

Findings

IN THE MATTER OF

PHILIP J. DOUGLAS DOING BUSINESS AS
HARLOW HAIR EXPERTSORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7152. Complaint, May 21, 1958—Decision, Mar. 14, 1960*

Order requiring an individual in Coral Gables, Fla., to cease representing in advertising that use of his preparations and methods of application would, in almost every case, prevent and overcome baldness or excessive hair loss and induce the hair to grow and thicken; and representing falsely by use of the word "Trichologist" and otherwise, that he had had competent training in dermatology; and requiring him to reveal in advertising that the great majority of cases of hair loss are of the male pattern type of baldness, in which cases his preparations were of no value.

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder*, counsel supporting the complaint.

Frank E. and Arthur Gettleman and *Mr. Franklin M. Lazarus*, of Chicago, Ill., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding alleges that the respondent has disseminated false advertisements in connection with the sale of cosmetic and drug preparations for external use in the treatment of certain conditions of the hair and scalp. Respondent, through his counsel, filed an answer and denied the allegations set forth in the complaint.

Hearings have been concluded at which evidence in support of and in opposition of the complaint was received. Proposed findings of fact, conclusions and order have been filed by respective counsel. All proposed findings of fact and conclusions not specifically found or adopted herein are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Respondent Philip J. Douglas is an individual doing business as Harlow Hair Experts with his office and principal place of business located at 2308 Galiano Street, Coral Gables, Florida. Since approximately April 1, 1956, the respondent has been engaged in

the business of selling and distributing drug and cosmetic preparations, as "drug" and "cosmetic" are defined in the Federal Trade Commission Act, for external use in the treatment of the hair and scalp. The respondent causes said preparations to be transported from his place of business in the State of Florida to purchasers thereof located in various states of the United States. Since 1956, respondent has maintained a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. In the operation of his business, it has been the custom of respondent or his representative, Mr. J. J. Stalteri, to plan an extensive itinerary and visit predetermined cities and towns in the Eastern and Southern part of the United States, east of the Mississippi river, but including Texas. The respondent or his representative generally places advertisements in local newspapers in advance of his visit to each town announcing the date of his visit and where he will be located in that particular city. Usually the location will be in a hotel room. The newspaper advertisement invites persons who are suffering with dandruff, falling hair or symptoms of baldness to visit respondent or his representative at such hotel room for advice, diagnosis, or treatment of his or her scalp or hair condition. Respondent or his representative will then examine the hair and scalp of such persons and, if treatment is recommended and agreed to, sells such persons home treatment kits containing respondent's preparations and sometimes a brush for the hair. The orders for such kits are transmitted to respondent's place of business in Florida for processing and the kits are then shipped, along with instructions for use and application, direct to the address given by the purchaser.

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

Alcohol	
Atlasene 500.....	Trade name of Atlas Refinery, Inc., for fatty alkylol amide condensate, a detergent and wetting agent.
Boric Acid	
Castro Oil	
Coloring	
Hyamine 2389.....	Trade name of Rohm & Haas Co. for alkylated tolyl methyl trimethyl ammonium chloride, a germicide.
Isopropyl Alcohol	
Mineral Oil	
Nopco 1034.....	Trade name of Nopco Chemical Company for sulfonated castor oil, a detergent and wetting agent.

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Oil of Bay	
Perfume	
Phenol	
Propylene Glycol	
Resorcinol	
Soap	
Tegosept M.....	Trade name of Goldschmidt Chemical Corporation for methyl parahydroxy benzoate.
Tincture Capsicum	
Tween 60.....	Trade name of Atlas Powder Co. for polyoxysorbitan monostearate, an emulsifier.
Vergum.....	Trade name of R. T. Vanderbilt Co., Inc., for colloidal magnesium aluminum silicate, an emulsifier and thickener.

Water

4. In the course and conduct of his said business, respondent has disseminated, and has caused the dissemination of advertisements, placed in various newspapers and distributed by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which would likely to induce directly or indirectly the purchase of said preparations; and respondent has disseminated and has caused the dissemination of advertisements by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. As examples, said advertisements stated, among other things, "Hair Specialist here Saturday will Show How to Save Hair and Prevent Baldness," "New home treatment methods for growing thicker hair—and preventing baldness—will be demonstrated," etc.

5. Through the use of the aforesaid statements and representations respondent has represented, directly and by implication that by the use of his preparations and methods of application, in most every case, or except in cases of persons who are slick-bald after years of gradual hair loss, baldness or excessive hair loss will be prevented or overcome, hair will be induced to grow and the hair will become thicker.

