

Decision

IN THE MATTER OF
ERICKSON HAIR & SCALP SPECIALISTSORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6499. Complaint, Jan. 27, 1956¹—Decision, Feb. 26, 1959

Order requiring a Chicago seller of "home treatment kits" of hair and scalp preparations to cease advertising falsely that through use of said preparations, methods, and treatments by purchasers in their homes, fuzz would be replaced with long and strong hair; dandruff, itching, and irritation of the scalp would be permanently eliminated; and in the great majority of cases baldness, including the hereditary type, would be prevented and overcome, etc.; and to cease representing falsely, by use of the term "Trichologist," that he and his agents had had professional training in the treatment of scalp disorders affecting the hair.

Mr. Harold A. Kennedy supporting the complaint.

Frank E. & Arthur Gettleman, Mr. Edward Brodsky and Mr. Franklin M. Lazarus all of Chicago, Ill., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Introductory Statement

Amended complaint in this proceeding charges violation of the Federal Trade Commission Act by the dissemination of false advertisements through the United States mails and by various means in commerce of cosmetic and medicinal preparations for external use in the treatment of certain conditions of the hair and scalp. It also alleges that the advertisements are false in that respondent is called a "Trichologist" in the advertising. The answer to the complaint was also amended and as amended it is in substance a denial of all the material allegations of the amended complaint, except respondent's trade name and address.

Hearings were held for the taking of evidence in support of and in opposition to the allegations of the complaint in Chicago, Ill., Ft. Wayne, Ind. and Philadelphia, Pa.

Both sides were represented by counsel and given full opportunity to and did introduce evidence pertinent to the issues, examine and cross-examine witnesses and argue points of law and evidence. All parties were given opportunity to and did file proposed findings, conclusions and orders and the reasons there-

¹ Amended May 9, 1957.

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for which were given careful consideration by the hearing examiner. All such proposed findings, conclusions and orders not hereafter adopted, found or concluded are hereby specifically rejected.

Upon the entire record of the proceeding and from the observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and order:

Findings as to the Facts and Conclusions

1. Respondent David W. Erickson is an individual trading and doing business as Erickson Hair & Scalp Specialists with his office and principal place of business located at 11103 South Kedzie Avenue, Chicago, Ill. He has conducted said business since September of 1953 which consists of the sale and distribution of various cosmetic 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 Chicago, Ill. to purchasers thereof in the State of Illinois and in various other States of the United States. The total volume of respondent's business done from the Kedzie Avenue address runs between \$60,000 and \$80,000 annually. Of this amount 50% to 60% is shipped to persons residing outside the State of Illinois.

2. Respondent has another smaller office in Cicero, Ill., but most sales made from that office are local. There is another office run at Louisville, Ky., by a Mr. C. O. Brown who conducts approximately the same type of operation there that respondent conducts from his Kedzie Avenue office in Chicago. Brown uses respondent's business name, Erickson Hair & Scalp Specialists, with respondent's permission and respondent retains the right to generally supervise Brown's advertising. The only profit to respondent from Brown's operations comes from the sale to Brown in wholesale quantities of respondent's preparations.

3. Respondent's said preparations are composed of the following ingredients in various combinations:

- Boric acid
- Castor oil
- Dyes
- Hyamin 10X—Rohm & Haas Co. (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride)
- Isopropyl alcohol
- Lanolin
- Lanolin derivative
- Mineral oil

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Oil of Bay
Oxyquinoline sulfate
Perfume
Phenol
Propylene Glycol
Resorcinol
Sulfonated castor oil
Tegasept M—Goldschmidt Chem. Corp. (Methyl paraben)
Triethanolamine lauryl sulfate
Tween 20—Atlas Powder Co. (Polyoxyethylene sorbitan monolaurate)
Tween 60—Atlas Powder Co. (polyoxyethylene sorbitan monostearate)
Tincture of Capsicum
Veegum—R. T. Vanderbilt Co. (colloidal magnesium aluminum silicate)
Stearic acid
Precipitated sulphur
Ammoniated mercury
White precipitate
Beta Naphthol
Oil of tar, rectified
Carbowax 400
Water

4. Respondent's said preparations, made from the above ingredients, are sold in home treatment kits. Each kit has a shampoo, a solvent and two types of dressing for the hair. In addition thereto there are a number of small vials. So far as the ingredients of these vials are concerned, there are three basic kits. There are fourteen basic formulas in all. Some of these fourteen formulas are in one kit, some of them are in the second basic kit and some in the third. There are some repetitions of the formulas in the various kits. One kit is prepared particularly for those cases that have an excessive amount of oil in the hair. The other two kits are used alternatively for those whose hair is drier. All of the formulas, shampoos, solvent and dressing are made from the above listed ingredients. Each vial in each kit is numbered and the instructions that go with each kit tell the order in which the numbered vials are to be used. There is also a hair brush in each kit and a form for reporting to the respondent the use that has been made of the kit and the condition of the hair and scalp after use as observed by the user. The various formulas have been made up for the respondent by a chemist.

