

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,

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1957, moved to withdraw their answer and, on the same date order granting the requested withdrawal was passed by this Hearing Examiner. Further, in the aforesaid motion respondents stated they had no objection to the cancellation of the hearing then scheduled to take place in Oklahoma City, Oklahoma, and resetting same in the City of Washington, D.C., pursuant to which a hearing was thereupon scheduled for the latter place on May 23, 1957. At the appointed time and place the said hearing was duly convened, as the transcript thereof, duly filed in the office of the Commission in Washington, D.C., according to law, will reveal. At said hearing counsel in support of the complaint appeared and announced his readiness to proceed but so it is that respondents did not appear in person or by representative whereupon, and because of the withdrawal of their answer as aforesaid, and further by reason of the nonappearance of respondents, or any of them, the Hearing Examiner, pursuant to motion of Commission's counsel, declared the matter to be in default under the provisions of Rule No. 3.7(2)(b), notice of the provisions and effects of said rule having been served upon all respondents under the "Notice" portion of the complaint.

3. Prior to the date of hearing there were filed of record four affidavits signed by respondents M. W. Collins, John A. Green, Jr., Rex W. Ochs and David R. Collins, the tenor of all of such being that respondents M. W. Collins and John A. Green, Jr. served only as officers of certain of the corporate respondents in a purely nominal capacity; that neither had any voice in policy making or conducting the businesses of the corporate respondents, nor do either have any financial interest in any of the corporate respondents, wherefore, as to them, the complaint should be dismissed. To this request for dismissal the attorney in support of the complaint acceded, as will appear from the transcript, and confirmed his nonopposition in his submitted proposed findings, conclusions and order.

4. Default having occurred, and pursuant to the express provisions of the aforementioned Rule, the Hearing Examiner now proceeds with the making of his findings of facts, appropriate conclusions and order, such being based upon the complaint and proposed findings, conclusions and order submitted by the attorney in support of the complaint, no proposed findings having been submitted by the respondents.

FINDINGS OF FACT

1. Respondents Collins Hair and Scalp Experts, Inc., Carey Hair & Scalp Experts, Inc., and Winston, Ltd., are corporations organized and existing under and by virtue of the laws of the State of Oklahoma, with their offices and principal places of business at 4621

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N. E. 13th Street, Oklahoma City, Oklahoma. The individual respondents David R. Collins, M. W. Collins, Rex W. Ochs and John A. Green, Jr., are the officers of the above named corporations. Their addresses are as follows: David R. Collins, 4621 N. E. 13th Street, Oklahoma City, Oklahoma; M. W. Collins, Hartley, Iowa; Rex W. Ochs, 1828½ N. W. 23rd Street, Oklahoma City, Oklahoma; and John A. Green, Jr., 1701 N. Broadway, Oklahoma City, Oklahoma. The individual respondents David R. Collins and Rex W. Ochs control and have controlled the policies, acts and practices of the said corporate respondents, including the acts and practices herein found as facts.

2. Respondent Philip J. Keough, Jr., doing business as Phil Keough and Associates Advertising Agency, an individual proprietorship, maintains and has maintained an office at 810 Leonhardt Building, Oklahoma City, Oklahoma. This individual respondent controls and has controlled the policies, acts and practices of the said Phil Keough and Associates Advertising Agency, including the acts and practices herein found as facts.

3. Respondents are now, and have been for more than one year last past, engaged in the business of selling and distributing various "cosmetic" and "drug" preparations, as those terms are defined in the Federal Trade Commission Act, for external use in the treatment of conditions of the hair and scalp. Respondents cause said preparations, in many instances when sold, to be transported from their places of business in the State of Oklahoma to purchasers thereof located in various other states of the United States and in Canada. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations between and among the various states of the United States and between the State of Oklahoma and Canada.

