

IN THE MATTER OF
KEELE HAIR & SCALP SPECIALISTS, INC., ET AL.

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

Docket 6589. Complaint, July 17, 1956—Decision, May 21, 1959

Order requiring two distributors of hair and scalp preparations in Oklahoma City, Okla., and Wichita, Kans., respectively, along with their advertising agency, to cease advertising falsely that their said preparations would be effective in checking thinning hair and overcoming baldness, including male pattern baldness; to reveal clearly that the great majority of cases of thinning hair and baldness are of the male pattern type and that their preparation would be ineffective in such cases; and to cease claiming that they and their agents were "Trichologists" or had training in dermatology or other branches of medicine.

Mr. Harold A. Kennedy for the Commission.

Mr. Richard M. Welling, of Charlotte, N.C., for respondents Keele Hair & Scalp Specialists, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Rogers Hair Experts, Inc., and American Advertising Bureau, Inc.

No appearance for respondents Lorene Firsching, Vangie Clendenin, J. Wayne Green, John Shiflet, Mrs. Lorraine Shiflet and David A. Miller.

John H. Kennedy, pro se.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The Commission's complaint in this matter charges the respondents with disseminating false advertisements in connection with various cosmetic and drug preparations intended for use in the treatment of the hair and scalp. After the filing by certain of the respondents of their answers to the complaint, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by counsel supporting the complaint, and a motion to dismiss the complaint has been filed by counsel for respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele and J. H. Keele. The case has been argued orally and is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Keele Hair & Scalp Specialists, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 710 Leonhardt Building, Oklahoma City, Okla. Respondents William L. Keele, Thelma P. Keele, and J. H. Keele are officers of the corporation, their addresses being as follows: William L. Keele, 710 Leonhardt Building, Oklahoma City, Okla.; Thelma P. Keele, 905 NW. 40th Street, Oklahoma City, Okla.; and J. H. Keele, Red Rock, Okla. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

3. Respondent Rogers Hair Experts, Inc., is a corporation organized and existing under the laws of the State of Kansas, with its office and principal place of business at 426 East Central Avenue, Wichita, Kans. Respondents Lorene Firsching and Vangie Clendenin are officers of the corporation, their addresses being as follows: Lorene Firsching, Range Road, Wichita, Kans.; Vangie Clendenin, Michigan, Kans. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

4. Respondent J. Wayne Green, joined as a respondent individually and as an officer of Rogers Hair Experts, Inc., was not served with process, and the complaint must therefore be dismissed as to him. The term respondents as used hereinafter will not include this individual.

5. Respondent American Advertising Bureau, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 704 Leonhardt Building, Oklahoma City, Okla. Respondents John Shiflet, Mrs. Lorraine Shiflet and David A. Miller are officers of the corporation, their address being the same as that of the corporation. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

6. Respondent John H. Kennedy, joined as a respondent individually and as an officer of American Advertising Bureau, Inc., is a practicing attorney in Oklahoma City, Okla. While for a period of approximately three months (September 1 to December 3, 1954) he was vice president of the corporation, he has at no time participated actively in the management of its affairs. Since December 3, 1954, he has had no connection whatever with the company. The complaint is therefore being dismissed

as to him, and the term respondents as used hereinafter will not include this individual.

7. The respondents answering the complaint and contesting the proceeding are the three corporate respondents and William L. Keele, Thelma P. Keele and J. H. Keele. The other respondents are in default, having neither filed answers to the complaint nor appeared at any of the hearings.

8. Respondents Keele Hair & Scalp Specialists, Inc., and Rogers Hair Experts, Inc., are engaged in the business of selling and distributing various cosmetic and drug preparations intended for external use in the treatment of conditions of the hair and scalp. The sales of the preparations include sales made in connection with and as a part of treatments administered by respondents and their employees. Respondents have caused their preparations, when sold, to be transported from their respective places of business in the States of Oklahoma and Kansas to purchasers located in various other States of the United States. Respondents have maintained a course of trade in the preparations in commerce between and among the various States of the United States.

9. Respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Lorene Firsching, and Vangie Clendenin have acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter set forth.

