

Modified Order

51 F. T. C.

IN THE MATTER OF

CHARLES ANTELL, INC. ET AL.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE
AND DESIST, AND OPINION OF THE COMMISSION*Docket 6102. Order and Opinion, Nov. 26, 1954*

Order modifying cease and desist order of December 19, 1953,¹ to bring it into conformity with the stipulated facts so as to prohibit representations that the main ingredient from a percentage standpoint in respondents' product "Charles Antell Formula No. 9" was lanolin, and that said product would remedy the cause of cracked or split hair.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Bernard H. Herzfeld, of Baltimore, Md., for respondents.

Modified Order

It is ordered, That the respondent Charles Antell, Inc., a corporation, and its officers and respondents, Charles D. Kasher, Leonard L. Rosen and Julius J. Rosen, individually, and respondent T. A. A., Inc., a corporation, and its officers, and respondents' respective agents, representatives and employees, directly or through any corporate, or other device, in connection with the offering for sale, sale or distribution of Charles Antell Formula No. 9 and Charles Antell Shampoo, or any products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from, directly or indirectly:

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 through inference,

(a) With respect to Charles Antell Formula No. 9:

(1) That the main ingredient in said product from a percentage standpoint is lanolin;

(2) That lanolin is the only natural oil or grease that is absorbed by the hair or scalp or that the lanolin in said product is absorbed by the scalp to the extent that it will reach the roots of the hair;

(3) That the lanolin in said product will cleanse the hair;

¹ 50 F. T. C. 543.

(4) That its use will loosen the scalp or constitute an effective treatment for dandruff or infected scalp;

(5) That it will remedy the cause of cracked or split hair;

(6) That the use of said product, as directed or otherwise, will promote the growth of the hair;

(7) That the use of said product will give the hair health or vitality, except to the extent that brushing, pulling and massaging of the hair and scalp with said product regularly serves as a stimulant to circulation around the hair roots and thereby helps maintain normal scalp and hair health;

(8) That the use of said products will not change the color of the hair or will not leave grease on the hair, unless such representation is limited to cases where said product is used in moderate amounts as directed;

(9) That its use will cause the hair to curl;

(10) That its use will prevent the loss of hair or baldness.

(b) With respect to Charles Antell Shampoo: That the hormones present in said product will have any cleansing action on the hair.

2. Disseminating, or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of either of said products, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That respondents Charles Antell, Inc., a corporation, and its officers, and respondents Charles D. Kasher, Leonard L. Rosen and Julius J. Rosen, individually, and respondent T. A. A., Inc., a corporation, and its officers, and respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of the product known as Hexachlorophene Soap, or any other soap or product of substantially similar properties, whether sold under the same name or any other name, do herewith cease and desist from:

1. Misrepresenting, directly or by implication, the effectiveness of said soap as a cleansing agent.

2. Representing, directly or by implication, that the use of said soap will prevent impetigo or cradle cap in case of babies or prevent the development of pimples, boils, blackheads or other skin blemishes generally.

Modified Order

It is further ordered, That respondents Charles Antell, Inc., a corporation, and its officers, and respondents Charles D. Kasher, Leonard L. Rosen and Julius J. Rosen, individually, and respondent T. A. A., Inc., a corporation, and its officers, and respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any article of merchandise do forthwith cease and desist from representing, directly or by implication:

That it is being sold at a reduced price when such price is the price at which the article is usually and regularly sold.

The order is published as modified by Commission order reopening proceeding and modifying order to cease and desist, as follows:

This matter having come on to be heard by the Commission upon respondents' motion to modify the order entered herein on December 18, 1953, and answer thereto by counsel supporting the complaint; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that this proceeding should be reopened and the order to cease and desist modified in the respects requested by the respondents:

It is ordered, That this proceeding be, and it hereby is, reopened for the purpose of modifying paragraphs 1 (a) (1) and 1 (a) (5) of the order to cease and desist entered herein on December 18, 1953.

It is further ordered, That paragraph 1 (a) (1) of said order to cease and desist, which now reads:

"That the main ingredient in said product is lanolin"; be, and it hereby is, modified to read:

"That the main ingredient in said product from a percentage standpoint is lanolin"

and that paragraph 1 (a) (5) of said order to cease and desist, which now reads:

"That it will remedy the cause of cracked or split hair or will remedy the damage caused by improper dyeing of the hair, permanents, burning or other harmful practices having to do with the hair";

be, and it hereby is, modified to read:

"That it will remedy the cause of cracked or split hair."

