

Decision

IN THE MATTER OF
LOESCH HAIR EXPERTS ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6305. Complaint, Mar. 2, 1955—Decision, Nov. 14, 1957

Order requiring an individual with place of business in Houston, Tex., from where he or his representatives traveled to various cities to meet customers and prospects, along with his advertising agency, to cease representing falsely in advertisements inserted in local newspapers announcing his arrival that by use of his scalp preparations bacteria swarming beneath the scalp would be killed; dandruff, itching, irritation, and all local scalp disorders would be cured and the scalp kept healthy; excessive hair fall would be stopped, and all types of baldness prevented, new hair induced to grow, and the hair become thicker; requiring him to reveal that the cause of "male-pattern" baldness, which accounts for approximately 95% of all cases, would not be favorably influenced; and requiring him to cease representing falsely, by use of the word "Trichologist" and pictorial representations, that he and his representatives had had competent training in dermatology having to do with treatment of scalp disorders.

Mr. Morton Nesmith for the Commission.

Welling & Welling by *Mr. Richard M. Welling*, of Charlotte, N.C., for William T. Loesch.

McGregor & Sewell, by *Mr. Douglas W. McGregor*, of Houston, Tex., for William B. Zimmerman.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

INTRODUCTORY STATEMENT

The complaint in this case was issued March 2, 1955, against the respondents named in the caption hereof. Among other things it was alleged therein that respondent Loesch was engaged in the business of selling and distributing various cosmetic and other preparations for external use in the treatment of conditions of the hair and scalp in interstate commerce; that in the course and conduct of such business respondents had disseminated or caused the dissemination of advertisements concerning said preparations for the purpose of inducing and which were likely to induce the sale of said preparations; and that respondent Zimmerman, trading as Zimmerman Advertising, prepared said advertisements. Typical of such statements and representations were certain statements with respect to the efficacy of the products and it was alleged that through the use of such statements, said respondents had represented that by the use of respondent Loesch's preparations bacteria swarming beneath

the scalp will be killed; dandruff, itching and irritation of the scalp will be permanently eliminated; all local scalp disorders will be cured and the scalp kept healthy; excessive hair fall will be stopped; all types of baldness, including hereditary baldness and spot baldness, will be prevented and overcome; new hair will be induced to grow; and the hair will become thicker. It was further alleged that by use of the word "trichologist" and by other means respondents had represented that respondent Loesch and his employees had had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair and scalp.

It was further alleged in the original complaint that such advertisements were misleading in material respects and constituted false advertisements as that term is defined in the Federal Trade Commission Act. Respondents in their answers denied the material allegations.

After taking testimony in support of the above allegations, counsel in support of the complaint filed a motion to amend the complaint which motion was granted March 1, 1956. As amended, the complaint now alleges in paragraph nine that respondent's products will not stop excessive hair fall in the type of baldness known to dermatologists as male pattern baldness which type accounts for approximately 95% of all cases of baldness; will not in cases of male pattern baldness prevent or overcome baldness or have any favorable influence on its underlying cause; induce new hair to grow in such cases; or cause the hair to become thicker in such cases. It is further alleged in the amended complaint that respondent's said advertisements are misleading in a material respect:

in that they fail to reveal facts material in the light of the representations made. The statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to persons who have excessive hair fall or who are bald that there is a reasonable probability that they are threatened with or have a type of baldness which will be prevented or overcome by use of respondent Loesch's preparations. In the light of such statements and representations, said advertisements are misleading in a material respect and therefore false because they fail to reveal the fact that the vast majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of that type of baldness known to dermatologists as male pattern baldness, and that in cases of that type respondent Loesch's preparations will not stop excessive hair fall, prevent or overcome baldness or have any favorable influence on its underlying cause.

In paragraph ten of the complaint as amended it is alleged that:

The use by the respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, and their failure to reveal the material facts set forth in subparagraph two of Paragraph Nine, have had

and now have 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 to cause them to purchase said preparations hereinabove referred to from respondent William T. Loesch because of such erroneous and mistaken belief.

At the time the complaint was amended, as aforesaid, the Hearing Examiner entered an order that the evidence theretofore taken in support of and in opposition to the allegations of the complaint be adopted and considered as evidence in support of and in opposition to the amended complaint to the same extent and effect as if such evidence had been originally taken under the amended complaint. Subsequent to the amendment of the complaint, testimony was taken on behalf of respondent William B. Zimmerman but no testimony was taken on behalf of respondent William T. Loesch. Counsel for both respondents filed motions to dismiss at the conclusion of the taking of testimony. The order closing the taking of testimony was entered by the Hearing Examiner on October 16, 1956. Subsequent to that date proposed findings and order were filed by all parties and oral argument was held on April 8, 1957. Consideration having been given by the undersigned Hearing Examiner to all of the reliable, probative and substantial evidence in the record on all material issues of fact, law or discretion, the following findings, conclusions and order are hereinafter set forth:

FINDINGS OF FACT AND LAW

Respondent William T. Loesch is an individual doing business as Loesch Hair Experts, with his office and principal place of business located at 603 Avondale Avenue, Houston, Texas. Since September 1, 1952, said respondent has been engaged in the business of selling and distributing various cosmetic and other preparations for external use in the treatment of conditions of the hair and scalp. He causes said preparations when sold to be transported from his place of business in the State of Texas to purchasers thereof located in various States of the United States. At one time he had an office in St. Paul, Minnesota, where one of his representatives was located, which he closed in July 1954. Although respondent Loesch has sold his products in most of the States except the New England States, most of his business has been done in what respondent described as the Gulf Coast States from New Mexico and Arizona in the West to the Atlantic Coast in the East, including particularly the States of Texas, Tennessee, North and South Carolina and Florida. During 1953 sales of Loesch Products amounted to approximately \$100,000 and in 1954 between \$100,000 and \$150,000.