5. Respondent and his representatives visit various cities of the United States, stopping one or two days at a time in each city, holding what is called a hair and scalp clinic in each city. An advertisement is placed in the local newspaper in each city visited, one or two days before the visit, inviting the public to

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call on respondent or his representative on the date fixed for free consultation and advice as to their hair and scalp problems. These advertisements contain certain other representations, which will be discussed later.

6. The clinic is usually held in a hotel room. Those visiting the clinic are given a hair and scalp examination. This is done by focusing a flood light on the head and examining the hair and scalp with a magnifying glass. The subject is also asked questions about the history of his hair and scalp troubles. From this examination and history, respondent or his representative holding the clinic attempts to diagnose the condition and the cause of the condition of the subject's hair and scalp and to recommend treatment. About 5% of those visiting the clinic are refused treatment. In the other cases, when agreeable to the subject, respondent or his representative sells the prospect one of the home treatment kits. These orders for kits are then sent by respondent or his representative to respondent's Chicago office on Kedzie Avenue. The home treatment kit is mailed directly to the purchaser from that Chicago office. At the time the sale is made instructions are given the purchaser as to how to care for his hair and scalp until the home treatment kit is received.

7. As a part of the service rendered in connection with sale of a home treatment kit, the purchaser is contacted prior to the next return of respondent or his representative to that city and told to come in for a free checkup. As a result of the progress report to the Chicago office by the purchaser on the form provided therefor, or as a result of a checkup on one of the return visits, the formulas may be changed by respondent or his representative.

8. Since respondent started his business in 1953 he and his representatives have visited and held clinics in cities and towns in most of the States of the United States. There are some of these places that have been visited only once and others only two or three times. Respondent has gradually cut the itinerary to those places where experience has shown he can get the most business. At present his clinics are largely confined to cities and towns in Michigan, Wisconsin, Indiana and Illinois, with visits to a few cities and towns in Ohio.

9. The record contains copies of advertisements placed by respondent for respondent's clinics, which advertisements appeared in newspapers published in Columbia, S.C., Harrisburg, Pa., Knoxville, Tenn., Wilmington, Del., Elkhart and Plymouth, Ind.,

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Pasadena, Calif., and Peoria and Rockford, Ill. Other such advertisements have appeared in a large number of newspapers in cities and towns in various other States. The record also shows substantial circulation by United States mail and substantial out of the State circulation by the newspapers in the cities and towns mentioned above of the issues of said newspapers carrying respondent's said advertisements. By way of illustration, the issue of the Columbia, S.C. newspaper carrying respondent's said advertisement had a circulation by mail of 19,073 and an out of the state circulation of 1,907 copies. The issue of the Knoxville, Tenn. newspaper carrying respondent's said advertisement had a circulation by mail of 31,311 and an out of the state circulation of 5,758 copies.

10. Said advertisements disseminated and caused to be disseminated as above set forth contained among other things the following statements and representations:

You can now treat baldness successfully at home. Hear the facts about baldness and thinning hair. One day clinic, Wednesday June 23, Hotel Harrisburger—Harrisburg.

(beneath a picture of respondent and another man
appeared the following)

Internationally famous trichologist D. W. Erickson points out the dangers of clogged hair follicles to one whose hair is thinning. (Com. ex. 1)

New home treatment prevents baldness, Expert guarantees, Trichologist presents new evidence from recent case histories.

In an interview he (respondent) stated that his files contain reports from many current clients proving that his new home system of treatment is checking hair fall and stimulating thicker hair growth. * * * "Neglect and poor scalp hygiene" Erickson declared, "are the beginning of 85% of the cases of premature baldness today" (Com. ex. 4)

With few exceptions Erickson says The scalp that grows "fuzz" can be reactivated to grow hair of full length and strength.