6. The respondent, by referring to himself and his representative as a "Trichologist" in said advertisements, has represented, directly and by implication, that he and his representative 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.

7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the

Federal Trade Commission Act. The medical testimony adduced at the hearing shows that the great majority of cases of baldness and excessive hair loss is the common type known as male pattern baldness. Male pattern baldness involves gradual and progressive thinning of the hair. The medical testimony offered at the hearing to substantiate the allegations set forth in the complaint consists of the testimony of two qualified and experienced physicians. Their testimony is that approximately 95% of all cases of baldness and excessive hair loss falls in the male pattern type. These physicians testified that the condition is probably attributable to hereditary factors. These physicians, who were familiar with the ingredients contained in respondent's preparations, testified that, in their opinions, regardless of the exact formulae or combination of ingredients of the preparations or methods of application, the use of respondent's preparations or any other preparations, regardless of their composition or methods of application, will not, in cases of male pattern baldness, prevent or overcome baldness or excessive hair loss or induce hair to grow or cause the hair to become thicker.

8. The evidence shows that respondent has not had any type of medical training. His formal education includes two years of Business Administration at the University of Illinois. Neither respondent nor his representative, Mr. J. J. Stalteri, has 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.

9. Respondent's advertisements are misleading in a further material respect and constitute "false advertisements" by reason of failure to reveal facts material in the light of representations made therein. In advertising that his preparations will cause hair to grow and overcome baldness, respondent has suggested that there is a reasonable probability that hair loss or baldness in any particular case may involve a condition in which his preparations may be of benefit, or will constitute an effective treatment therefor. In truth and in fact, the instances in which respondent's preparations will be of any benefit, or constitute an effective treatment for hair loss or baldness, are rare. In the great majority of cases, loss of hair or baldness is the male pattern type in which case respondent's preparations are of no value whatsoever in the treatment thereof. Thus, there is no reasonable probability that any particular case of hair loss or baldness is a condition for which respondent's preparations will be beneficial, and respondent's advertising is misleading because of respondent's failure to reveal the material fact that the great majority of cases of hair loss or baldness is the type known as male

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pattern baldness and when hair loss or baldness is of that type, respondent's preparations are of no value in the treatment thereof.

CONCLUSIONS

10. The use and dissemination by respondent 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 respondent's preparations and the benefits to be derived from the use thereof, and to cause such persons to purchase respondent's preparations as a result of the erroneous and mistaken belief so caused. The acts and practices of respondent herein found are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That Philip J. Douglas, an individual doing business as Harlow Hair Experts, or under any other name and his agents, representatives and employees, directly or indirectly 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 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 mail, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

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

(1) Prevent or overcome baldness or excessive hair loss, unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisements clearly and conspicuously reveal the fact that the great majority of all cases of baldness or excessive hair loss are of the male pattern type, and that said preparations will not in such cases prevent or overcome baldness or excessive hair loss;

(2) Induce hair to grow or cause the hair to become thicker, or otherwise grow hair, 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 baldness or

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excessive hair loss are of the male pattern type, and that said preparations will not in such cases induce the growth of hair or thicken hair.

(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 conditions 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.

OPINION OF THE COMMISSION

By the Commission:

The issues presented in the respondent's appeal from the initial decision are identical to those previously considered and determined by the Commission in other cases, including its decisions in the *Loesch*,¹ *Erickson*,² and *Keele*³ proceedings. Having considered the record in this case, we are of the view that the hearing examiner's findings and conclusions are supported by reliable and substantial evidence that the order contained in the initial decision has sound legal basis.

The appeal is accordingly denied and the initial decision is adopted as the decision of the Commission.

Commissioner Tait did not participate in the decision.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by the respondent from the initial decision of the hearing examiner: and the Commission having rendered its decision denying said appeal and adopting the initial decision as the decision of the Commission:

It is ordered, That the respondent shall, within sixty (60) days

¹ *In the Matter of Loesch Hair Experts*, Docket No. 6305 (decided November 14, 1957), aff'd 257 F. 2d 882 (4th Cir. 1958), cert. denied 358 U.S. 883.

² *In the Matter of Erickson Hair & Scalp Specialists*, Docket No. 6499 (decided February 26, 1959), aff'd 272 F. 2d 318 (7th Cir. 1959).

³ *In the Matter of Keele Hair & Scalp Specialists, Inc.*, Docket No. 6589 (decided May 21, 1959), aff'd 275 F. 2d 18 (5th Cir. February 17, 1960).



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