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Respondent William B. Zimmerman has been for a number of years engaged in the business of conducting an advertising agency under the name or style of Zimmerman Advertising, with his office and principal place of business at 603 Avondale Avenue, Houston, Texas. He represented respondent Loesch as advertising counsel during 1953, 1954 and until August 1955 and placed advertisements for respondent Loesch which he had helped prepare, and which he had prepared for and which had been used by one Sidney J. Mueller, the former employer and predecessor of respondent Loesch, against whom the Commission had issued an Order to Cease and Desist in December 1952 on charges similar to those involved in this case.

Respondent Loesch's usual method of doing business is for either himself or one of his representatives to travel to various cities where they meet prospective as well as present clients or customers, in which cities, shortly before being visited by respondent or his representative, advertisements are inserted by respondents Loesch and Zimmerman in local newspapers announcing their arrival. The following are some of the phrases or headlines in such advertisements:

Save-your-hair day set for tomorrow. Scalp specialist here to demonstrate new home treatment.

How to save and improve your hair demonstrated by expert here tomorrow. Take advantage of save your hair week at your Loesch Hair Experts.

Not the hair you lose that makes you bald, says noted "do it yourself" trichologist.

Questions on hair care answered free by expert. You can save your hair by home treatment and care, says W. T. Loesch, Director, Loesch Hair Experts.

To men growing bald: I dare you to try Loesch do-it-yourself scalp treatment at my risk.

Hair specialist here tomorrow will show how to save hair and prevent baldness.

There are pictorial representations in some of such advertisements of respondent Loesch in a white coat with a pointer in his hand before an enlarged picture of the hair follicle in the scalp. A sample of the text immediately under such pictorial representations is as follows:

One of the most common causes of hair loss, the blocked follicle is explained to balding men by trichologist W. T. Loesch. His organization is sending a hair expert here to advise men how to escape baldness by home treatment.

In some of these advertisements are pictorial representations of persons "before and after" using "Loesch-type" preparations. Also in other advertisements explaining the "before-and-after" pictures of men who were partially bald and whose hair apparently had been restored are such phrases as:

For balding heads like these a "save your hair day" has been announced. As long as you have some hair, trichologist W. T. Loesch, says you have an excellent chance to grow thicker hair by new methods of home treatment.

In one such advertisement, which Mr. Loesch testified was sent throughout the United States, under the caption "What causes baldness," the following statement appears:

How many times have you heard men attempt to explain their loss of hair with one of these remarks: "Oh, baldness runs in my family so I just have to accept it" or "Well, it's natural for a man to lose his hair as he gets along in years" or "If you're going to be bald, you're going to be bald and there's nothing you can do about it." So many men have said such things for so many hundreds of years, these old ideas are still widely believed. But they are not supported by modern knowledge.

True, some men do inherit a scalp structure that may predispose to early baldness. But any such tendency can be overcome by proper hair care. * * *

"Actually the two most common causes of baldness" says hair expert W. T. Loesch "are neglect and mistreatment of the hair" * * *

This famous authority urges that you do not resign yourself to baldness unless you are already bald. * * *

About 12 million American men are already bald or soon will be. How many women are bald no one can estimate. Certainly all of these men and women regret their condition.

Under the caption "Can Prevent Baldness" it is stated in this advertisement:

The shocking truth is that most of these bald people need not have lost their hair. Although baldness cannot be "cured" it can most certainly be prevented. Our Loesch trichologists have developed methods of self-administered home treatment that are successful 95% of the time. (Com. Ex. 6N)

In another advertisement in the Charlotte, North Carolina Observer in 1954 and which was sent all over the United States, containing many of the foregoing statements, there appears under the caption "No Cure-All" the following language:

"After many years experience in treating scalp disorders" continued Loesch "we have developed scientific treatments that will correct your scalp trouble and give you a healthy scalp." Loesch emphasized that his treatment is neither "mail order" nor "cure-all". Different scalp conditions require different methods of treatment. "For that reason" he said "we do not recommend a treatment without first making a personal scalp examination."

Results from home treatment are quickly noticeable * * * usually it takes just a few weeks to cleanse the hair of dandruff (surface and imbedded), kill the bacteria swarming beneath the scalp, correct local disorders and stop excess hair fall.

Under the caption *Can Prevent Baldness* appears the following statement:

In most cases baldness can be prevented if you get professional help before your hair loss goes too far. * * * The important thing is don't put it off until your "hair factories" close down—for life. (Com. Ex. 4, 6-0)

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In the Bakersfield Californian in 1953 under the general caption "How To Save and Improve Your Hair, Demonstrated by Expert Here Tomorrow" and a subcaption "Who can be helped" the following statement is made:

Loesch treatment can help any man or woman whose scalp is still creating hair. In most cases you can at least save and improve what you have. Some disorders such as *alopecia areata* (spot baldness) usually have complete recovery if caught in time.

Dandruff, itching and irritation disappear during the first 30 days of treatment. Hair fall decreases rapidly.

If you have scalp trouble, Loesch emphasizes that the important thing is this: *Don't wait until it's too late.* You cannot be helped when you are slick-bald after years of gradual hair loss. If you have a disease, of course, you should see a physician. (Loesch is not a doctor) * * * "Actually, our biggest problem is not in doing what we claim to do," Loesch declares. We satisfy more than 90% of our clients. But overcoming the average man's initial skepticism is really difficult. He's usually quite desperate—and definitely baldish—before he nerves himself to see us. All the time he's losing hair, he justifies his neglect with one of the old notions about hair: That baldness is hereditary; that men just have to lose hair as they get along in years; that nothing can be done to stop hair loss.

What's worse all the time he's losing hair he keeps right on with the bad habits of hair care that cause him to lose hair.

In an advertisement which Mr. Loesch testified was published in Nashville and Memphis newspapers in 1954 under the caption "Save Your Hair Specialist Makes Unprecedented Offer," and under a Houston, Texas date line, the following statements appear:

Houston, Texas—Now you can stop excessive hair loss, prevent baldness, eliminate dandruff, scalp itch and irritation. Now you can grow stronger, healthier looking hair.

