

Complaint

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IN THE MATTER OF
YARDLEY OF LONDON, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (e) OF THE CLAYTON ACT

Docket 6442. Complaint, Nov. 8, 1955—Decision, Apr. 19, 1956

Consent order requiring a manufacturer of soaps, cosmetics, perfumes, etc., with principal place of business in Union City, N. J., to cease discriminating in price in violation of Sec. 2 (e) of the Clayton Act through furnishing demonstrator services or allowances to some customers, when not according such services on proportionally equal terms to all their competitors.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Donald K. King for the Commission.

Appell, Austin & Gay, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Yardley of London, Inc., hereinafter designated as respondent, has violated and is now violating provisions of Subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Yardley of London, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 620 Fifth Avenue, New York, New York. It also maintains plants and warehouses at Union City, New Jersey, Chicago, Illinois, Dallas, Texas, and San Francisco, California.

PAR. 2. Respondent is now and for a number of years has been engaged in the business of manufacturing and selling soaps, cosmetics, perfumes, beauty aids and toilet preparations. Respondent divides its products into four different categories or lines as follows: The "A" line which is its general line of merchandise; the "B" line, consisting of skin treatment creams and allied products; the "Flair" line, consisting of perfume, bath oil and dusting powder; and the "Lavanesque" line, a perfume and toilet water preparation marketed under the brand name of "Lavanesque." These various lines are sold by respondent to some 12,000 retail customers with places of business located throughout the several

States of the United States and the District of Columbia for resale to consumers within the United States.

PAR. 3. In the course and conduct of said business respondent has engaged in commerce, as "commerce" is defined in the Clayton Act as amended by the Robinson-Patman Act, having shipped its products or caused them to be transported from its said places of business to said customers with places of business located in the several States of the United States and the District of Columbia.

PAR. 4. In the course of said business in commerce respondent has furnished, contracted to furnish, or has contributed to the furnishing of certain services and facilities to some of its customers in connection with the processing, handling, sale or offering for sale of respondent's products by them; and respondent has not made such services and facilities (or in the alternative, equivalent payments or allowances) available on proportionally equal terms to all other of its customers competing in the sale and distribution of said products.

PAR. 5. In dealing with its customers respondent furnished or contracted to furnish demonstrator services or allowances to some competing customers in amounts (based on respondent's costs) not equal to the same percentage of net purchase of respondent's products by such customers (and not proportionally equal by any other test); and respondent did not offer or make available such services (or in the alternative equal promotional allowances) in amounts equal to the largest of such percentages to all competing customers (and not proportionally equal by any other test).

PAR. 6. Specifically during the year 1954 respondent paid to each of its customers selling the A line a promotional allowance in the amount of 6% of such customer's annual net purchases in excess of \$860 (all A line accounts are furnished sales aids having a value equal to 6% of annual net purchases up to \$860) with the exception of those customers selling both the A and B line.

Respondent paid allowances for or furnished to its customers selling both the A and B line a sales person (known in the cosmetic industry as a demonstrator) at a cost to respondent of \$50 for salary a week plus a 5% commission on B line retail sales and a 2% commission on A line retail sales. As a condition to the receipt of demonstrator services such customers were each required to waive the 6% promotional allowance hereinbefore described. Allocation of the demonstrator's salary on the basis of ratio of percentage of such customer's retail "A" line sales to its total "A" & "B" line sales, together with the other promotional allowances applicable to the "A" line merchandise results in a number of such customers re-

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ceiving larger contributions for the promotion of the "A" line than competing customers, who sold only the "A" line, received.

For example, in the Washington, D. C., trading area the only account handling both the A and B lines received a combination of promotional and demonstrator services and allowances at a cost to respondent equaling 16.1% of that account's A line purchases while respondent's other accounts which carried only the A line received from respondent promotional allowances equaling 6% of net purchases as is shown in the following computation:

	"A" and "B" account	"A" account
Net purchases on "A" line merchandise.....	\$9,782.00	\$11,349.69
Display material furnished on basis of 6 percent of \$860 worth of "A" line merchandise.....	51.60	51.60
6 percent allowance on purchases over \$860.....		629.38
2 percent commission on retail sales of "A" line merchandise.....	308.92	
Allocated portion of demonstrator's salary.....	1,211.87	
Total allowance.....	1,572.39	680.98
Percent of allowances to net purchases.....	16.1	6.0

Similarly, in the Chicago, Illinois, trade area, the one A and B line account received 12.9% as is shown in the following computation:

	"A" and "B" account	"A" account
Net purchases on "A" line merchandise.....	\$13,376.00	\$2,754.90
Display material furnished on basis of 6 percent of \$860 worth of "A" line merchandise.....	51.60	51.60
6 percent allowance on purchases over \$860.....		133.69
2 percent commission on retail sales of "A" line merchandise.....	432.87	
Allocated portion of demonstrator's salary.....	1,239.68	
Total allowance.....	1,724.15	165.29
Percent of allowances to net purchases.....	12.9	6.0

PAR. 7. The acts and practices of the respondent as above alleged violates Subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C., Title 15, Section 13).