* * * the Erickson organization has proved to thousands over a period of years that this progressive home hair and scalp treatment restores hair in a majority of cases where hair is thinning, thus preventing subsequent baldness. (Com. ex. 5)

Your only obligation is to yourself—to free your mind from worries about hair loss, dandruff, itching scalp and other disorders by learning to take care of your hair. * * * , less than 5% of the people we examine are "hopeless" (Com. ex. 6)

Other conditions that usually bring on excessive hair loss, dandruff, itching, irritated scalp, follicles clogged with sebum or seborrhea—can be corrected by Erickson home treatments if caught before the "hair factories" are destroyed. (Com. ex. 9)

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Unfortunately many people misunderstand the meaning of heredity. They think they have to go bald because other members of the family are bald. Actually the theory of heredity states that some families have a tendency toward a weak scalp. My system is based on bringing strength back to that weak scalp. A strong scalp is a productive one.

* * * * *

Hundreds of his clients will tell you that the application of these methods has developed weak fuzz into healthy, mature hair. "If there is any fuzz at all" Erickson said, "We can restore a healthy scalp condition and the hair will grow normally again as nature intended." (Com. ex. 7)

11. Through the use of such statements and representations in the context in which they appear, respondent has represented directly and by implication that through the use of his preparations, methods and treatment by purchasers in their homes, fuzz will be replaced with long and strong hair, dandruff, itching and irritation of the scalp will be permanently eliminated,² that in approximately 85% of the cases excessive hair loss and baldness will be prevented and overcome and the growth of thicker hair promoted. To one whose hair is thin, thicker hair implies new hair between the sparse hairs remaining.

12. Dr. Rattner, one of the expert dermatologists who testified, said he had the type of baldness known as male pattern baldness. His hair and scalp illustrate what is commonly seen, a fringe of normal hair on the sides over the ears and in the back with sparse fuzz on top of the head. Respondent's advertising, among other things, says to men who are bald like Dr. Rattner that respondent's preparations, methods and treatment will restore a normal head of hair.

13. Under the evidence, by referring to himself as a "trichologist" respondent has represented, at least by implication, that he has had sufficient training in medicine, including dermatology, to qualify as an expert in scalp disorders affecting the hair.

14. It is evident that the advertisements mentioned above and others similar were for the purpose of inducing and likely to induce the purchase of respondent's preparations in commerce. In fact the evidence shows the respondent's advertising of this kind did result in sales of respondent's preparations in Illinois and other States. That the preparations were cosmetics as that term is defined in the Federal Trade Commission Act is established by the evidence. They were to be applied to the human

²If one can free one's mind from worries about dandruff, itching and irritation of the scalp by use of respondent's preparations, methods and treatment, that means to the hearing examiner that these things will be permanently eliminated.

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head and were intended for cleansing, promoting attractiveness and altering the appearance. If such advertisements were false, violation of Sections 12(a) (1) and 12(a) (2) of the Act has been established.

15. The complaint limits the charge of false advertising in regard to preventing and overcoming excessive hair loss and baldness. The charge is that the great majority of cases of excessive hair loss and baldness are of the type known as male pattern baldness and that in cases of male pattern baldness respondent's preparations and methods of treatment will not prevent or overcome excessive hair loss and baldness or cause hair to grow thicker, or cause new hair to grow. A further charge is that failure to reveal in the advertising the alleged ineffectiveness of respondent's preparations and methods of treatment in cases of male pattern baldness is itself a cause of deception. Thus, there is no charge that respondent's preparations and methods of treatment are ineffective in preventing or overcoming excessive hair loss and baldness in other types of baldness.

16. The medical experts who testified in this proceeding were Drs. Hebert Rattner, Adolph Rostenberg, Jr., Seymour Weisberg, Eugene Lorant and Clark W. Finnerud, all of Chicago, and Dr. Albert Kligman of Philadelphia. The qualifications as an expert of each doctor who testified are in the record. Another expert in his field also testified. He was William Colburn of Chicago, a consulting chemist. His qualifications as an expert are also in the record.

17. Mr. Colburn's testimony was limited to the uses of the ingredients in respondent's preparations when applied to the scalp. For instance he said that lanolin, one of the ingredients, is used as a carrier of other ingredients in ointments and cosmetics and itself has the properties of dissolving greasy materials, of causing two dissimilar liquids to mix and of softening and smoothing the skin. He went through the list, similarly giving the properties of each ingredient.