"You can do it yourself at home without paying a cent until you have seen what the treatment will do." That's the daring offer now made to Nashville men and women by Loesch Hair Experts of Houston. The story behind it is explained by W. T. Loesch this way: * * *

Cause of Trouble

"Here's what we found:

"Most hair troubles are caused by discharge of body waste through the scalp. Far from being beneficial, as commonly supposed the so-called 'natural oils' (sebum) and perspiration are actually forms of toxic, acid-like matter thrown off by the system. It appears on your scalp as 'dandruff,' either in oily or dry form.

"This acid-like matter imbeds deep in the hair follicles, where it brings about excessive hair fall and weakens the hair growing facilities!"

This conclusion, Loesch said, is supported by recent experiments in a great university. They applied the "natural oils" to a number of test animals and the animals lost their hair in ten to twelve days!

Who Can Be Helped?

Hard to believe? The new Loesch method of scalp treatment based on this discovery has "made believers" out of 95% of those who tried it.

"Our methods will help *anybody's* hair." Loesch says,

"Dandruff, itching and irritation disappear within ten days. Hair loss slows down thereafter and soon becomes normal.

"Where you are already slick-bald, of course there isn't much chance to regrow hair but you can at least save and improve what hair you have." (Com. Ex. 7)

In pamphlets which are distributed to prospective customers by respondent Loesch but which were not prepared by respondent Zimmerman, respondent Loesch makes the following representations:

The following information presented by W. T. Loesch, Director of Loesch Hair Experts, Houston, Texas, is the composite result of the study of the problems, treatment and the subsequent regulated scalp hygiene of thousands of people in a twelve-state area during the past five years.

This experience and observation has resulted in the development of simple home treatment methods which have proven to be better than ninety-five percent effective in eliminating dandruff, itching and irritation and stopping excess hair fall.

Under the caption "Cause of Baldness" the following statement is made in this pamphlet:

We have found that the main cause of baldness is wrapped up in one, small five-letter word "sebum" * * *

For many years "sebaceous sebum" has been classified as "natural oil" and thought to be necessary to the hair and scalp. Actually this so-called natural oil and perspiration are forms of toxic, acid-like matter thrown off by your system. Instead of benefiting your hair and scalp as commonly supposed, *it causes dandruff, itching and irritation. It imbeds deep in the hair follicles on top of the scalp where it causes excessive hair fall and gradually weakens and eventually destroys the hair-growing and hair replacing facilities.*

The sides and back of the scalp are usually not affected since the hair follicles there point in a downward direction allowing the sebum to drain out of the hair follicles. That is why baldness usually occurs at the tops of the scalp where the sebum cannot drain off.

Under the caption "Heredity" the following statement is made in this pamphlet:

It can't be said positively that baldness is inherited. However, it is true that some people inherit a weaker than average scalp structure and as a result they have less resistance to the damaging work of sebum. It is also possible to inherit an over-abundance of male sex hormone and as a result have a heavier or more acid-like discharge of sebum and perspiration. Any such tendency can now usually be overcome with proper scalp care and hygiene.

In writing to his clients after his visits, respondent Loesch reminds them of the necessity of continuation of treatments and scalp hygiene.

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You must remember that the constant discharge of body wastes and perspiration in the scalp is the main cause of most scalp trouble. If allowed to accumulate, it causes dandruff, itching and irritation and most of all is harmful to the hair growing and replacing facilities. *It should be removed as frequently as possible.*

Your six months series of progressive treatments are designed to neutralize, dissolve and gradually remove the accumulation of these toxic body wastes from deep within the hair follicles. At the same time, the treatments stimulate and strengthen your hair and scalp. You can help your condition by simply adjusting your scalp care to the condition in *your* scalp. The more perspiration and body waste you have the more frequently you *must* shampoo. (Com. Ex. 12)

In the event the client does not appear for his 90-day check-up, he is again contacted by letter by respondent Loesch and advised that it is necessary for him to continue the "scalp hygiene" to keep his scalp in healthy condition. Again he is told:

You must remember that the constant discharge of body wastes and perspiration in the scalp is the main cause of most scalp trouble (Usually evidenced by an oily forehead and an excessively oily or dry, scaly scalp). If allowed to accumulate, it causes dandruff, itching and irritation, and, most of all, it causes excessive hairfall and is harmful to the hair-growing and replacing facilities. *It should be removed as frequently as possible.*

Through the use of the foregoing statements and representations, respondent Loesch with the assistance of respondent Zimmerman has represented directly and by implication that by the use of respondent Loesch's preparations: (a) bacteria swarming beneath the scalp will be killed; (b) dandruff, itching and irritation of the scalp will be eliminated; (c) all local scalp disorders will be cured and the scalp kept healthy; (d) excessive hair fall will be stopped; (e) all types of baldness including male-pattern-type baldness and spot baldness will be prevented; (f) new hair will be induced to grow; and (g) the hair will become thicker.

By the use of the word "Trichologist" and by pictorial representations of respondent Loesch as an expert lecturing on the hair follicle in said advertisements, respondents have represented that respondent Loesch and his representatives have had competent training in dermatology, having to do with treatment of scalp disorders affecting the hair and scalp.

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: (a) none of said preparations will cure bacteria beneath the scalp as they do not exist there; (b) none of respondents said preparations will eliminate dandruff, defined as an accumulation of scales on the scalp primarily due to shedding of top layers of the epidermis. Some of respondent Loesch's formulae will remove dandruff temporarily,

that is, so long as the product is used by the customer; (c) none of his products will correct or cure all kinds of local scalp disorders, itching and irritation; (d) none of respondent Loesch's products will stop excessive hair fall in the type of baldness known to dermatologists as "male pattern baldness," which type accounts for approximately 95% of all cases of baldness; (e) none of respondent Loesch's products will prevent or overcome any type of baldness or hair loss or have any favorable influence on the underlying causes. This is particularly true with respect to so-called spot or alopecia areata baldness which often accompanies dandruff and is often a symptom of systemic disorders which need medical treatment by a physician. Usually the hair in such cases will return under normal conditions and none of respondent Loesch's products need to be used in order for such hair to be restored; (f) there is some evidence that respondent Loesch's products will cause a fuzz known as lanugo or "puppy hair" to grow in some places but such fuzz is not recognized as hair and never grows to real hair; (g) none of respondent Loesch's products will actually cause hair to become thicker since the product will not cause new hair to grow.

