

Complaint

IN THE MATTER OF

MERIT PHARMACAL COMPANY ET AL.

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

Docket 6314. Complaint, Mar. 22, 1955—Decision, Aug. 31, 1955

Consent order requiring sellers in Chicago to cease making false claims in advertising as to the effectiveness of their "X-TRON" hair and scalp preparations.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Henry Junge and *Mr. Richard G. Bodenshtab*, 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 Merit Pharmacal Company, a corporation, and A. B. Marks, M. A. Marks and A. Skadler, individually and as officers of Merit Pharmacal Company and also doing business as Apex Pharmacal Company and as Apex Pharmacal Distributing Company, and Anthony J. Kemp, individually, hereinafter referred to as 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. Respondent Merit Pharmacal Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3704 W. North Avenue, Chicago, Illinois. Respondents A. B. Marks, M. A. Marks, and A. Skadler are the officers, and Anthony J. Kemp is the General Manager of the corporate respondent. These individuals formulate and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter alleged. The individuals also are and have been doing business from the same address as that of the corporate respondent as Apex Pharmacal Company and as Apex Pharmacal Distributing Company. The address of respondents A. B. Marks and M. A. Marks is 2626 W. Iowa Street, Chicago, Illinois, that of respondent A. Skadler is the same as that of the corporate respondent;

Complaint

52 F. T. C.

and the address of respondent Anthony J. Kemp is 460 North Walnut Street, Elmhurst, Illinois.

PAR. 2. The said respondents are now and have been since April 1952 engaged in the business of selling and distributing cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp. Said respondents cause said preparations, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations between and among the various States of the United States. The business of said respondents in said preparations has been substantial.

PAR. 3. The said preparations, consisting of an ointment and a lotion, are sold under the trade name of X-TRON and are composed of the following ingredients:

<i>Ointment</i>	<i>Lotion</i>
Isopropyl Alcohol	Polyethylene Glycol 400
Benzyl Alcohol	Monostearate
Alkyl Dimethyl	Benzocaine
Benzyl Ammonium	Vitamin A Palmitate
Chloride	34000 units/oz.
Lactic Acid (to pH 5)	Vitamin D ₃ 7000 units/oz.
Sodium Lactate (add	
Sodium Hydroxide	
to pH 6)	

The directions for use provide that the ointment be applied to the hair and scalp followed by the lotion.

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

215

Complaint

and over the radio, disseminated and caused to be disseminated as hereinabove set forth are the following:

If you are suffering from an unsightly scalp and hair condition DON'T GIVE UP HOPE! X-TRON FORMULA has brought aid and relief to thousands of people who thought they were destined to go through life with an itchy scalp, dandruff and falling hair. * * *

We unconditionally guarantee to Stop Itching Scalp
Eliminate Dandruff Completely
Stop Falling Hair
Help Renew Hair Growth Or your money back

X-TRON actually has grown new hair on bald heads

* * * the X-TRON liquid hair medicine and the X-TRON hair and scalp salve, the same combination formula, that stopped hair loss, stopped falling hair by the handful, stopped dandruff * * * the formula that did all this in closely observed clinical research trials you have already read about.

PAR. 5. 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 by the use of respondents' preparations: (a) dandruff, itching and irritation of the scalp will be permanently eliminated, (b) excessive hair fall will be stopped, (c) baldness will be prevented and overcome, and (d) new hair will be induced to grow.

PAR. 6. 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 formula or the combination of the ingredients or preparations, or the method of application, the use of respondents' preparations (a) will not permanently eliminate dandruff, itching, or irritation of the scalp; (b) will not stop excessive hair fall; (c) will not prevent or overcome any type of baldness or hair loss or correct these conditions or have any favorable influence on their underlying causes; and (d) will not induce new hair to grow.