4. Respondents have acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter found as facts.

5. The principal method of operating the business of said respondents is as follows: Employees of respondents, and also David R. Collins, travel about this country and Canada, stopping at various cities. Through extensive advertising, respondents invite persons in each locality to visit a temporary office, usually set up in a hotel room in that locality, for diagnosis and advice as to hair and scalp conditions; whereupon the use of certain preparations is recommended. If agreed to, said preparations are sold to such persons to be used at home and, together with instructions for their use, are shipped from the place of business of the corporate respondents to the purchasers thereof.

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6. The ingredients in said preparations are taken from the following list and are in various combinations:

Boric Acid
Castor Oil
#77 Detergent (a general household and industrial cleaner made by Peck's Products Co.)
Dyes
Emcol 5130 (an alkanolamine condensate detergent made by Emulsol Chemical Co.)
Hyamine 1622 (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride made by The Rohm & Haas Co.)
Isopropyl Alcohol
Lanolin
Methylcellulose
Mineral Oil
Nopco 1034 (a sulfonated oil made by Nopco Chemical Co.)
Oil Bay Terpeneless
Perfumes
Phenol
Propylene Glycol
Resorcinol
Sulfonated Castor Oil
Tincture Capsicum
Tween 60 (polyoxethylene sorbitan monostearate made by Atlas Powder Co.)
Veegum (colloidal magnesium aluminum stearate made by R. T. Vanderbilt Co., Inc.)
Water
Glycerol 40% Liquid Soap

7. Respondent Philip J. Keough, Jr., doing business as Phil Keough and Associates Advertising Agency, has been and is engaged in the business of conducting an advertising agency. In operating such advertising agency he has prepared, participated in the dissemination of and the causing of the dissemination of advertising of the respondents herein, including the advertising hereinafter set forth and found as a fact to have been used by the respondents in the furtherance of their business enterprises.

8. Among and typical of the statements and representations contained in said advertisements, principally in newspapers and other periodicals, booklets, leaflets and otherwise, disseminated and caused to be disseminated in interstate commerce, as "commerce" is defined in the Federal Trade Commission Act, are the following:

World's Largest Home Treatment Firm Tells Truth About Hair and Scalp.
Famous Trichologist Tells Truth About Saving And Improving Hair.

This new method of home treatment for saving and growing hair will be demonstrated in (name of city and date).

In an interview here today D. Russell Collins, internationally famous trichologist and director of the Collins Hair and Scalp Experts, Inc., said "There are 18 different scalp disorders that cause most men and women to lose hair. Using

common sense, a person must realize no one tonic or so-called cure-all could correct all the disorders," he explained.

"The Collins (or Carey) firm, recognizing that most people are skeptical of claims that hair can be grown on balding heads, offers a guarantee," Collins (or Carey) said.

GUARANTEED

Once a person avails themselves of the Collins treatment his skepticism immediately disappears.

* * * If there is fuzz, no matter how light, thin, or colorless, the Collins (or Carey) firm can perform wonders.

* * * This examination is very thorough and highly technical * * *.

World's Largest Home Treatment Firm Offers Lifetime Guarantee to Prevent Baldness.

Winston's New Method Offers Lifetime Satisfaction to Men and Women with Hair and Scalp Problems * * *.

* * * In an interview here today R. W. Ochs, who heads the House of Winston, the largest Hair and Scalp Home Treatment firm in the World, stood before us and in plain, simple language, set forth a new realm of hope with an entirely new concept of thinking regarding the Hair and Scalp, and its troubles. * * *

9. Through the use of the aforesaid statements and representations, respondents have represented, directly and by implication, that by the use of said preparations:

- (1) Thinning hair will be checked;
- (2) All types of baldness will be prevented and overcome;
- (3) New hair will be induced to grow; and
- (4) Hair will become thicker.

By use of the word "Trichologist," respondents have represented that respondents David R. Collins and Rex W. Ochs, and employees of the respondents, have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

10. The said advertisements are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact, regardless of the exact formula or combination of the ingredients of the preparations or the method of application, the use of said preparations, in the type of baldness known as male pattern baldness, which type accounts for the great majority of cases of all baldness, will not check thinning hair, prevent or overcome baldness or have any favorable influence on its underlying cause, induce new hair to grow, or cause the hair to become thicker.