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on November 8, 1955, charging it with a violation of subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

After the issuance of said complaint and the filing of its answer thereto, the respondent entered into an agreement with counsel supporting the complaint, dated February 6, 1956, providing for

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the entry of a consent order disposing of all the issues in this proceeding, which agreement was duly approved by the Director and the Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

By said agreement respondent's answer to the complaint shall be considered as having been withdrawn and the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. Respondent in the agreement expressly waives any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint and Rule 1 (VII) of the Amended Trade Practice Rules for the Cosmetic and Toilet Preparations Industry, promulgated September 10, 1954, (Title 16 C.F.R. 221.1 (g)) may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Yardley of London, Inc., is a corporation 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 600 Palisades Avenue, Union City, New Jersey.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondent hereinabove named; the complaint herein states a cause of action against said respondent under the provisions of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13).

ORDER

It is ordered, That respondent, Yardley of London, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale, of cosmetics, beauty aids, and toilet preparations in commerce, as "commerce" is defined in the Clayton Act as amended, do forthwith cease and desist from:

Furnishing or contributing to the furnishing of demonstrator services to any purchaser of its products when such services are not accorded on proportionally equal terms to all other purchasers who resell such products in competition with purchasers who receive such demonstrator services.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner, as corrected by his order filed March 26, 1956, shall, on the 19th day of April 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

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IN THE MATTER OF
HAYR CHEMICAL CO., INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6157. Complaint, Jan. 21, 1954—Decision, Apr. 24, 1956

Order requiring sellers in Newark, N. J., to cease representing falsely in advertisements in newspapers and magazines that the blocking of hair follicles with foreign matter was a cause of diminished hair growth, excessive hair loss, baldness, and dandruff; and that removal of the foreign matter by use of their "Hayr Application for the Scalp and Hair" would correct such conditions and cause hair to grow on bald or partially bald heads.

Mr. Jesse D. Kash, Mr. William M. King and Mr. John J. McNally for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., for Hayr Chemical Co., Inc., Phillip Kalech, Nathan Kalech and Myrtle L. Larsen.

Harkavy & Lieb, of Newark, N. J., for Arthur W. Herrigel, assignee of assets.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, including additions to proposed findings and conclusions submitted by counsel in support of the complaint, and the hearing examiner having considered the matter and being now fully advised in the premises makes the following findings as to the facts and conclusions drawn therefrom and order:

1. Respondent Hayr Chemical Co., Inc., is a corporation organized under the laws of the State of Delaware, having its office and principal place of business located at 304-306 Mt. Pleasant Avenue, Newark, New Jersey. Respondents Phillip Kalech, Nathan Kalech and Myrtle L. Larsen were, at the time of the filing of the complaint herein, officers of said respondent corporation. Respondent Dr. Joseph Caspe immediately prior to September 1953 was also an officer of said respondent corporation, but at that time severed his connection with said respondent corporation and did not file an answer or appear in this proceeding. Respondent Louis F. Herman is an individual, trading as Louis F. Herman Advertising Agency. Respondent Eugene Kesselman is an individual who placed advertising material submitted by the officers of the respondent

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corporation through respondent Louis F. Herman Advertising Agency, which advertising was placed in three newspapers—the New York Sun News, New York World Telegram and the Chicago Sun Times. During the trial of this proceeding respondent Phillip Kalech departed this life and his death was duly suggested on the record in this proceeding.

2. The corporate respondent and its officers have been engaged in the sale and distribution, in interstate commerce, of a drug and cosmetic preparation for the hair and scalp designated "Hayr Application for the Scalp and Hair," which will hereinafter be referred to as "Hayr." The formula and directions for use of said product "Hayr" are as follows:

Formula:

50% Isopropyl Alcohol Extract of Non-Alkolooidal Botanicals,
Worm Wood Herb, Chick Weed Herb

Water -----	48.400%
Isopropyl Alcohol -----	48.800%
Thyroid Powder -----	0.035%
Resorcin -----	0.650%
Oleic Acid -----	0.750%
Neutronyx 333 -----	0.350%
Natural Oil of Cade -----	0.050%
Lactic Acid U.S.P. 85% -----	0.820%
Perfume -----	0.145%

100.000%

Directions for use:

Apply daily, place finger tips on head, moving scalp in circular motion for one minute. Shampoo weekly.