PAR. 7. 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 mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of said preparations, because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute

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

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 22, 1955, issued and subsequently served its complaint on respondents herein, who have their principal office and place of business at 3704 W. North Avenue, Chicago, Illinois and are engaged in the business of selling and distributing cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp. The address of individual respondents, A. B. Marks and M. A. Marks, is 2626 W. Iowa Street, Chicago, Illinois; that of individual respondent A. Skadler is 3704 W. North Avenue, Chicago, Illinois; and that of individual respondent Anthony J. Kemp is 460 N. Walnut Street, Elmhurst, Illinois.

On May 12, 1955, there was filed with the Federal Trade Commission a stipulation between the parties providing for entry of a consent order, which stipulation appears of record. By the terms thereof all respondents admit all the jurisdictional allegations set forth in the complaint; stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; stipulate that the agreement is for settlement purposes only and does not constitute an admission by respondent that they have engaged in any violation of law.

The parties to such stipulation expressly waive the filing of an answer; a hearing before the hearing examiner or the Commission; the making of findings of fact or conclusions of law by either; the filing of exceptions or oral argument before the Commission, and all other and further procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

Respondents further agree in said stipulation that the order hereinafter entered shall have the same force and effect as if made after full hearing, presentation of evidence and findings and conclusions thereon, and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation. Said stipulation further provides that it, together with the complaint, may be used in construing the terms of the aforementioned order, which order may be altered, modified or set aside in the manner provided by statute for the orders of the Commission and said stipulation further provides that it is subject to approval in accordance with Rules V and XXII of the Commission's

215

Order

Rules of Practice and that said order shall have no force and effect unless and until it becomes the order of the Commission.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest and in conformity with the action contemplated and agreed upon by such stipulation makes the following order:

ORDER

It is ordered, That the respondent Merit Pharmacal Company, a corporation, and its officers and respondents A. B. Marks, M. A. Marks and A. Skadler, individually and as officers of said corporation, and doing business as Apex Pharmacal Company and as Apex Pharmacal Distributing Company, or under any other name or names, and Anthony J. Kemp, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of X-TRON preparations or of any 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 that the use of said preparations will:

- (a) Cause the permanent elimination of dandruff, itching or irritation of the scalp;
- (b) Stop excessive hair fall;
- (c) Have any effect in preventing or overcoming baldness;
- (d) Induce the growth of new hair.

2. Disseminating or causing to be disseminated by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in subparagraphs (a), (b), (c), or (d) of paragraph 1. hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of August, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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 the order to cease and desist.

IN THE MATTER OF
MASTERLINE CORPORATION ET AL.

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

Docket 6291. Complaint, Jan. 26, 1955—Decision, Sept. 1, 1955

Order requiring a corporate seller in Philadelphia (individual respondents having been dismissed) in advertising aluminum storm doors, aluminum storm windows, and aluminum awnings, to cease misrepresenting the terms and conditions of sale, guarantees, indorsements, protective features, prices, and combination offers.

Mr. Daniel J. Murphy and Mr. William L. Taggart for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 26, 1955, issued and subsequently served its complaint in this proceeding upon the respondents Masterline Corporation, a corporation, and Morris Marder, Henry Yusem, Myrna Yusem and Rita Marder, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. In the "Notice" portion of said complaint there was set out a provisional order with the statement that such order shall issue unless the respondent shall file an answer within the time designated in the complaint and appear at the time and place fixed for the hearing.

Subsequent thereto, the respondent Masterline Corporation, a corporation, failed to file its answer in this proceeding or to appear before the hearing examiner on April 6, 1955, the date set for initial hearing in the complaint, and was declared in default. Upon motion of the attorney in support of the complaint the proceeding was continued to May 12, 1955, at which time said attorney presented an affidavit executed by the individual respondents Morris Marder and Henry Yusem, stating that they were officers of the respondent corporation at the time of the issuance of the complaint and that the respondents Myrna Yusem, wife of Henry Yusem, and Rita Marder, wife of Morris Marder, were nominal directors and nominal officers