Some consideration has been given to the testimony of a number of user or consumer witnesses who had attended respondent Loesch's clinics and had taken respondent Loesch's treatment and who testified generally to the effect that excessive hair fall had been stopped and that dandruff had been eliminated, and some to the effect that the hair was thicker after using respondent Loesch's treatment and preparations. No finding is made with respect to such testimony, as it is believed that to the extent it is contrary to the testimony of experts, it is unreliable, and there is nothing to show that these users had experienced anything more than the use of a good shampoo and tonic.

Neither the respondent Loesch nor any of his representatives are qualified to refer to themselves as a "trichologist," who is a scientist or person who studies the science of hair. Trichology is defined as the "science or study of the hair and its various disorders." It is generally recognized as a part of the study of dermatology. In other words before a person could pass himself off or hold out to the public that he is a "trichologist," it would be necessary for him to qualify himself as a dermatologist and neither the respondent nor any of his representatives had any such scientific training.

The record contains a complete list of all of the various ingredients used by respondent Loesch in the formulae, which ingredients are prepared for him by the Merrill Laboratory in St. Louis, Missouri. According to respondent Loesch there are two types of treatment: (a) for normal dandruff condition; and (b) for an oily

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dandruff condition. Respondent Loesch represents in his advertisements that by cleaning the scalp and removing dandruff you will thereby help prevent baldness. It is also claimed that the product will neutralize fatty acids and help dissolve fatty acids and stimulate and destroy bacteria.

However, according to reliable and competent expert opinion, respondent Loesch's product in any of the formulae used will not kill bacteria and will not prevent itching and irritation of the scalp unless the cause of the irritation is removed by medication; and will not keep such scalps healthy or stop the excessive fall of hair; and positively will not have any effect in preventing or overcoming what is known as male-pattern-type baldness or spot baldness known as alopecia areata. It was admitted however by some of such experts that respondent Loesch's preparations will temporarily remove loose dandruff but they would not permeate down into the follicles of the hair as represented in some of the advertisements. It is also the consensus of expert medical opinion that a superficial infection of the scalp, known as seborrhea, or subaceous sebum, does not affect hair growth or cause baldness of any type as represented by respondent Loesch in some of his publications and in correspondence with customers. Some of these experts admitted on cross-examination that in using the various ingredients combined by the respondent in his formulae, one could expect a feeling of improvement in the scalp as far as itching and the amount of dandruff is concerned, but this would be temporary. There would be no effect on the hair growth whatever.

Respondent Loesch's products or any other similar product cannot have any effect upon male-pattern-type baldness, for the reason that it is caused by three main mechanisms—heredity, hormonal balance and the age process. Male-pattern-type baldness is defined by a medical authority in dermatology as the "genetic make-up of the individual. In other words, his hair follicles are destined to die after functioning a certain number of years. * * * Yes, the cause, as I stated it, is what he inherits from those ancestors. * * * all you can say is that the odds are very much in favor of a male child being born of parents whose ancestors who have male baldness will also have male baldness. * * *"

Respondent Loesch and his representatives are not doctors and are not educated in such a manner as to qualify them to pass upon medical questions nor to conduct examinations of prospective customers as they are not qualified to determine the condition of the scalp: although when they question the customer or patient as to whether he has alopecia, or alopecia areata, or attempt to conduct the examination of the scalp of the clients or ask questions as to

their physical condition, and whether they have had scarlet fever, typhoid fever, diphtheria, measles, or other illnesses, they give the impression they are so qualified.

It is the consensus of reliable and competent medical opinion that an understanding of the body as a whole and the diseases and disorders affecting it is necessary for the practice of dermatology, which relates to the diseases or disorders affecting the skin including the scalp and appendages, such as hair. Certainly only competent dermatologists are in a position to determine whether or not the so-called excessive hair fall or the itchy condition of the scalp are caused by some systemic disease, such as a fever, or whether it is a patchy type of baldness due to some other systemic condition.

Furthermore, the representations made by respondent Loesch in advertisements and in correspondence with his clients, as they are called, and the oral representations of said respondent and his representatives are false advertisements, as that term is defined in the Federal Trade Commission Act, in that they fail to reveal facts material in the light of the representations made. The statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to those who are bald, that there is a reasonable probability that they are threatened with or have a type of baldness which will be prevented or overcome by the use of respondent Loesch's preparations. In the light of such statements and representations, said advertisements are misleading in a material respect because they fail to reveal the fact that the vast majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of that type of baldness known to dermatologists as "male-pattern baldness," and that in cases of that type, respondent Loesch's preparations will not stop excessive hair fall, nor will they prevent or overcome such baldness, or have any favorable influence on its underlying causes.

The use by the respondent Loesch of the foregoing false and misleading statements and representations, disseminated as hereinbefore described, and his failure to reveal the material facts set forth above, have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to cause them to purchase said preparations from respondent Loesch because of such erroneous and mistaken belief.

CONCLUSIONS

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public, and constitute unfair and de-

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ceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

Respondent Zimmerman is joined herein as a respondent in the following order because of his close relationship to respondent Loesch, and the assistance he gave respondent Loesch in preparing the printed matter contained in the advertisements and the placing of such advertisements in newspapers. His activities in connection with the affairs of other so-called hair experts, including S. J. Mueller against whom the Commission issued a complaint and order to cease and desist in 1952, and the interchange of advertisements under his copyright between respondent Loesch and others, are sufficient reason for holding that he should be included in the order to cease and desist in this case. Authority for the foregoing opinion as to inclusion of respondent Zimmerman in the order is found in the case of Fleming and Sons, Inc., Commission Docket 5264; Foster & Milbourne Co., et al., Docket 5937; and Carter Products Inc., et al., Docket 4960, in which cases the orders to cease and desist included the advertising agent.