3. The ingredients of respondents' preparation, with the exception of thyroid powder, have been generally used by dermatologists in various combinations for the treatment of conditions of the skin and scalp. Thyroid powder is usually administered by mouth to control the secretions of the thyroid gland. It is of no value when administered externally because of the inability of penetration and further because the glands in the scalp have nothing to do with the thyroid, which is a gland of internal secretion, and the glands in the scalp are sebaceous glands.

4. In the course and conduct of the business of corporate respondent, respondents have disseminated and caused the dissemination of, various advertisements concerning said drug and cosmetic preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements inserted in various newspapers and magazines for the purpose of inducing and which were

likely to induce, directly or indirectly, the purchase of said drug and cosmetic preparation; and respondents have disseminated and caused the dissemination of advertisements concerning said drug and cosmetic preparation for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said drug and cosmetic preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the advertising disseminated by the respondents it was represented that dirt, grime, oil secretions and bacteria become imbedded in the scalp, forming a tough, gummy film which plugs the hair follicle preventing normal functioning of the glands and causing hair loss, dandruff, itching scalp, and eventual baldness; that the use of respondents' preparation "Hayr" would remove the accumulations of such material from the scalp and hair follicles, increase hair growth, prevent excessive hair loss, eliminate dandruff and cause hair to grow on bald or partially bald heads.

6. In their defense to this proceeding the respondents introduced evidence designed to support their contention that baldness is caused by the plugging of the hair follicle and that in some mysterious way their preparation was effective in removing such plugs and permitting the hair to grow.

7. The first expert witness called by the respondents was a specialist in dermatology in Chicago. He attempted to give lip service to respondents' theory of plugging, but only to the extent where such plugging is caused by a diseased condition of the scalp, where either the hair follicle or the sebaceous glands have become infected and inflamed, causing an improper functioning of the sebaceous glands, resulting in a condition known as folliculitis or inflammation of the hair follicle. In this connection this witness contended that inflammation of the sebaceous glands causes a thickening and congealing of the sebaceous oil that is within the hair follicle itself, which congealed material continues to thicken and to some extent to obstruct the follicle. While this witness testified that the cause of premature baldness was not known and was affected by heredity, age and metabolism, he nevertheless attempted to give externally caused "infection" a major role as a causative factor of baldness. While supporting the plugging theory, this witness also testified that dust and grime on the scalp would not penetrate the hair follicle and that unplugging of the follicle would not in itself cause hair to grow. In the absence of infection it would appear from the testimony of this witness, that the scurf and scum which serves as a basis of respondents' theory of baldness, could be removed by ordinary hygiene.

8. The second expert witness for the respondents, a dermatologist located in Newark, New Jersey, attempted to place a larger cause of hair loss upon scurf and scum present on the scalp. He claimed to have used this preparation with satisfactory results on a number of patients whose case histories he failed and refused to produce although he had promised to produce these records. This witness, who was partially bald, claimed to have used the preparation on his own head with satisfactory results, although these results were not readily discernible to the hearing examiner. On the basis of his limited experience, covering a period of five or six months, this witness was very emphatic on the effectiveness of the product "Hayr" and asserted that respondents' preparation, because of the mixture of the ingredients, has an unusual and unexplained buffering action which causes the various ingredients to become more effective than when ordinarily used by other competent physicians, but that he did not know how this buffering action took place but based his testimony entirely upon information given to him by the chemist employed by the respondents. In attempting to explain the penetration of the thyroid powder the witness used what might be termed a certain amount of medical jargon in stating that respondents' preparation is buffered to a clinical pH or a pH of an "isoelectric pH of the skin" neutralizing the "dielectric set-up by the skin." The theories advanced by this witness were completely disproved by a rebuttal witness, J. H. Draize, a well-qualified pharmacologist. After observance of this witness on the witness stand and noting his testimony, the hearing examiner is of the opinion that his testimony is not worthy of consideration and has no value as probative evidence in this proceeding.

9. The third expert witness called by the respondents was their medical advisor, formerly a professor of pathology at Temple University, who had a fine head of skin with a narrow border of fringe connecting the ears. He stated that he was no longer concerned with appearance of his head and for that reason did not attempt to use the product "Hayr" to accomplish any hirsute adornment for his scalp. While not a dermatologist and although his experience with dermatology of the scalp was limited to his connection with respondents, he attempted to testify generally as to the theory of plugging of the hair follicles, but did not go into the so-called buffering action of respondents' preparation. He attempted to draw certain conclusions from enlarged photographs of slides. These conclusions were completely dissipated by a witness called in rebuttal, Dr. Hans Elias, a professor of anatomy of the Chicago Medical School whose chief field was microscopic anatomy and histology.

