

IN THE MATTER OF
MILLARD, INC., ET AL.

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

Docket 6427. Complaint, Oct. 17, 1955—Decision, Mar. 30, 1956

Order vacating and setting aside—for the reason that respondents were out of business and had no intention of resuming—initial decision prohibiting false advertising in connection with the sale of hair and scalp preparations and a “new” method of treatment for baldness or thinning hair for use by persons in their homes.

Mr. Morton Nesmith for the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents in this proceeding are charged with violating the Federal Trade Commission Act by the dissemination of false and deceptive advertising pertaining to a suggested course of treatment and the use of certain medical and cosmetic preparations sold by them to induce hair growth and prevent baldness. The complaint was issued October 17, 1955, mailed October 20, 1955, and served on respondents October 24, 1955. No answer was filed by respondents and no appearance was made by any of them at the initial hearing held January 10, 1956. They are, therefore, in default. Under the rules of the Commission and in accordance with the Notice, which is attached to and part of the complaint duly served upon respondents, the hearing examiner is authorized to and does find the facts to be as alleged in the complaint. All the transactions at the hearing, including the submission by counsel supporting the complaint of a proposed cease and desist order, were duly recorded and the transcript thereof filed in the office of the Commission. No request for the submission of proposed findings and conclusions has been received, and the proceeding before the hearing examiner has been closed.

Upon this record, the following findings of fact are made:

1. Respondent Millard, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business located at 2511 East 75th Street, Chicago, Illinois.

Individual respondents, E. V. Safranski and Eugene J. Dooley, are president and secretary-treasurer, respectively, of the corporate respondent, Millard, Inc. These individual respondents formulate,

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direct and control the advertising and sales activities and policies of said corporate respondent.

3. Respondents are now and for the past year have been engaged in the business of selling and distributing various cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp by self-application in the home. Respondents have their said preparations compounded for them by others in Chicago, Illinois, and cause said preparations to be transported from the place of their manufacture to the respondents' office and to individual purchasers located in various States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said cosmetic and medicinal preparations in commerce among and between various States of the United States.

3. In the course and conduct of their business the respondents, by means of newspaper advertisements and otherwise, solicit members of the general public to submit to a free hair and scalp examination by a Millard specialist, designated as a "trichologist." The diagnosis is followed by a suggested course of treatment which employs the use of medicinal and cosmetic preparations sold by the respondents. The contents of home treatment kits are determined by the "trichologist" making the examination and consist of the following ingredients, which are included in various rations and combinations in respondents' products:

- Duponol WAT,
- Lanolized soap with Hexachlorophene,
- Hyamine,
- Mercapto-benzo-thiazole,
- Oxyquinoline sulphate,
- G-1441 Atlas water-soluble lanolin (Derivative),
- Boric Acid,
- Propylene glycol,
- Isopropyl alcohol,
- Oil Bay Terpeneless,
- Mineral oil.

4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, advertisements concerning their said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and respondents have disseminated, and caused the

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dissemination of, advertisements concerning their said preparations, by various means, including but not limited to advertisements inserted in newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in said advertisements are the following:

This new method of home treatment for saving and growing thicker hair will be demonstrated in Ft. Wayne, Wednesday, Feb. 3 only.

First the Millard specialists are quick to tell hopeless cases that they cannot be helped. But the "hopeless" cases are few. Only if a man is completely, shiny bald is he in this last category.

If there is fuzz, no matter how light, thin, or colorless, the Millard people can perform wonders.

We have no cure-all for slick, shiny baldness; "Safranski emphasis." If there is fuzz, the root is still capable of creating hair and we can perform what seems to be a miracle.

There is one thing Safranski wants to be certain every man and woman knows. If a recession appears at the temples or a spot begins to show up on the crown of the head, there is something wrong and it should be given immediate attention.

If clients follow our directions during treatment, and after they finish the course, there is no reason why they will not have hair all the rest of their lives, "Safranski said."

Famous trichologist tells truth about saving and improving hair.

How's your hair—If it worries you call Trichologist E. J. Dooley at the Hotel Keenan * * *.