The legal finding that respondent Loesch had violated the Federal Trade Commission Act is supported by numerous decisions including particularly the following: *Hayr Chemical Co., Inc., et al.*, Docket 6157, which became the decision of the Commission in April 1956. That case involved a product somewhat similar to respondent's and also somewhat similar allegations. An order was entered requiring the respondents to cease and desist disseminating advertisements representing among other things that the use of respondent's preparations will cause hair to grow on bald or partially bald heads; or that it has any effect upon dandruff other than a temporary removal of dandruff scales. This is the only decision where the question was litigated. It was decided after testimony had been taken, both in support of and in opposition to the allegations of the complaint, and represents the deliberate opinion of the Commission.

The Commission, however, has issued a number of orders to cease and desist in cases where an agreement was entered into between the Commission and the respondents authorizing the issuance of an order to cease and desist. Included among these is an order to cease and desist against Sidney J. Mueller trading as Mueller Hair Experts, Docket 5977, hereinbefore referred to as a predecessor and former employer of the respondent Loesch and as a client of respondent Zimmerman. In that case the order required the respondent to cease and desist the dissemination of advertisements which represented that the Mueller preparations would have any effect in preventing or overcoming baldness; cause hair to grow thicker in spots where it is thin; kill bacteria beneath the scalp; cause the scalp to

be energized to grow new hair; cause the permanent elimination of dandruff, itching, dryness, or oiliness of the scalp; or cure all scalp disorders, keep the hair healthy; or enable the individual to maintain a thick head of hair.

In another case, in the matter of *Hair Experts, Inc.*, et al., Commission Docket 5757, decided in 1950, the respondents therein engaged in a business quite similar to the one involved in this case. They were required, among other things, to cease and desist disseminating advertisements representing that their product would cause hair to grow when growth had ceased and resulted in thin hair or partial baldness, or that the germicides included in the preparation would penetrate beneath the skin surface, kill bacteria there located and destroy bacilli on the scalp surface; that their said preparations would prevent baldness, grow hair on bald heads and enable an individual to maintain a thick growth of hair for life. That order also required the respondents to cease and desist representing themselves as "trichologists" or using any similar name which may tend by implication, either directly or indirectly, to convey the idea or inference that such men have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

Although these two last-named decisions were not litigated, but were based upon an agreement between respondents and the Commission, they indicate the opinion of the Commission with respect to such practices.

With respect to the legal finding that the representations made by respondent Loesch in advertisements and in correspondence with his clients, as well as the representations of said respondent and his representative, are false advertisements as that term is defined in the Federal Trade Commission Act, in that they failed to reveal facts material in the light of the representations made; that is, the fact that the vast majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of that type of baldness known to dermatologists as male pattern baldness, reference is made to the following language of Section 15(a) of the Federal Trade Commission Act, as amended, with respect to food, drugs, devices or cosmetics.

The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed

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in said advertisement, or under such conditions as are customary or usual. (Emphasis supplied)

The Courts have recognized the obligation on the part of the Commission to observe that portion of the statute. For instance the Court of Appeals for the Seventh Circuit in the case of *L. Heller & Sons, Inc., et al. v. Federal Trade Commission*, 191 F. 2d 954, decided in 1951, held:

We commence our study of the instant case with the knowledge that the Commission may require affirmative disclosures where necessary to prevent deception, and that failure to disclose by mark or label material facts concerning merchandise, which, if known to prospective purchasers, would influence their decisions of whether or not to purchase is an unfair trade practice violative of § 5 of the Federal Trade Commission Act. (Citing the case of *Haskelite Manufacturing Company v. Federal Trade Commission*, 127 F. 2d 765.)

The *Alberty* case, 182 F. 2d 36, the United States Court of Appeals for the District of Columbia Circuit, presented the question and the Court made the following comment:

The Commission must find either of two things before it can require the affirmative clause complained of: (1) that failure to make such statement is misleading because of the consequences from the use of the product, or (2) that failure to make such statement is misleading because of the things in the advertisement.

In that case, the Court found that there was no such finding by the Commission. However, in the present case there is sufficient evidence to warrant the finding that respondent Loesch had full knowledge of the nature of male-pattern-type baldness which in one or two advertisements he recognized as "slick baldness" but as to which he gave the definite impression the use of respondents product, if taken in time, would prevent such baldness from developing. The whole impression given by respondent to prospects was that if they would use his preparation and keep their scalps clean they would thereby prevent the development of baldness of any kind, including male-pattern-type. This, according to reliable medical authority is false and misleading.

Turning now to the conclusion that the testimony of the medical experts should be the basis for a finding, reference is made to the decision of the United States Court of Appeals for the Fourth Circuit in the case of *Bristol-Myers Company v. Federal Trade Commission* in 1950, 185 F. 2d 58. In that case the Court held:

In our opinion the Commission was justified in giving preference to the testimony of the experts who supported the allegations of the complaint and who, so far as the evidence shows, were the persons best qualified in the field to form a trustworthy judgment upon the matters under investigation. Opinion evidence based on the general medical and pharmacological knowledge of quali-

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fied experts has often been held to constitute substantial evidence, even if the experts have had no personal experience with the product.

The Court then goes on to say:

* * * and this has been done even where witnesses who had personally observed the effects of the product testified to the contrary.

In accordance with the foregoing findings and conclusions the following order is entered:

ORDER

It is ordered, That respondent William T. Loesch, an individual doing business as Loesch Hair Experts, or under any other name, and respondent William B. Zimmerman, an individual doing business as Zimmerman Advertising, or under any other name, 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 the various cosmetic or other preparations being sold, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mail, 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 alone or in conjunction with any method or treatment will:

- (a) Kill bacteria beneath the scalp;
- (b) Cause elimination of dandruff, itching or irritation of the scalp;
- (c) Cure all local scalp disorders or keep the scalp healthy;
- (d) Prevent or overcome excessive hair fall or baldness, unless such representations be expressly limited to cases other than those known to dermatologists as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness, and that respondent Loesch's said preparations will not in such cases stop excessive hair fall, prevent or overcome baldness or have any favorable influence on its underlying cause;
- (e) Induce new hair to grow or cause the hair to become thicker or otherwise grow hair in cases of impaired hair growth, unless such representations be expressly limited to cases other than those

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arising by reason of male pattern baldness and unless the advertisement clearly and conspicuously reveals the fact that the great majority of all cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness and that said preparation will not in such cases induce the growth of hair or thicker hair.