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10. In the case in chief in support of the complaint, three well-qualified physicians were called who were specialists in dermatology, and they were all in agreement that the plugging of the hair follicle is not one of the causes of baldness; that dust, grime and dandruff scales would not penetrate the hair follicle sufficiently to cause any obstruction; that the hair had the ability to force its way through obstructions; and that the use of respondents' preparation, while effective in the temporary removal of dandruff scales and the clearing up of certain scalp conditions because of its antiseptic properties, would not be effective in preventing hair loss or in causing hair to grow on bald or partially bald heads.

11. The most frequent type of baldness or partial baldness, accounting for from 90 to 95 percent of all cases and constituting the type at issue in this proceeding, is alopecia prematura, sometimes referred to as "male pattern baldness." The exact cause of this condition is not definitely known to the medical profession. It is believed, however, that this condition results from the interaction of three causative factors, namely, age, heredity and endocrine imbalance. According to the overwhelming weight of the reliable, probative and substantial evidence of this record, it is found as a fact that there is no cure, effective treatment, remedy or relief known to medical science for this type of hair loss. Respondents' preparation used as directed, or otherwise, or any other preparation consisting of the same or similar ingredients will accordingly have no effect whatsoever on cases of baldness or partial baldness of this type. The remaining 5 to 10 percent of the cases of baldness or partial baldness are outward manifestations of certain diseases, such as syphilis or conditions such as trauma. In the majority of such cases, when the disease or such underlying condition has been cured or has run its course, the outward manifestation of loss of hair disappears. Respondents' product used as directed, or otherwise, or any other product consisting of the same or similar ingredients will have no effect whatever upon cases of baldness or partial baldness that are outward manifestations of such diseases or conditions.

12. The hair on the scalp consists in the main of terminal hair and also of lanugo hair, which forms of hair differ greatly from each other. Though terminal hair is thicker and harder, has body texture and pigment, grows to a greater length and has a longer life, lanugo or fuzz is softer, downier, finer, colorless, unpigmented, grows to a short length only and has a much shorter life. Lanugo is not true hair and it rarely gets beyond the stage of fuzz, is of short duration and never develops into true hair. It is not at all an

unusual occurrence for new lanugo growth to occur on bald scalp areas, particularly when the scalp has been irritated by such means as light, massage, sunburn or chemicals. Such newly stimulated lanugo growth is of particularly short life, lasting up to about six or eight weeks as a rule.

13. Respondents' preparation is mildly irritating to the scalp, particularly when applied with massage as directed. As a consequence thereof it may, in some instances, like scalp irritants, result in new lanugo growth. It has never resulted in new hair growth nor can it ever do so. The lanugo growth caused by the irritant properties of respondents' product undoubtedly accounts for the fuzz sometimes seen on the hopeful prospect's head after use of respondents' preparation.

14. In addition to the expert testimony, the respondents introduced a number of individuals having varying degrees of baldness who claimed to have used respondents' preparation with success. These varied from a shining pate resembling a ripe tomato to partial frontal baldness. The Commission in turn introduced a number of witnesses with varying degrees of baldness who claimed to have used respondents' preparation without any appreciable effect. A number of these individual users testified to the presence and disappearance of fuzz on the head.

15. Respondent Nathan Kalech, president of respondent corporation, testified that through the use of the preparation he had been successful in growing curly hair, bushy hair and thick hair on stone-bald individuals. None of the witnesses produced, however, could qualify for any more than a bald pate so far as the examiner could ascertain. In fact, Mr. Kalech himself had a bald ring on the crown of his head which he covered by combing back the hair from the front instead of growing hair with his own preparation.

16. Based upon the testimony of the witnesses in this proceeding, it is apparent that the respondents mixed a certain amount of psychology with the irritating properties of the preparation. They advertised for individuals, sometimes offering a supply of "Hayr" for the working of a puzzle. When the individual called at their place of business they gave him a bottle of respondents' preparation and asked him to come back for examination at periodical intervals, usually about the time that the first bottle would be used. It was explained to the individual that when his hair began to grow it would be immediately adjacent to the existing hair line and would gradually proceed over the bald area. When the subject called at respondents' place of business for a check-up, he was then placed under a very bright light and a number of persons would

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then examine his head and become enthusiastic over the hair growing, particularly along the hair line, and fuzz appearing at various portions of the scalp. The witness was then asked to see for himself, and under the bright light would see hair or lanugo, some of which had probably gone unnoticed by him prior to his approach to the respondents. While the subject was in the state of enthusiasm and was convinced that he was growing hair, he was then requested to sign a questionnaire stating what the condition of his hair was and whether the product was growing hair. By this means a number of questionnaires were obtained from individuals stating that the product was growing hair, when, in fact, they were seeing hair which they already had and had not noticed, and also were seeing lanugo which after a short period of time would disappear.