Commissioner MEAD dissenting for the reason that he would reopen and remand the case for the purpose of taking evidence as to the factual questions raised by respondents' motion.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

This is a motion by respondents for the modification of an order to cease and desist on the ground that certain parts of said order are not justified by the facts.

The complaint charged unfair and deceptive acts and practices in the advertising of a product for the hair known as Charles Antell Formula No. 9. A stipulation was entered into as to the facts and the initial decision based thereon became the decision of the Commission December 18, 1953.

In paragraph 1 (a) (1) of the order the respondents were directed to cease and desist from representing "That the main ingredient in said product is lanolin." Respondents' motion requests that said inhibition should be modified to read "That the main ingredient in said product from a percentage standpoint is lanolin." The reason for the modification is that the stipulated facts are that "The main ingredient in said product from a percentage standpoint is not lanolin, but the lanolin present in the product is of full strength or maximum potency."

Counsel supporting the complaint makes no objection to this part of the motion.

The suggested amendment would bring the order into conformity with the agreed facts and therefore the motion with regard to paragraph 1 (a) (1) is granted.

"(5) That it will remedy the cause of cracked or split hair *or will remedy the damage caused by improper dyeing of the hair, permanents, burning or other harmful practices having to do with the hair.*"

Respondents' motion would strike out the *italicized* part of the above order. On this point the stipulation provides as follows:

"The use of said product will make the hair less brittle and more pliable and improve the appearance of hair that is cracked, split or otherwise damaged by improper dyeing, permanents, burning and other harmful practices, but its use will not remedy the cause of cracked or split hair."

The finding made by the Hearing Examiner was in similar language.

The agreed facts clearly set forth that the use of the formula will not remedy the *cause* of cracked or split hair and that part of the order is not questioned. There is no direct statement in the stipulation or findings as to whether use of the product will or will not remedy the *damage* caused by improper dyeing, permanents, burning or other harmful practices unless improving of the appearance of damaged hair can be said to be a remedy of such damage. It appears that

cracked or split hair may be caused by improper dyeing, permanents, burning and other harmful practices. It also appears that there may be other damage but just what that damage may be is not disclosed nor do the facts set out whether use of the product will or will not remedy such damage.

Counsel supporting the complaint argues that the clear and obvious meaning of the finding is "that where there is hair that is cracked and split due to the enumerated causes, the efficacy of said formula No. 9 is limited to improving the appearance of the hair."

This is a possible construction of the sentence; however, the finding, together with any inference properly drawn therefrom, are not clear enough to warrant that part of the order which is in question.

It is therefore directed that respondents' motion be granted; that paragraph 1 (a) (1) be modified to read as follows:

"(1) That the main ingredient in said product from a percentage standpoint is lanolin."

and that paragraph 1 (a) (5) be modified to read as follows:

"(5) That it will remedy the cause of cracked or split hair."

It is further directed that an order in accordance herewith be prepared and filed.

Commissioner Mead dissents for the reason that he would reopen and remand the case for the purpose of taking evidence as to the factual questions raised by respondents' motion.

Complaint

IN THE MATTER OF
BROOKLYN PAINT & WALLPAPER DEALERS
ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6224. Complaint, June 29, 1954—Decision, Dec. 2, 1954

Consent order requiring a trade association and its 182 member retailers of paint and wallpaper to cease concertedly classifying particular purchasers or groups of purchasers as legitimate or illegitimate, acting to induce suppliers to refrain from selling to disapproved dealers, and boycotting suppliers who disregarded their requests.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Everette MacIntyre for the Commission.

Proskauer, Rose, Goetz & Mendelsohn, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the said Act, the Federal Trade Commission, having reason to believe that the Brooklyn Paint & Wallpaper Dealers Association, Inc., its officers, Board of Governors and members, named or referred to in the caption hereof and hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Brooklyn Paint & Wallpaper Dealers Association, Inc., is an association of members organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business located at 166 Montague Street, Brooklyn, New York. Sometimes hereinafter it will be referred to as respondent "Association." The membership of the said respondent Association is composed of approximately 182 individuals, partnerships and corporations located in the metropolitan area of New York, New York, and who are engaged in the distribution of paint and wallpaper and kindred lines of merchandise at retail. All members of respondent Association are hereby made respondents herein and sometimes hereinafter will be referred to as respondent "Members."