(f) Have any beneficial effect on itching scalp or other skin irritations or ailments in excess of affording temporary relief of scaling and itching.

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 of the representations prohibited in Paragraph 1 above, or which fails to comply with the affirmative requirements of subparagraphs (d) and (e) of Paragraph 1 hereof, or which advertisement uses the word "trichologist" or any other terms or words of similar import and meaning to designate, describe or refer to the respondent William T. Loesch or any of his representatives 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.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The complaint, as amended, charges dissemination of false advertisements for inducing the sale of preparations for the home treatment of hair and scalp conditions. Named as parties to this proceeding are respondent William T. Loesch, doing business as Loesch Hair Experts, and respondent William B. Zimmerman, who has conducted an advertising agency under the name of Zimmerman Advertising. The latter participated in the preparation of certain printed matter including newspaper advertisements for the preparations and handled their placement with newspapers for dissemination.

In his initial decision, the hearing examiner held the charges were sustained by the evidence and the initial decision's order contains proscriptions against use by the respondents of the acts and practices which were found unlawful. The respondent William T. Loesch filed appeal from that decision as permitted under § 3.22 of the Commission's Rules of Practice, and, pending its review hereof, the Commission has stayed the effective date of the initial decision as to respondent William B. Zimmerman, who filed no appeal. Unless otherwise designated, the term "respondent," as used hereinafter, refers to the respondent William T. Loesch.

The respondent's initial contacts with prospective purchasers are secured through newspaper advertisements. Typical advertisements offering the treatments announce the arrival of a Loesch representative or staff trichologist and invite those having hair troubles for free examination and discussion of hair problems. The products consist of shampoos and other preparations for external scalp use. Orders secured by the representatives are filled by shipment from the respondent's place of business in Houston, Texas. His sales territory includes the Gulf Coast states and various southeastern states.

The appeal urges that the hearing examiner erred in sustaining the charges which allege that certain of the advertising statements constituted representations that the Loesch preparations permanently eliminate dandruff, itching and irritations of the skin. In this connection, the brief emphasizes that the word "permanently" does not appear in the text of relevant advertising statements and that their import must be understood as limited to claims of beneficial results while treatment progresses and when succeeded by a regimen of improved scalp hygiene, including continued use of the preparations. The advertising, however, has included statements that dandruff, itching and irritations disappear within 10 days and that the products will eliminate those disorders. We think the promise implicit in those and other relevant advertising statements is one of permanent correction of such conditions rather than temporary alleviation. Inasmuch as any benefits afforded by the shampooing and mild bacteriostatic effects of respondent's preparations on dandruff and associated irritations are temporary and limited to period of use, the hearing examiner properly concluded that the advertising statements relevant to this aspect of the charges have constituted false advertisements.

In related vein is the appeal's contention that the advertising statements do not represent or imply, as found by the hearing examiner, that all local scalp disorders will be cured through use of the Loesch treatment. In this connection, the appeal asserts that the word "all" has not appeared in the advertising, that a disclaimer of the treatment being a "cure-all" does appear, and that the advertisements must be construed as representing only that benefits will be afforded in selected cases. Not all the advertisements have contained that disclaiming language, however. Furthermore, the statement as to the treatment being neither mail-order nor cure-all usually has appeared in emphasis of additional representations that different scalp conditions necessitate different treatments, and that a free personal examination by respondent's representative is afforded before any treatment is recommended. The advertising has offered

the Loesch products expressly as scientific treatments that correct scalp trouble and as giving a healthy scalp and one of the "Quick Results" stressed in advertising is correction of local disorders. In our view, the hearing examiner correctly concluded that the advertising reasonably represents and implies that the preparations will cure all types of scalp disorders and will keep the scalp healthy. Because the evidence clearly shows that benefits are not afforded in all such conditions by use of the products, the hearing examiner's additional holding that those representations are false has sound record basis.

The complaint, as amended, additionally charged that the advertising has falsely represented that the preparations will stop excessive hair fall, overcome and prevent all types of baldness and induce growth of new and thicker hair. The hearing examiner in effect held these allegations sustained and found that no benefit would be afforded in the type of baldness known to dermatologists as male pattern baldness. According to the evidence, this type accounts for 95% or more of all baldness. In contending that the hearing examiner erred in concluding that claims of product efficacy for overcoming all types of baldness were implicit in the advertising, the appeal states that any impressions in that respect are wholly dispelled by the advertisements' additional statements disclaiming benefits in cases of "slick" baldness.

That certain of the advertisements do admit a probable lack of hair restorative power for the preparations for those "slick-bald after years of gradual hair loss" does not serve to disclaim merit in overcoming male pattern baldness, save perhaps for persons with completely denuded scalps. One of the advertisements promises that the user can "at least save and improve" the hair he has and the home treatment is represented as satisfactory or successful in 90% or 95% of cases of use. In illustrations contained in certain of the advertisements, the scalps portrayed feature barren or thinned areas ranging from small to substantial. It seems clear, therefore, that the advertising has promised and implied that the preparations will overcome and prevent all types of baldness including the male pattern variety.