Neither respondent David R. Collins, respondent Rex W. Ochs, nor any of respondents' employees, have undergone competent training in dermatology or any other branch of medicine having to do with the diagnosis or treatment of scalp disorders affecting the hair.

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Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to persons who have thinning hair, or who are bald, that there is a reasonable probability they are threatened with or have a type of baldness which will be prevented or overcome by the use of said preparations. In the light of such statements and representations, said advertisements are misleading in a material respect and, therefore, constitute "false advertisements," as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of that type of baldness known as male pattern baldness, and that in cases of that type the said preparations will not check thinning hair, prevent or overcome baldness, have any favorable influence on the underlying cause of baldness, induce new hair to grow or cause hair to become thicker.

11. The use by respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, and their failure to reveal pertinent and material facts, 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 misrepresentations are true and into the purchase of said preparations.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the named respondents and over the subject matter hereinabove set forth.

2. The respondents are engaged in interstate commerce as such commerce is defined in Section 4 of the Federal Trade Commission Act.

3. The respondents M. W. Collins and John A. Green, Jr., in their capacities as nominal corporate officers of the named corporate respondents, having no financial interest in the corporate businesses above delineated, nor participating in the formulating, exercising or practicing of the false and misleading acts hereinabove found to exist, the complaint, as to them, will be dismissed in the hereinafter appended order.

4. The foregoing 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 within the intent and meaning of the Federal Trade Commission Act.

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ORDER

It is ordered, That respondents Collins Hair and Scalp Experts, Inc., a corporation, and its officers; Carey Hair & Scalp Experts, Inc., a corporation, and its officers; Winston, Ltd., a corporation, and its officers; David R. Collins and Rex W. Ochs, individually and as officers of said corporations; and Philip J. Keough, Jr., an individual doing business as Phil Keough and Associates Advertising Agency, or under any other name or names, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic and drug preparations set out in the findings herein, or any preparation of substantially similar composition, or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the use of said preparations:

(a) Will check thinning hair, prevent or overcome baldness, or have any favorable influence on the underlying cause of baldness, unless such representations be expressly limited to cases other than those known as male-pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness, and that said preparations will not in such cases check thinning hair, prevent or overcome baldness or have any favorable influence on its underlying cause.

(b) Will 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 thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness and that said preparations will not in such cases induce the growth of hair or thicker hair.

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations in

commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in 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 respondents David R. Collins or Rex W. Ochs, or said respondents' representatives, or representatives of the respondents Collins Hair and Scalp Experts, Inc., Carey Hair & Scalp Experts, Inc., or Winston, Ltd., who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp conditions affecting the hair.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the respondents M. W. Collins and John A. Green, Jr.

OPINION OF THE COMMISSION

By KERN, Commissioner:

Counsel supporting the complaint has appealed from an initial decision which would dismiss the complaint as to two nominal corporate officers therein named as respondents but found not to have participated in the illegal acts alleged and order the remaining respondents to cease and desist from disseminating false advertisements in violation of the Federal Trade Commission Act. The appeal is directed solely to the form of the proposed order.

The complaint charged that respondents were disseminating false advertisements for the purpose of inducing the sale of certain preparations for use in the home treatment of thinning hair and baldness. The hearing examiner found that the "great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of that type of baldness known as male pattern baldness," and that in cases of that type respondents' preparations "will not check thinning hair, prevent or overcome baldness, have any favorable influence on the underlying cause of baldness, induce new hair to grow or cause hair to become thicker." He further held that statements and representations in respondents' advertisements have served, contrary to the facts, to suggest to persons who have thinning hair or 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 said preparations."

Paragraph 1(a) of the proposed order forbids advertisements of the sort aforementioned unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the majority of cases of excessive hair thinning and baldness

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are the beginning and more fully developed stages of said male pattern baldness which type represents the majority of all cases of baldness.

Counsel supporting the complaint argues that the above-quoted requirement that respondents disclose merely that a "majority" of such cases of hair trouble are due to male-pattern baldness is inadequate to correct the misrepresentation here involved and is not fully consistent with the finding that the "great majority" of cases of baldness are of the male-pattern type. We agree with that contention.

