) Cause "fuzz" or thin hair to be replaced by thick hair;

(4) Prevent or overcome all scalp disorders;

(5) Cause the permanent elimination of itching of the scalp, dandruff, dryness or oiliness of the scalp;

(b) That baldness is usually caused by infection, local disease of the scalp, neglect or abuse;

(c) That the formulas used are exclusively their own or are unknown to, or cannot be used by, others;

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing or which is likely to in-

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duce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in subparagraphs (a) and (b) of Paragraph 1 hereof or which represents, directly or by implication, that the respondent Paul R. Dooley or any of respondents' employees who have not had competent training in dermatology or other branches of medicine having to do with the examination and treatment of scalp disorders affecting the hair have had such training or are trichologists.

It is further ordered, That respondents 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.

Paul R. Dooley, Inc.,

a corporation,

By (Sgd) Paul R. Dooley,

President.

Dooley Hair Experts, Inc.,

a corporation,

By (Sgd) Paul R. Dooley,

President.

(Sgd) Paul R. Dooley

PAUL R. DOOLEY

(Sgd) Eugene P. Dooley

EUGENE P. DOOLEY

(Sgd) Constance R. Dooley

CONSTANCE R. DOOLEY,

Individuals.

(Sgd) Peter W. Irwin

Counsel for all of the above
named respondents.

Date: Feb. 1, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this day of March 2, A. D., 1954.

IN THE MATTER OF
TRACTOR TRAINING SERVICE ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5943. Complaint, Jan. 18, 1952—Decision, Mar. 3, 1954

Where two corporations, with principal offices and places of business at Portland, Ore., and Chicago, Ill., respectively, and an individual who was an officer of both, their principal stockholder and in control of their business policies and activities; engaged in the sale and distribution by mail of a course of study and instruction in diesel engines and tractor equipment;

In promoting the sale of their said courses and to secure inquiries from prospective purchasers to whom oral sales presentations would be made in their homes, in advertisements throughout the midwestern and the western states and in Alaska, and through other advertising matter, including reply postal card and bulletin and circulars forwarded to prospects along with a questionnaire, and through oral statements in the course of sales presentations during which additional promotional matter was exhibited to prospective enrollees contacted through such advertising—

- (a) Represented directly and by implication that there was a great demand for graduates of their schools as diesel mechanics, servicemen, and in similar positions, and that employment in such positions was available and assured upon the completion of their course of study and instruction;

The facts being there was no significant demand for such graduates whose training was limited to completion of their courses of study through correspondence, and the demand for men with limited mechanical experience in diesel engines and the training in mechanical theory afforded by their course was not great or unusual; graduates would at best be hired as helpers, apprentices, or sweepers unless they had had shop experience or the substantial equivalent in repairing and servicing diesel engines; employers of diesel and other skilled mechanics generally speaking prefer to promote their own men with proven shop experience when better positions become available, rather than to hire men from the outside for such positions; and, in many establishments, as a condition to employment experience as a journeyman or other work qualifications of an applicant, are passed on by examining committees of unions;

- (b) Represented additionally through their salesmen that the schools had working agreements with manufacturers of diesel engines and tractors and other diesel equipment to place graduates in employment upon completion of their courses of instruction and that, upon such completion, said schools would secure employment for graduates in the diesel industry and secure such employment for them as a regular thing;

The facts being they had no such connection or working agreements; while they maintained a placement department and communicated with retail diesel and tractor dealers, other employers of diesel mechanics, and others, as to job vacancies, circulated information thus secured, with details as to pay and conditions of employment usually omitted, and furnished graduates expressly requesting placement help information as to any jobs believed