18. Twenty-nine users of respondent's preparations also testified about their experiences and satisfaction with the results obtained. A number of them stated that they had experienced substantial growth of new hair in bald spots. Others that their hairfall had diminished since using respondent's preparations. Most of them testified that dandruff, itching and irritation of the scalp ceased after having used respondent's preparations for

awhile. Most of these witnesses were continuing to use respondent's preparations or some of them. The hearing examiner observed the hair and scalp of each of these user witness at the time they gave their testimony. Some of them had what appeared to be normal hair growth in places where they testified the hair had been thin prior to using respondent's preparations. In the majority of these witnesses, however, the hair was still thin in places where they testified that the hair had filled in while using respondent's preparations. Their testimony in regard to these places where the hair was still thin, was, that it had been thinner before using respondent's preparations.

19. From the expert testimony and the user testimony it must be determined whether the challenged representations made by respondent are true or false.

20. Dr. Rostenberg stated unequivocally that no combination of the ingredients in respondent's preparations would cause fuzz to be replaced with longer or stronger hair. Dr. Rattner stated unequivocally that no combination of the ingredients in respondent's preparations, alone or in combination with any physical methods of treatment will result in fuzz on the scalp being replaced by longer or stronger hair. Neither Dr. Weisberg, Dr. Lorant, Dr. Finnerud or Dr. Kligman were questioned on this point, which is one of the contested issues in the case.

21. Only three of the 29 user witnesses, Malhiot, Hallstein and Callahan said that fuzz grew into hair like the other hair on their scalps while using respondent's preparations and treatment.

22. Considering all the expert and user testimony, the preponderance of the evidence is to the effect that respondent's preparation whether used alone or in combination with any physical method of treatment will not cause fuzz on the scalp to be replaced by longer or stronger hair. It is so found.

23. All experts questioned on the subject agreed that the ingredients in respondent's preparations, if properly used will, during their use, eliminate dandruff and also eliminate itching and irritation of the scalp due to local conditions, but there is no assurance that such conditions will not return, when the use of the preparations is stopped. It is therefore found that respondent's preparations, methods and treatment will not permanently eliminate dandruff, itching or irritation of the scalp. Nowhere in the advertising is there any indication that the use of the

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preparations must be continued for the remainder of one's life to achieve the results claimed.

24. Dr. Rattner expressed the opinion that male pattern baldness comprised "as near as you can get to 100%" of all cases of baldness although there are other types of baldness. Dr. Rostenberg stated that from his experience he would say that male pattern baldness comprised approximately 80% of all cases of baldness. Dr. Weisberg did not use the term "male pattern baldness" but was evidently referring to the same thing when he talked about "common baldness" and the "prevailing type of baldness." The very use of these terms indicated a recognition that this type of baldness was more prevalent than any other type, although he did not give any percentage figures. Dr. Weisberg admitted the possibility of plugged hair follicles causing baldness, but he did not confuse that type of baldness with "common baldness" or the "prevailing type of baldness." Dr. Lorant recognized alopecia prematura as a distinct type of baldness. This had been previously identified by Dr. Rattner and Dr. Rostenberg as the same thing as male pattern baldness. Dr. Lorant said that baldness could be caused by the hair follicles becoming plugged by a combination of the secretions from the sebaceous glands in the scalp and certain fungi that grow on the scalp. Dr. Lorant did not attempt to say or even indicate that alopecia prematura was caused by plugged follicles, nor did he attempt to say how prevalent either of these types of baldness was. Dr. Finnerud spoke of presenile baldness or common baldness or idiopathic baldness. The record shows that presenile and common baldness are terms meaning the same type of baldness as Dr. Rattner and Dr. Rostenberg called male pattern baldness. Dr. Finnerud recognized this as a distinct type of baldness. He also spoke of hair loss due to severe seborrhoeic dermatitis. He said that condition was accompanied by grossly evident inflammatory changes in the scalp. He further said the pattern of hair loss in such cases is similar to that in presenile baldness. By this he recognized presenile baldness and baldness due to severe seborrhoeic dermatitis as two distinct types of baldness. Dr. Kligman stressed the point that in male pattern baldness there is no irritation or inflammation of the scalp. Thus, all the medical experts who testified recognized a distinct type of baldness, called variously in the record, male pattern, common, pre-senile, the prevailing type of baldness and alopecia premature. The only experts who testified as to the prevalence of that type of

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baldness were Dr. Rattner and Dr. Rostenberg. Thus, the preponderance of evidence is that the great majority of all cases of baldness are of the male pattern type. It is so found.