We further believe that this provision of the order is additionally deficient in that it fails to require respondents to reveal that their preparations will not, in cases of male-pattern baldness, check thinning hair or baldness or have any favorable influence on the underlying cause of baldness. Paragraph 1(b) of the proposed order, providing for a revealing statement in regard to certain other representations that respondents' products are of value in inducing the growth of new or thicker hair, is similarly deficient.

For reasons stated in our decision in the matter of *Loesch Hair Experts et al.*, Docket No. 6305 (decided today) we are of the opinion that our determinations respecting the form of order appropriate there and here have sound support in law and public policy. The appeal is granted and the order to cease and desist proposed in the initial decision will be modified in accordance with the views herein stated. As thus amended, the initial decision will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner and upon the brief in support thereof, no answering brief having been filed by the respondents; and the Commission having 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 respondents Collins Hair and Scalp Experts, Inc., a corporation, and its officers; Carey Hair & Scalp Experts, Inc., a corporation, and its officers; Winston, Ltd., a corporation, and its officers; David R. Collins and Rex W. Ochs, individually and as

officers of said corporations; and Philip J. Keough, Jr., an individual doing business as Phil Keough and Associates Advertising Agency, or under any other name or names, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic and drug preparations set out in the findings herein, or any preparation of substantially similar composition, or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the use of said preparations:

(a) Will check thinning hair, prevent or overcome baldness, or have any favorable influence on the underlying cause of baldness, unless such representations be expressly limited to cases other than those known as male-pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness, and that said preparations will not in such cases check thinning hair, prevent or overcome baldness or have any favorable influence on its underlying cause.

(b) Will 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 thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness and that said preparations will not in such cases induce the growth of hair or thicker hair.

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in 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 respondents David R. Collins or Rex W. Ochs, or said respondents' representatives, or representatives of the respondents Collins Hair and Scalp Experts,

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Inc., Carey Hair & Scalp Experts, Inc., or Winston, Ltd., who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp conditions affecting the hair.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the respondents M. W. Collins and John A. Green, Jr.

It is further ordered, That the respondents, save those dismissed hereinabove, 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 hereby, be, and the same hereby is, adopted as the decision of the Commission.

IN THE MATTER OF
ILLINOIS CONTINENTAL
MACHINE CORPORATION ET AL.

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

Docket 6615. Complaint, Aug. 20, 1956—Decision, Nov. 15, 1957

Order dismissing for lack of proof complaint charging two corporate promoter-sellers located in Chicago and Laguna Beach, Calif., and their common officer, with making false representations in advertising in magazines and periodicals of national circulation designed to elicit the interest of private individuals as purchasers and operators of their vending machines, and the cooperation of civic organizations as sponsors therefor.

Mr. S. F. House for the Commission.

Defrees, Fiske, O'Brien, Thompson & Simmons, by *Mr. Thomas J. Johnson, Jr.*, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

On August 20, 1956, the Federal Trade Commission issued the complaint in this proceeding, charging the Respondents with the dissemination of various false representations relative to the easy work and high profits to be gained from the purchase and operation of Respondents' candy and chewing-gum vending machines. The specific charges may be summarized as follows:

1. That, contrary to Respondents' representations, large profits rarely, if ever, accrue to persons who purchase and operate Respondents' vending machines;
2. That, contrary to Respondents' representations, purchasers are generally not able to earn \$100.00 per week in their spare time, and do not recoup their original investment in fifteen months;
3. That, contrary to Respondents' representations, purchasers are required to engage in extensive canvassing and selling;
4. That, contrary to Respondents' representations, purchasers of Respondents' machines are not required to have a car and good references in order to qualify therefor, but only to have the purchase price of the machine;
5. That, contrary to Respondents' representations, purchasers are not given exclusive sales territories;
6. That, contrary to Respondents' representations, Respondents do not give financial assistance to purchasers for expansion; that such