The appeal also contends that the advertising claims of efficacy in preventing baldness have support in the fact that certain of the dermatologists called as witnesses by counsel supporting the complaint testified that they successfully treated selected cases of hair loss. The import of their testimony in that respect did not include cases of male pattern baldness, however, and those witnesses were unanimous in their views that the respondent's formulas have no

therapeutic effect in cases of loss attended by male pattern conditions. In alopecia areata, the so-called spot-type of baldness, the hair often returns spontaneously. Massage or shampoos sometimes are resorted to by dermatologists as one aspect of its management. The course of male pattern baldness, on the other hand, is not affected by anything applied to the scalp. Although its causative factors have not been finally determined by medical science, the great weight of the evidence establishes that dandruff is not one of them. Hence, the hearing examiner's conclusions as to the falsity of the respondent's foregoing representations have full support in the record and this aspect of the appeal is denied.

A companion and closely related charge to the foregoing one presents the legal issue of whether the advertising is false through alleged failure to reveal facts material in the light of other statements and claims contained in the advertising. Section 15 of the Federal Trade Commission Act, as amended, relates to the advertising of certain products, including cosmetics and drugs. False advertisements, as there defined, include not only those which are misleading in a material respect through representations made or suggested by words and statements or through their failure to reveal consequences of use, but also those advertisements which are misleading due to "the extent to which the advertisement fails to reveal facts material" in the light of other representations there made. On the basis of that provision of law, the complaint, as amended, alleges falsity of the advertising through failure to reveal, in the light of its other representations of product merit, that the vast majority of the cases of excessive hair fall and baldness are the beginning or more fully developed stages of male pattern baldness, and that in such cases the Loesch preparations will not stop excessive hair fall, prevent or overcome baldness, or have any favorable influence on its underlying cause.

As previously noted, the advertising has falsely represented that those suffering from hair loss can at least save and improve their remaining hair, the treatments being offered as satisfactory or successful in 90% and 95% of cases of use; and the advertising has been key-noted by the additional false theme that most of the twelve million American men already or soon to be bald need not have lost their hair and that baldness was "most certainly" preventable. These advertisements patently have served to engender beliefs among persons with excessive hair fall or baldness that there was great probability that they were threatened with, or had, a type of baldness which would be overcome or prevented by the preparations. Not only does the record show that male pattern baldness represents 95% or upwards of all baldness among males,

but it also supports informed determinations that beneficial effects for the remaining 5% or less of cases of hair loss are afforded by the respondent's preparations only in some instances. Because these limitations unquestionably are highly material in the light of the advertisements' other representations respecting hair fall or loss and no adequate revealing statement in respect thereto has been included in the advertising, it follows that such advertisements are false as a matter of law.

Ordinarily, excessive hair fall occurring in any stage of male pattern baldness readily is so identified and diagnosed by the dermatologist; and its course and the true facts concerning its relative frequency in scalp conditions are an old and familiar story to physicians. This does not hold true, however, for members of the purchasing public. Therefore, only if the order includes a provision requiring an appropriate revealing statement relevant to the therapeutic limitations of the respondent's preparations will the deception lurking in any future advertisements offering them in even selected conditions of hair loss be effectively eliminated. In its absence, such advertisements inevitably would serve, contrary to the true facts, to suggest and represent to persons suffering from excessive hair loss that there is a reasonable probability that they are threatened with, or have, a type of baldness favorably influenced by the preparations' use. We think that the hearing examiner's ruling sustaining this charge has sound legal basis and is in conformity with the public policy underlying the Act.

While we concur in the initial decision's findings on this aspect, the relevant provisions of the order appear to require modification. Such order would require a revelation to the effect that a majority of the cases of excessive hair fall and baldness are the beginning or more fully developed states of male pattern baldness. As expressly found in the initial decision, however, the vast majority of such cases fall in the male pattern baldness category. The order is being modified accordingly.

The appeal also excepts to the initial decision's holding that through use of the word "trichologist" in designating the respondent and his traveling agents, and by other means in the advertisements, the respondent has falsely represented that he and his employees have had competent training in dermatology and other branches of medicine having to do with diagnosis and treatment of scalp disorders affecting hair. "Trichology" is defined variously as the science of treating the hair and as the branch of medicine having to do with the hair, its anatomy, growth and disease. As found in the initial decision, respondent and his associates lack such sci-

entific training. Conclusions that the respondent's use of the word "trichologist" has had the capacity and tendency to deceive are nowise refuted by the fact that some of the advertisements have contained statements to the effect that Mr. Loesch is not a doctor or that those suffering hair loss from organic disease should be treated by a physician. Not all of the advertisements have contained statements in that regard, and those noting the respondent not to be a doctor contain no similar statement regarding his traveling representatives, usually designated in advertising as staff trichologists.

We also are of the view that in the context in which the foregoing statements have appeared they nowise serve to eliminate impressions necessarily engendered by the "trichologist" designation. Such impressions unquestionably have been corroborated and enhanced by additional designations of the respondent's representatives as scalp specialists, the connotation of which is not dissimilar, together with the advertising's pictorial matter portraying Loesch white-coated personnel engaged in diagrammatic lectures on the hair growth mechanism. While concurring in and adopting the initial decision's findings on this aspect, we are of the view that the relevant paragraph of the order should be modified in order, among other things, to limit its legal application to practices promoting sales of the preparations in commerce and in the interest of deleting a provision relating to matters elsewhere covered in the order.

The appeal also excepts to certain procedural and evidentiary rulings by the hearing examiner which the appealing respondent contends constitute arbitrary and capricious limitations on his right of cross-examination. The hearing examiner's action requiring counsel to conclude cross-examination of one of the scientific witnesses by 6 P.M. on the date when he appeared was made in the interest of expediting the hearings and, in the situation there presented, clearly represented an exercise of the hearing officer's sound discretion in the conduct of the proceedings. Furthermore, after the hearing examiner granted a motion by staff counsel for amendment of the complaint, an opportunity to examine the witness further was duly extended but subsequently waived by counsel.