25. Dr. Rattner testified that no combination of the ingredients in respondent's preparation alone or in conjunction with any physical method of treatment will prevent or overcome male pattern baldness, or cause the hair to become thick, or thicker, or cause new hair to grow in such cases. He further testified that he knew of no method of treatment, whether involving topical application of preparations alone or in conjunction with any physical therapy which will prevent or overcome the male pattern type of baldness or cause the hair to grow thicker or new hair to grow, or any other kind of hair to grow in such cases. Dr. Rostenberg gave similar testimony on these points. Dr. Kligman's testimony on these points was essentially the same in that he said nothing can be done for male pattern baldness.

26. Dr. Weisberg stated that local applications containing antiseptics and antipruritics coupled with massage "might and could" result in diminished hair fall and diminished hair loss, by one suffering from excessive hair loss. He did not state that these measures would have any effect in cases of male pattern baldness "or the prevailing type of baldness" or "common baldness" as he characterized it. He refused to give an opinion in regard to the efficacy of respondent's preparations because of his unfamiliarity with some of the ingredients. Dr. Lorant's testimony on plugged hair follicles, the cause and the remedy has been described above. He did not give any opinion as to whether alopecia prematura (which is another name for male pattern baldness) would be affected by respondent's preparations or any method of treatment. He did say that the cause of alopecia prematura is unknown.

27. Dr. Finnerud gave no statement on the question of whether respondent's preparation alone or in connection with any physical methods of treatment would prevent or overcome male pattern baldness or presenile baldness, as he called it, or cause hair to grow thicker or cause new hair to grow in such cases.

28. The testimony of the user witnesses is not helpful on this point. There is no evidence that any of them had male pattern baldness, whether called by that name, or any of the other names used to describe the same type of baldness. Only three of them had ever been to a medical doctor for the condition of their hair

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and scalp. One of these three had only been to a medical doctor once and that was about 30 years ago.

29. It is therefore found that respondent's preparations, methods and treatment will not prevent or overcome male pattern baldness or cause the hair to grow thicker or cause new hair to grow in such cases.

30. Dr. Rostenberg testified and it is undisputed in the record that one does not have to be visibly bald to be afflicted with male pattern baldness. When one hair is gone that is not replaced, that is a bald spot, although it is not visible while still surrounded by other hairs. As the other hairs around that spot come out and are not replaced, except perhaps some of them are replaced by fuzz, a visible bald spot appears, but the difference is only one of degree. Before much hair is gone or a visible bald spot appears, Dr. Rostenberg said it was more difficult for the doctor to determine whether the excess hair fall is due to male pattern baldness. However, by examining the hair and scalp, the history of the hair loss and the family history of the individual, a diagnosis can be made. Dr. Kligman agreed with Dr. Rostenberg although he thought that during the early stages of development, it would require more than one examination to make a diagnosis of male pattern baldness.

31. Respondent sought to make the point during the hearings that prevention of further excessive hair loss, before one becomes bald was not covered by the expert testimony, because it is claimed that even the expert cannot tell whether one has male pattern baldness until the baldness becomes evident. The testimony of Dr. Rostenberg and Dr. Kligman above mentioned refutes this point.

32. Much of the expert testimony given by the experts called by respondent was devoted to the claimed uncertainty as to the cause of male pattern baldness. There is more apparent than real conflict in the evidence on this point. Dr. Rattner, Dr. Kligman and Dr. Rostenberg admitted that many experts formerly held the view that the cause of male pattern baldness was unknown. They further stated that they knew of no experts of stature who currently hold views contrary to those expressed by them on the point. The testimony of the experts called by respondent on this point reflected the earlier view point. The questions asked these witnesses and their answers indicated that their views were governed at least to some extent by the earlier rather

than the current writing on the subject. Of course they had the right to reject the current writing.

33. As stated above, male pattern baldness, whether called by that name or some other was recognized as a distinct type of baldness. That being true, the hearing examiner is of the opinion that its cause was not an issue in the case, under the pleadings.

34. The preponderance of the evidence also establishes that by calling himself a "Trichologist" respondent has falsely represented that he has had competent training in dermatology or other branches of medicine having to do with the treatment of scalp disorders affecting the hair. In addition to the testimony of the expert witnesses on this point, one user witness testified that after reading respondent's advertising, he went to him for correction of his hair troubles like he would go to a dentist for a toothache, that he thought Erickson had a license to practice medicine. Another user witness said he thought Erickson was a very learned man. Another said that his wife talked him into visiting somebody in the professional field who could help him. After seeing respondent's advertising he chose Erickson. He further said he called on Erickson to use his professional services. The facts are that Erickson was not a doctor, not a professional man and not learned. He has had no medical training. He has had only one semester of college work, that being a course in marketing taken at New York University.

