

Decision

IN THE MATTER OF

DRAKE LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6610. Complaint, Aug. 17, 1956—Decision, May 22, 1957*

Consent order requiring sellers in Detroit, Mich., to cease advertising falsely in newspapers and magazines and by radio broadcasts that their hair and scalp preparation "Persulan" would prevent and overcome falling hair and baldness and cause new hair to grow, restore healthy scalp, relieve skin irritations and ailments, etc.

Mr. Harold A. Kennedy for the Commission.

Mr. John C. Ray, of Detroit, Mich., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 17, 1956, issued and subsequently served its complaint in this proceeding against respondents Drake Laboratories, Inc., a corporation, and Morris S. Plotkin, Elaine Plotkin, and Joseph P. Boltach, Jr., individually and as officers of said corporation, with their office and principal place of business located at 10610 Joy Road, Detroit, Michigan.

On December 21, 1956, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint, providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have

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violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Drake Laboratories, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 10610 Joy Road, Detroit, Michigan. Respondents Morris S. Plotkin, Elaine Plotkin and Joseph P. Boltach, Jr. are, respectively, the President-Treasurer, Vice President and Secretary of said corporate respondent, and have the same address as the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Drake Laboratories, Inc., a corporation, and its officers and respondents Morris S. Plotkin, Elaine Plotkin, and Joseph P. Boltach, Jr., individually and as officers of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the preparation "Persulan", or any 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, directly or indirectly:

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 preparation:

a. Will prevent or overcome excessive hair loss or baldness, unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals that in the great majority of

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cases of baldness or excessive hair loss respondents' said preparation is of no value whatever;

b. Will grow new hair on bald spots or thicker hair where the hair is thin or short, or otherwise grow hair, unless such representation be expressly limited to cases other than those arising by reason of male pattern baldness, and unless the advertisement clearly and conspicuously reveals that the use of the preparation will not grow hair or thicker hair in a great majority of cases;

c. Will permanently eliminate dry, brittle, splitting or breaking hair, or dandruff;

d. Will restore scalp health;

e. Will have any effect on skin lesions, itching scalp, ringworm, tetter, eczema or other skin irritations or ailments in excess of affording temporary relief of scaling and itching;

2. Disseminating or causing to be disseminated any advertisement 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, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard by the Commission upon its review of the hearing examiner's initial decision filed January 3, 1957; and

The Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Drake Laboratories, Inc., a corporation, and Morris S. Plotkin, Elaine Plotkin, and Joseph P. Boltach, Jr., 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 initial decision.

IN THE MATTER OF
ROTO-BROIL CORP. OF AMERICA ET AL.

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

Docket 6672. Complaint, Oct. 31, 1956—Decision, May 22, 1957

Consent order requiring manufacturers in Long Island City, N.Y., to cease representing falsely in advertisements in newspapers and magazines, in price lists, and in television and radio commercials that their "Roto-Broil" electric broiler-rotisseries were being offered at substantial reductions from regular retail prices and were of a value in excess of such purported reductions, and that a free gift would be given to purchasers of their products.

Edward F. Downs, Esq. in support of the complaint;
Samuel A. Spiegel and *Rudolph Sommer, Esqs.*, of New York City, for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued October 31, 1956, charges the respondents Roto-Broil Corp. of America, a corporation existing and doing business by virtue of the laws of the State of New York, and Albert Klinghoffer and Leon Klinghoffer, individually and as officers of the corporate respondent, with violation of the Federal Trade Commission Act in connection with the sale, offering for sale and distribution of electric broiler-rotisseries, and accessory parts thereto, under the brand name "Roto-Broil," in commerce, as "commerce" is defined in the Federal Trade Commission Act.

After the issuance of said complaint respondents entered into an agreement for consent order with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before