5. Through the use of the statements in the aforesaid advertisements and others similar thereto, respondents represented, directly and by implication, that their method of treatment of the hair and scalp is a new method; that the use of their preparations in accordance with their method of treatment by persons in their homes will prevent baldness and cause a regrowth of hair in cases of thin hair and partial baldness; will cause fuzz on the scalp to develop into a normal head of hair and will assure a normal head of hair during the lifetime of the user.

6. The aforesaid advertisements were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondents' method of treatment is not new. The most common type of baldness or partial baldness has its origin in heredity, endocrine balance and aging. The use of respondents' preparations, singly, or in any possible combination or combinations, and by any method, will not prevent baldness of this type. When so originated, such use will not cause a regrowth

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of hair in cases of thin hair and partial baldness. Such use will not cause fuzz on the scalp to develop into normal hair or be effective in causing or maintaining a normal head of hair, under any circumstances, for the lifetime, or any other specified period of time, of the users.

7. Respondents by the use of the designation of "Trichologist" in their advertisements thereby represent that they and certain of their employees have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp diseases affecting the hair. In truth and in fact, neither of the respondents nor any of their employees have had such training.

CONCLUSIONS

The use by the respondents of the foregoing false, deceptive and misleading statements, disseminated as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that all such statements were and are true, and to induce a substantial portion of the purchasing public to purchase respondents' preparations.

The aforesaid acts and practices of respondents were and are all to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Therefore,

It is ordered, That the respondent Millard, Inc., a corporation, and its officers, and the respondents E. V. Safranski and Eugene J. Dooley, individually and as officers of respondent corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale and sale of the various cosmetic and medicinal preparations, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp in accordance with any method, or any other preparations of substantially similar composition or possessing substantially similar properties, 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 represents, directly or through inference:

(a) That their method of treatment of the hair and scalp is a new method;

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(b) That the use of their method of treatment, or any other like method of treatment, and their preparations, singly or in any combination or combinations, will:

(1) Prevent baldness, unless expressly limited to that type of baldness having its origin other than in heredity, endocrine balance and aging;

(2) Cause a regrowth of hair in cases of thin hair or partial baldness, unless expressly limited as in (1) above;

(3) Cause fuzz on the scalp to develop into normal hair;

(4) Be effective in causing or maintaining a normal head of hair of users for any specified period of time;

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 represents, directly or by implication, that respondents or any of their employees or other persons who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair, is a trichologist, or which advertisement contains any of the representations prohibited in Paragraph 1 of this order.

ORDER VACATING INITIAL DECISION AND
DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come before the Commission upon its review of the initial decision of the hearing examiner, filed January 23, 1956; and

It appearing from the record that respondents are out of business and have no intention of resuming business; and

The Commission having duly considered the matter, and being of the opinion that, under these circumstances, the public interest does not require further corrective action at this time:

It is ordered, That the aforesaid initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Complaint

IN THE MATTER OF
OLD EMPIRE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6401. Complaint, Aug. 24, 1955—Decision, Apr. 3, 1956*

Consent order requiring a perfume manufacturer in Newark, N. J., and its franchise distributor in New York City to cease representing falsely through statements in circulars, letters, and on containers and labels that \$25 per bottle was the customary retail price of its "Marche Nuptiale" perfume, that it was displayed and sold by named large and well-known department stores, was manufactured from essence imported from France, and that they maintained a branch office in Paris; and supplying to retail purchasers gummed labels bearing the figure "\$25.00" to affix to the "Marche Nuptiale" packages.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggart for the Commission.

Mr. Seth Harrison, 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 said Act, the Federal Trade Commission, having reason to believe that Old Empire, Inc., a corporation; Julio de Elorza, Raymond Barnett, John de Elorza and Pearl de Elorza, individually and as officers of Old Empire, Inc.; Pierre Marche, Inc., a corporation; Louis Manus, Mrs. Samuel B. Kline, also known as Bebe Aaron, and Ruth Robbins, individually and as officers of Pierre Marche, Inc., and Samuel B. Kline, individually and as General Manager of Pierre Marche, Inc., all 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, Old Empire, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 865 Mount Prospect Avenue, Newark, New Jersey. Respondents Julio de Elorza, John de Elorza, Raymond Barnett and Pearl de Elorza are president, treasurer, vice-president and secretary, respectively of said corporate respondent. These individuals acting in cooperation with each other formulate, direct, and control the acts, practices and policies of said corporate re-