10. One of the methods used by respondents Keele Hair & Scalp Specialists, Inc., and Rogers Hair Experts, Inc., in operating their business is as follows: Employees of the two corporations, and also respondent William L. Keele, travel extensively in the United States, with stops at various cities. Through newspaper advertisements respondents invite members of the public in each locality to visit a temporary office set up by respondents in that location, the office usually being set up in a hotel room. Members of the public are invited to visit the office in order that they may receive diagnosis and advice by respondents as to their hair and scalp conditions. Frequently, as a result of such interviews the use of certain of respondents' preparations is recommended by them. If successful in their efforts, respondents sell the preparations to such customers for use by them in their homes. The preparations, together with instructions for their use, are shipped to the purchasers from the place of business of one of the corporate respondents.

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Respondent Keele Hair & Scalp Specialists, Inc., by means of newspaper advertisements also invites members of the public to come to its place of business in Oklahoma City for diagnosis and treatment. To those coming to such place of business a certain series of treatments is usually recommended. If the treatments are agreed to, they are administered by respondent, and in connection with and as a part of the treatments certain of the preparations are used. Respondent also sells home treatment kits, along with instructions for the use thereof, to individuals visiting its place of business as a result of the advertisements. These home treatment kits include certain of the preparations.

11. The following ingredients are used in respondents' preparations, the ingredients being used in various combinations in the several preparations:

- Ammoniated Mercury
- Ammonium Lauryl Sulfate
- Benzoyl Peroxide
- Beta Naphthol
- Boric Acid
- Carbowax 1500 (a solid polyethylene glycol made by Carbide & Carbon Chemicals Co.)
- 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.)
- Eucalyptol
- Glycerol 40% Liquid Soap
- Hyamine #1622 (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride made by The Rohm & Haas Co.)
- Hydrophilic Ointment Base
- Isopropyl Alcohol
- Lanolin
- Methylcellulose
- Methyl Para Hydroxy Benzoate
- Mineral Oil
- Nopco #1034 (a sulfonated oil made by Nopco Chemical Co.)
- Oil of Bay, Terpeneless
- Oil of Cade
- Oil of Tar, Rectified
- Oil of Thyme
- Oxyquinolin
- Petrolatum
- Perfume
- Phenol
- Propylene Glycol

Resorcinol
Salicylic Acid
Sulfonated Caster Oil
Sulfur, Precipitated
Tincture Capsicum
Tincture Green Soap
Tween 60 (Polyoxyethylene Sorbitan Monostearate made by Atlas Powder Co.)
Unsaturated Fatty Acid
Veegum (Colloidal Magnesium silicate made by R. T. Vanderbilt Co., Inc. Water

12. Respondents American Advertising Bureau, Inc., John Shiftet, Mrs. Lorraine Shiftet and David A. Miller are engaged in the business of conducting an advertising agency. In the operation of such agency they have prepared, disseminated and caused the dissemination of advertising for the preparations in question. They have acted in conjunction and cooperation with the other corporate and individual respondents in the performance of the acts and practices hereinafter described.

13. In the course and conduct of their business all of the respondents have disseminated and caused the dissemination of advertisements concerning the preparations by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and caused the dissemination of advertisements concerning such preparations by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

By means of these advertisements, respondents have represented, directly or by implication, that through the use of their preparations thinning hair will be checked, baldness prevented and overcome, new hair induced to grow, and the hair become thicker.

By referring to respondent William L. Keele and certain of their other representatives as "trichologists," respondents have also represented in their advertisements that such persons have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

14. The scientific evidence in support of the complaint consists of testimony from three highly qualified and experienced

physicians. In substance their testimony is that the great majority of cases of baldness and thinning hair fall in the category of "male pattern baldness." While scientists are not entirely certain as to the cause of this type of baldness, the consensus is that the condition is due to hereditary factors. In any event, the witnesses are unanimous in their opinion that there is no known cure or effective treatment for the condition (except possibly hormone injection and castration).

While two highly qualified physicians were called as witnesses by respondents, their testimony was not in conflict with the opinions expressed by the witnesses called in support of the complaint. On the contrary, the testimony of respondents' witnesses in substance was corroborative of the testimony of the three witnesses called on behalf of the Commission.

15. The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. Respondents' advertisements, however, include claims such as "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or excessive hair fall will be aided by the preparations. Some of the respondents' advertisements, but not all, seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented their preparations to be effective in such cases. Respondents' preparations, whether used singly or in combination, and regardless of the method of treatment followed in connection with the preparations, will have no effect upon male pattern baldness. In such cases the preparations are wholly incapable of checking thinning hair, preventing or overcoming baldness, inducing new hair to grow, or causing the hair to become thicker. It follows, therefore, that the representations in respondents' advertisements to the contrary are misleading in a material respect.