The foreclosed line of questioning challenged under related exceptions concerns a conference between counsel supporting the complaint and a medical witness on the day prior to the latter's appearance as a witness. The doctor was questioned by counsel for the respondent on cross-examination respecting any discussion which occurred concerning the scientific views of an earlier witness; and after answers to several questions on the matter were received the hearing examiner remarked that the questions implied that counsel

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supporting the complaint had told the medical witness how he was to testify and improperly impugned the motives of staff counsel. In this aspect of the cross-examination, the witness had stated in effect that the classification of the different forms of baldness to which he had testified constituted his sincere and independent views on the subject. No question was pending at the time of the hearing examiner's remarks and his ruling was a general one. As we interpret that ruling, it in no sense foreclosed counsel from propounding specific questions expressly directed to ascertaining whether the witness voiced scientific views at his prehearing interview or elsewhere which departed from those expressed by him when subsequently examined. It seems clear, therefore, that the ruling in no sense denied the respondent the right to examine the witness fully on matters of credibility, including possible bias, motive or interest, as long as the form of interrogation did not imply that the witness' testimony was inspired by improper conduct by counsel supporting the complaint. The same considerations are controlling to our conclusion that no undue restriction was presented respecting the cross-examination of another witness by reason of the hearing examiner's statement, in response to inquiry by respondent's counsel, that his ruling would be the same in the event the same type of questions were adopted there.

The last exception to procedural matters urges prejudicial error in connection with the hearing examiner's ruling excluding another question on cross-examination as immaterial. The question, in effect, requested an estimate of the percentage of cases of excessive hair loss in which loss would stop, or hair growth recur, under medical treatment by that physician; and the question apparently excluded the 95% or more cases of hair loss due to male pattern baldness or due to other disorders characterized by atrophy or death of the papilla, that is, the hair growth mechanism. Although two other medical witnesses were permitted to answer inquiries similar thereto, that circumstance does not render the instant ruling erroneous, however. The proportion of the relatively small percentage of cases of excessive hair fall due to the various causes not excluded under the question, including disease and certain other systemic factors, which may respond to treatment by a trained and experienced physician is in no sense an index to the efficacy of products solely intended for external use. The ruling as to the immateriality of those matters accordingly cannot be regarded as erroneous. We are convinced from our examination of all matters urged under this aspect of the appeal that the exceptions are lacking in merit.

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The appeal is denied accordingly and the initial decision, as modified under our accompanying order, is adopted as the decision of the Commission.

FINAL ORDER

This case having come on for final consideration upon the record, including the appeal of the respondent William T. Loesch from the initial decision of the hearing examiner, and the Commission having rendered its decision and determined, for reasons stated in its accompanying opinion, that said initial decision should be modified.

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision.

ORDER

It is ordered, That respondent William T. Loesch, an individual doing business as Loesch Hair Experts, or under any other name, and respondent William B. Zimmerman, an individual doing business as Zimmerman Advertising, or under any other name, 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 the various cosmetic or other preparations being sold, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mail, 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 alone or in conjunction with any method or treatment will:

- (a) Kill bacteria beneath the scalp;
- (b) Cause elimination of dandruff, itching or irritation of the scalp;
- (c) Cure all local scalp disorders or keep the scalp healthy;
- (d) Prevent or overcome excessive hair fall or baldness, unless such representations be expressly limited to cases other than those known to dermatologists as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness, and that respondent Loesch's said preparations will not in such cases stop excessive hair fall, prevent or overcome baldness or have any favorable influence on its underlying cause;

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(e) Induce new hair to grow or cause the hair to become thicker or otherwise grow hair in cases of impaired hair growth, unless such representations be expressly limited to cases other than those arising by reason of male pattern baldness and unless the advertisement clearly and conspicuously reveals the fact that the great majority of all cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness and that said preparation will not in such cases induce the growth of hair or thicker hair.

(f) Have any beneficial effect on itching scalp or other skin irritations or ailments in excess of affording temporary relief of scaling and itching.

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 of the representations prohibited in Paragraph 1 above, or which fails to comply with the affirmative requirements of subparagraphs (d) and (e) of Paragraph 1 hereof, or which advertisement uses the word "trichologist" or any other terms or words of similar import and meaning to designate, describe or refer to the respondent William T. Loesch or any of his representatives 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.

It is further ordered, That the respondents, William T. Loesch and William B. Zimmerman, 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.

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

Decision

IN THE MATTER OF
COLLINS HAIR AND SCALP EXPERTS, INC., ET AL.

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

Docket 6707. Complaint, Jan. 9, 1957—Decision, Nov. 14, 1957

Order requiring three associated corporations in Oklahoma City, Okla., along with their advertising agency, to cease representing falsely in advertising in newspapers, periodicals, leaflets, etc., that by use of their hair and scalp preparations, thinning hair would be checked, all types of baldness would be prevented and overcome, new hair would be induced to grow, and the hair would become thicker, unless such advertisements were expressly limited to cases other than "male-pattern baldness" and clearly revealed that the great majority of cases of thinning hair and baldness were of such male-pattern type and would not be favorably influenced by respondents' preparations; and to cease representing falsely by use of the term "Trichologist" that individual respondents and their employees had had competent medical training in the diagnosis and treatment of scalp disorders.

Harold A. Kennedy, Esq., for the Commission.

John A. Green, Jr., Esq., of Oklahoma City, Okla., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

PRELIMINARY STATEMENT

1. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 9, 1957, issued and subsequently served its complaint in this proceeding upon the above-named respondents Collins Hair and Scalp Experts, Inc., a corporation; Carey Hair & Scalp Experts, Inc., a corporation; Winston, Ltd., a corporation; David R. Collins, M. W. Collins, Rex W. Ochs, and John A. Green, Jr., individually and as officers of the next foregoing-named corporations; and Philip J. Keough, Jr., individually and doing business as Phil Keough and Associates Advertising Agency. Said complaint charges that respondents, who are engaged in the business of selling and distributing various cosmetic and drug preparations for external use in the treatment of the hair and scalp, have disseminated or caused the dissemination of false and misleading advertisements concerning said preparations for the purpose of inducing, and which are likely to induce, the sale of said preparations.

2. On February 18, 1957, respondents filed their joint and several answer in the form of a general denial of all of the material allegations of the complaint, and, subsequent to the fixing of a date for the initial hearing for reception of testimony respondents, on May 16,