35. It is therefore found that respondent has falsely represented through the advertising mentioned above that the use of his preparations, methods and treatment will permanently eliminate dandruff, itching and irritation of the scalp and result in fuzz being replaced by long and strong hair. The representations that the use of respondent's preparations, methods and treatment will prevent and overcome baldness and promote the growth of thicker hair are false because these claims are not limited to cases other than cases of male pattern baldness. The representation that respondent is a Trichologist is false for the reasons hereinbefore set forth.

36. Respondent's advertising is also false for another reason. In advertising that his preparations, methods and treatment will cause hair to grow and will overcome baldness, respondent suggests that there is a reasonable probability that hair loss or baldness in any particular case may be due to a cause for which his preparations, methods and treatment will be of benefit and

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constitute an effective treatment. In truth and in fact the instances in which loss of hair or baldness is due to a cause or condition for which respondent's preparations, methods and treatment will be of benefit, and will constitute an effective treatment are rare. In the vast majority of cases, loss of hair or baldness is a male pattern type, having no relation to any cause for which respondent's preparations, methods or treatment will be of any value whatever in the treatment thereof. Thus, there is no reasonable probability that any particular case of baldness is caused by a condition for which the respondent's preparations, methods or treatment may be beneficial. Respondent's advertising is misleading because of respondent's failure to reveal the fact that in most cases loss of hair or baldness is of the type known as male pattern baldness and that when baldness is of that type, respondent's preparations, methods and treatment are of no value in the treatment thereof.

37. The use by the respondent of the foregoing false statements and representations disseminated as hereinabove 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 respondent's said preparations because of such erroneous and mistaken belief.

38. The aforesaid acts and practices of respondent 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.

39. So that there may be no misunderstanding in regard to the proposed findings filed, respondent's proposed findings of fact numbered 1, 2, 3, 4, 6 and 7 are rejected because they have no bearing on the issues in this proceeding as established by the amended complaint and the amended answer. Respondent's proposed finding numbered 5 has been accepted in essence. Respondent's proposed findings numbered 8 and 9 are rejected because they are contrary to the preponderance of the evidence. Respondent's proposed conclusion and order are rejected for the same reason. This initial decision unmistakably informs the parties of the action taken on the findings, conclusion and order proposed by counsel supporting the complaint.

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ORDER

It is ordered, That the respondent David W. Erickson, trading as Erickson Hair and Scalp Specialists or under any other name or names, and respondent's 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 described in the findings herein, or of any other preparations for use in the treatment of hair and scalp conditions, 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:

(a) That the use of said preparations alone or in conjunction with any method of treatment will:

(1) Permanently eliminate dandruff, itching or irritation of the scalp;

(2) Cause fuzz to be replaced with long or strong hair;

(3) Prevent or overcome excessive hair loss or baldness or cause new hair to grow, or cause hair to grow thicker or otherwise grow hair, unless such representations be expressly limited to cases other than those known as male pattern baldness and unless the advertisement clearly and conspicuously reveals that in the great majority of cases of baldness and excessive hair loss, respondent's said preparations and treatments are of no value whatever;

(b) That respondent, his agents, representatives or employees 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, or are trichologists.

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 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Respondent having filed an appeal from the hearing examiner's initial decision; and the matter having been heard on briefs and oral arguments of counsel; and

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The Commission having considered the record and having determined that the findings and conclusions of the hearing examiner are supported in all respects by the record and that the order contained in the initial decision is fully justified:

It is ordered, That respondent's appeal be, and it hereby is, denied.

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

It is further ordered, That the respondent David W. Erickson shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist contained in the aforesaid initial decision.

IN THE MATTER OF
JACOB C. SWIMMER TRADING AS
NATIONAL TITANIUM COMPANY

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

Docket 7046. Complaint, Jan. 16, 1958—Decision, Feb. 26, 1959

Order dismissing, due to the decease of the sole respondent, complaint charging a paint distributor in Vernon, Calif., with misrepresenting in advertising the quality, durability, composition, etc., of his "Genuine Exterior Paint."

Mr. Garland S. Ferguson and *Mr. John J. McNally* for the Commission.

Mr. G. V. Weikert, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Upon motion of counsel supporting the complaint, the sole respondent herein, Jacob C. Swimmer, having died December 31, 1958,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of February 1959, become the decision of the Commission.