Respondents' representation that respondent William L. Keele and certain of their other representatives are trichologists is also misleading in a material respect. None of these individuals

is a trichologist. None is a physician and none has had any competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

16. Respondents' advertisements are misleading in a further material respect in that they fail to reveal facts material in the light of the advertisements' other representations respecting baldness or hair loss. As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations, could have been prevented and may yet be overcome. In all except a few "hopeless cases," they have said, amounting to no more than 5%, a full head of healthy hair can be grown and the condition of baldness relieved. Obviously, such advertisements, when read by a person who has lost or is losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined by the statute.

As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the

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further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

17. It is therefore concluded that respondents' advertisements, as charged by the complaint, constitute false advertisements within the meaning of the Federal Trade Commission Act.

18. The use by respondents of the false advertisements described above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' preparations and the benefits to be derived from the use thereof, and to cause such persons to purchase such preparations as a result of the erroneous and mistaken belief so engendered. The present proceeding is therefore in the public interest.

19. The acts and practices of respondents as herein found are to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Keele Hair & Scalp Specialists, Inc., a corporation, and its officers, and William L. Keele, Thelma P. Keele, and J. H. Keele, individually and as officers of said corporation, and Rogers Hair Experts, Inc., a corporation, and its officers, and Lorene Firsching and Vangie Clendenin, individually and as officers of said corporation, and American Advertising Bureau, Inc., a corporation, and its officers, and John Shiflet, Mrs. Lorraine Shiflet, and David A. Miller, individually and as officers of said corporation, and 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 or drug preparations referred to in the findings herein, or any other preparations intended for use in the treatment of hair or 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, that the use of said preparations, alone or in conjunction with any method of treatment:

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Will check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause the hair to become thicker, unless such representations be expressly limited to cases other than those of 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, cause new hair to grow, or cause hair to become thicker.

2. 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 respondents or any of their agents or employees are trichologists, or that they have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair or scalp.

3. 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 representation prohibited in paragraphs 1 and 2 hereof.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents J. Wayne Green and John H. Kennedy.

It is further ordered, That the motion of respondents, Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele, and J. H. Keele, to dismiss the complaint be, and it hereby is, denied.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

The complaint in this matter charges the respondents with violating the Federal Trade Commission Act in connection with the dissemination of false advertisements concerning various cosmetic and drug preparations intended for use in the treatment

of the hair and scalp. In an initial decision, filed August 28, 1958, the hearing examiner held that the charges in the complaint were sustained in part and included in his decision an order directing certain of the respondents to cease and desist the practices found to be unlawful.¹

Counsel for the respondents and counsel in support of the complaint have filed cross-appeals from the aforesaid initial decision. The contentions of each will be separately considered below.

Respondents' Appeal

Respondents take exception to the examiner's finding that by referring to respondent William T. Keele and some other representatives as "trichologists" in their advertisements they have represented that such persons have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp. The respondents' position is that "trichologist" means nothing more than one experienced in the hair. The record, however, supports the finding of the examiner. There is evidence that a trichologist is one who has had medical training, a medical degree and some special training in dermatology. Moreover, in the context in which the word "trichologist" appears in respondents' advertisements, the impression created thereby that certain personnel have special training in medicine is further enhanced by picturing a representative in a white coat before an enlarged photograph of hair follicles and by the use of words with medical associations, such as "specialists." The examiner's finding in this connection is consistent with prior Commission rulings as to the meaning conveyed by the use of such term. Cf. *William T. Loesch, et al.*, Docket No. 6305 (decided November 14, 1957), affirmed C.A. 4, 257 F. 2d 882 (1958).

The respondents' next exception is directed to the hearing examiner's finding that respondents have falsely advertised that their preparations will be effective in cases of male pattern baldness.

The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. It is also shown by the great weight of the evidence that respondents' preparations, in such cases, are incapable of checking thinning

¹ The examiner dismissed the complaint as to respondents J. Wayne Green and John H. Kennedy.

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hair, preventing or overcoming baldness, inducing new hair to grow, or causing hair to become thicker. It remains only to be determined, therefore, whether respondents have represented that their preparations would be effective in male pattern baldness cases. On this point we believe the record is entirely sufficient. Respondents' advertisements include claims such as: "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or hair loss will be aided by their preparations. Some, but not all, of respondents' advertisements seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented that their preparations will be effective in such cases. These advertisements, therefore, are misleading in a material respect. We do not believe that respondents' exception in this connection is well taken; nevertheless, the examiner's findings relative thereto will be modified in the interest of clarity.