17. Based upon the appearance of the witnesses, their demeanor on the witness stand, and considering their testimony in connection with other testimony in this proceeding, the hearing examiner is of the opinion that none of the consumer witnesses produced by the respondents had been successful in growing hair through the use of respondents' preparation.

CONCLUSIONS

1. The advertisements disseminated by the respondents as herein found were misleading in material respects and constituted false advertisements as that term is defined in the Federal Trade Commission Act.

2. The use by the respondents of said advertisements containing materially misleading statements and misrepresentations has had and now has the tendency and capacity to mislead a substantial number of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

3. The acts and practices of the respondents as herein found 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.

4. The participation of the respondents Louis F. Herman and Eugene Kesselman in the acts and practices hereinabove described is not such as would warrant a finding that said respondents had disseminated false advertisements in violation of the Federal Trade Commission Act.

5. The death of Phillip Kalech during the course of these proceedings having been suggested upon the record, the complaint should be dismissed as to this respondent.

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ORDER

It is ordered, That the respondents Hayr Chemical Co., Inc., a corporation, and its officers, and the individual respondents Dr. Joseph Caspe, Nathan Kalech and Myrtle L. Larsen, and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of a drug and cosmetic preparation designated "Hayr Application for the Scalp and Hair," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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 by implication:

(a) that the plugging of hair follicles with foreign matter is a cause of diminished hair growth, excessive hair loss or baldness.

(b) that the removal of foreign matter from the hair follicles by the use of respondents' preparation will correct a cause of diminished hair growth, excessive hair loss or baldness.

(c) that the removal of foreign matter from the hair follicles by the use of respondents' preparation will increase hair growth, prevent excessive hair loss or baldness.

(d) that the use of respondents' preparation as directed or otherwise will cause hair to grow on bald or partially bald heads.

(e) that the use of respondents' preparation has any effect upon dandruff other than the temporary removal of dandruff scales.

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

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Phillip Kalech, Louis F. Herman, and Eugene Kesselman.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The date on which the hearing examiner's initial decision in this matter would have otherwise become the decision of the Commission under § 3.21 of the Commission's Rules of Practice having been

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stayed by order issued March 1, 1956, for the reason that service of said decision had not been effected on all the parties; and

It appearing that service of said document has now been completed; and

The Commission being of the opinion that the aforesaid initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed January 16, 1956, did on April 24, 1956, become the decision of the Commission.

It is further ordered, That the 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 the order contained in said decision.

IN THE MATTER OF
THE AMERICAN HOSPITAL
AND LIFE INSURANCE COMPANY

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

Docket 6237. Complaint, Oct. 14, 1954—Decision, Apr. 24, 1956

Order requiring an insurance company with principal place of business in San Antonio, Tex., selling eight types of life, health, and accident policies through agents in 14 States, to cease misrepresenting the benefits of its policies through statements in brochures and application forms sent to its agents and used by them in selling the policies.

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

Mr. Robert R. Sills, *Mr. William R. Kearney* and *Mr. Joseph Callaway* for the Commission.

Boyle, Wheeler, Gresham, Davis & Gregory, of San Antonio, Tex., for respondent.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 14, 1954, issued and subsequently served upon respondents, The American Hospital and Life Insurance Company, a corporation, its complaint, charging said respondent with the use of unfair and deceptive acts and practices in commerce in the sale of health and accident insurance policies, in violation of the provisions of the Federal Trade Commission Act.

Thereafter, respondent filed its answer and, in conjunction therewith, a motion for dismissal of the complaint on the ground that the Commission is without jurisdiction in the matter. This motion having been denied by the hearing examiner duly designated in the complaint, for the reason that the question of jurisdiction could be resolved satisfactorily only after the submission of evidence, certain testimony and other evidence in support of the allegations of the complaint were introduced before the hearing examiner and were duly recorded in the office of the Commission. No further evidence having been presented by respondent, the matter was considered by the hearing examiner upon the complaint, respondent's answer thereto, the testimony and evidence, proposed findings as to the facts and conclusions presented by counsel, and additional motions for dismissal, filed by respondent, and the hearing examiner, on