Respondents finally assert that, beginning in May, 1955, respondents' advertisements were materially changed to conform to the alleged wishes of the Commission, and that the advertisements offered in evidence in support of the complaint were never thereafter used by respondents. There are no circumstances shown in this case, however, which would justify considering the matter as one for dismissal of the complaint on the ground of a discontinuance of unlawful practices, if that is what respondents are seeking. Respondents have not even established that the practices challenged by the complaint have been abandoned. Merely because there have been some changes in advertising copy, if such is the fact, does not justify a conclusion that the representations found to be false have been discontinued.

Appeal of Counsel in Support of the Complaint

Counsel in support of the complaint takes exception to the examiner's failure to find that respondents' advertising is misleading because of its failure to reveal that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of male pattern baldness and that in such cases respondents' preparations will not check thinning

hair or prevent or overcome baldness, and to enter an order requiring such disclosure. The examiner refused to enter an order with a provision of this nature, as requested, because of his apparent conclusion that such would be inconsistent with a principle discussed and adopted in *Alberty v. Federal Trade Commission*, 182 F. 2d 36 (1950). The examiner also ruled that to include the requested provision in the order, he would have to make a finding substantially the same as the pertinent allegation in the complaint, and this he said he could not do.

The basis of counsel's position is an allegation in the complaint, which he maintains has been sustained, that respondents' advertisements constitute "false advertisements" within the meaning of Section 15 of the Federal Trade Commission Act by reason of their failure to reveal facts material in the light of other statements and claims contained in the advertising. Under that section of the Act, every advertisement of a food, drug, cosmetic or device, other than labeling, which is misleading in a material respect is a "false advertisement," and under Section 12 the dissemination of such an advertisement by the means or for the purpose therein set forth is unlawful. Moreover, the statute expressly provides that in determining whether an advertisement is misleading, there shall be taken into account not only representations affirmatively made therein, but also the extent to which the advertisement fails to reveal other facts which are material in the light of affirmative representations which are made. It thus becomes important to determine here whether, in the light of respondents' affirmative claims for their preparations, it is material that the vast majority of cases of thinning hair and baldness are in fact the beginning or more fully developed stages of male pattern baldness and that in such cases the respondents' preparations will be wholly ineffective, and if such facts are material, whether the revelation of them is necessary to avoid the likelihood of deception of the affirmative claims.

As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations could have been prevented and may yet be overcome. In all except a few "hopeless cases," amounting to no more than 5%, they have said, a full head of healthy hair can be grown and the condition of baldness relieved. Obviously, such advertisements, when read by a person who has lost or is

losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined in the statute.

Under the order to cease and desist entered by the hearing examiner, respondents would be prohibited, among other things, from representing that the use of their preparations will check thinning hair, cause new hair to grow, or cause the hair to become thicker, unless such representations be limited to cases other than those of male pattern baldness. Thus, the order would prohibit the broad, unqualified claims of benefits which have characterized respondents' former advertisements. Future advertisements would at least have to be limited to "cases other than male pattern baldness." This, however, would not reach the real source of the deception. As noted in the Commission's opinion in the *Loesch* case, *supra*, a limitation on claims of benefits of the preparations to cases other than those of male pattern baldness may be informative to a trained dermatologist, fully cognizant of the symptoms and frequency of occurrence of this type of baldness, but this is not true as to the members of the purchasing public to whom the advertisements will be addressed. As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Hence, a limitation in an advertisement that the preparations therein described will be

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effective, for example, "in cases other than those of male pattern baldness" would be of limited value. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

In light of these considerations, an order with a provision such as requested by counsel in support of the complaint is fully justified. This is not in conflict with the holding in the *Alberty* case, *supra*. The court there recognized that the Commission has the authority to require an affirmative disclosure in cases such as where the representations made in the advertising demand further explanation. This is just such a case as noted above. In the exercise of this authority the Commission has required such disclosure in other similar matters, including *William T. Loesch*, *supra*; *Collins Hair and Scalp Experts, Inc., et al.*, Docket No. 6707; *The Wybrant System Products Corporation, et al.*, Docket No. 6472; and *Leo O. Johnson, et al.*, Docket No. 6497. The examiner erred in failing or refusing to follow the precedent established and in basing his ruling on an incorrect interpretation of the *Alberty* holding. His initial decision will be modified accordingly.

The appeal of respondents is denied and the appeal of counsel in support of the complaint is granted. An appropriate order will be entered.

Commissioners Gwynne and Anderson did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of respondents and counsel supporting the complaint from the initial decision of the hearing examiner, and upon briefs and oral argument in support of and in opposition to the appeals; and

The Commission, for reasons stated in its accompanying opinion, having denied respondents' appeal and granted the appeal of counsel supporting the complaint, and having determined that said initial decision should be modified:

It is ordered, That paragraphs 15, 16 and 17 contained in the initial decision be, and they hereby are, modified to read as follows:

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15. The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. Respondents' advertisements, however, include claims such as "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or excessive hair fall will be aided by the preparations. Some of the respondents' advertisements, but not all, seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented their preparations to be effective in such cases. Respondents' preparations, whether used singly or in combination, and regardless of the method of treatment followed in connection with the preparations, will have no effect upon male pattern baldness. In such cases the preparations are wholly incapable of checking thinning hair, preventing or overcoming baldness, inducing new hair to grow, or causing the hair to become thicker. It follows, therefore, that the representations in respondents' advertisements to the contrary are misleading in a material respect.

Respondents' representation that respondent William L. Keele and certain of their other representatives are trichologists is also misleading in a material respect. None of these individuals is a trichologist. None is a physician and none has had any competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

16. Respondents' advertisements are misleading in a further material respect in that they fail to reveal facts material in the light of the advertisements' other representations respecting baldness or hair loss. As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations, could have been prevented and may yet be overcome. In all except a few "hopeless cases," they have said, amounting to no more than 5%, a full head of healthy hair can be grown and the condition of baldness relieved. Ob-

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viously, such advertisements, when read by a person who has lost or is losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined by the statute.

As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

17. It is therefore concluded that respondents' advertisements, as charged by the complaint, constitute false advertisements within the meaning of the Federal Trade Commission Act.

It is further 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 Keele Hair & Scalp Specialists, Inc., a corporation, and its officers, and William L. Keele, Thelma P. Keele, and J. H. Keele, individually and as officers of said corporation, and Rogers Hair Experts, Inc., a corporation, and

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its officers, and Lorene Firsching and Vangie Clendenin, individually and as officers of said corporation, and American Advertising Bureau, Inc., a corporation, and its officers, and John Shiflet, Mrs. Lorraine Shiflet, and David A. Miller, individually and as officers of said corporation, and 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 or drug preparations referred to in the findings herein, or any other preparations intended for use in the treatment of hair or 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, that the use of said preparations, alone or in conjunction with any method of treatment:

Will check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause the hair to become thicker, unless such representations be expressly limited to cases other than those of 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, cause new hair to grow, or cause hair to become thicker.

2. 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 respondents or any of their agents or employees are trichologists, or that they have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair or scalp.

3. 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 representation prohibited in paragraphs 1 and 2 hereof.

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Order

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents J. Wayne Green and John H. Kennedy.

It is further ordered, That the motion of respondents, Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele, and J. H. Keele, to dismiss the complaint be, and it hereby is, denied.

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

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

Commissioners Gwynne and Anderson not participating.

IN THE MATTER OF
NORKON PHARMACAL, INC., ET AL.

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

Docket 6885. Complaint, Sept. 11, 1957—Decision, May 21, 1959

Order requiring New York City distributors of a drug preparation designated "Norkon Tablets" to cease representing falsely in advertisements in newspapers, magazines, etc., that said preparation was an effective treatment for the symptoms of arthritis and similar ailments and would afford complete relief from the pains thereof; that it had an antacid or buffer effect and prevented digestive or stomach upsets; and that it afforded faster and longer relief than competitive products, and prevented loss of calcium.

Harold A. Kennedy, Esq. for the Commission.

Arthur D. Herrick, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On September 11, 1957, the Federal Trade Commission issued its complaint against Norkon Pharmacal, Inc., and Paul McCoy, individually and as an officer of said corporation, (hereinafter collectively called respondents), charging them with disseminating false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents.

The complaint alleges in substance that respondents sell a drug preparation, called Norkon tablets, in commerce, and in connection therewith disseminate and cause to be disseminated false advertisements through the United States mail and by various other means in commerce, for the purpose of inducing the purchase of said product. Respondents appeared by counsel and filed an answer admitting the corporate, commerce, and advertising allegations of the complaint as well as the representations set forth therein, but denying any false advertisements or violations of the Act. Pursuant to notice, hearings were thereafter held on January 27 and 28, 1958, before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. After allotting time for the presentation of defense, some months