

IN THE MATTER OF
FORREST I. BRODIE ET AL. DOING BUSINESS AS
BROCRESS LABORATORIES, ETC.

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

Docket 8291. Complaint, Mar. 2, 1961—Decision, June 1, 1961

Consent order requiring "hair and scalp specialists" in Louisville, Ky., to cease representing falsely—in newspaper advertisements and to interested persons coming for diagnosis and advice to their visiting "clinics" in various cities—that, by use of the preparations in their home treatment kits, except in the case of completely bald persons, baldness or excessive hair loss would be completely overcome, and hair would be induced to grow and would become thicker; and by use of the word "Trichologist", that they had had competent scientific training in the diagnosis and treatment of scalp disorders affecting the hair.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Forrest I. Brodie and Alberta L. Brodie, individually and as copartners, trading and doing business as Broccress Laboratories, Lesley Hair and Scalp Consultants and Lesley Hair and Scalp Specialists, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are Forrest I. Brodie and Alberta L. Brodie, individually and as copartners, trading and doing business as Broccress Laboratories, Lesley Hair and Scalp Consultants and Lesley

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Hair and Scalp Specialists, with their office and principal place of business located at 2531 West Broadway, Louisville, Kentucky.

PAR. 2. Respondents are now, and for more than one year last past have 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 conditions of the hair and scalp. The respondents cause said preparations to be transported from their place of business in the State of Kentucky to purchasers thereof located in various other States of the United States. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents sell and have sold their said preparations in the following manner: Respondents, or one of their representatives, travel about the United States stopping at various cities where advertisements appear in local newspapers inviting persons to call upon respondents or such representatives, usually in a hotel room in that locality, for diagnoses and advice. Respondents, or their representatives, examine the scalp of such persons and, if treatment is recommended and agreed to, sell such persons home treatment kits containing certain of respondents' said preparations. The orders for such kits are transmitted to respondents' place of business in Kentucky for processing and the kits are shipped, together with instructions for use therefor, direct to the purchasers at their place of residence.

PAR. 4. Respondents' preparations are prepared in four series, each series consisting of four combinations of two preparations each. Each series is a separate kit. Respondents' preparations are and have been composed of the following ingredients:

Formulas and Ingredients per Gallon

#16	Distilled Water
2 mg. nicotinic acid	Contents filtered
10 ml. Philocarpus Jaborandi	
Distilled water	#34
Vegetable color added	64 oz. alcohol
Contents filtered	38 grams Quinine Hydrochloride
	1 c.c. Philocarpus Jaborandi
#27	Distilled Water
20 grams Tartaric Acid	Vegetable color added
7 grams Salicylic Acid	Contents filtered
1 c.c. Philocarpus Jaborandi	
5 ml. Wintergreen Oil	#67
Vegetable Color added	16 grams Quinine Bisulfate

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Formulas and Ingredients per Gallon—Continued

1 c.c. Philocarpus Jaborandi	#33
Distilled water	38 ml. Phenol
Vegetable color added	10 ml. Balsam Peru
Contents filtered	per gal. Hair Dress Base
#79	#43
108 oz. alcohol	1½ oz. Pine Tar
12 oz. glycerine	1 oz. mineral oil
2 grams resorcinol	per gal. Hair Dress Base
2 oz. Philocarpus Jaborandi	#55
10 ml. ml. oil of Lavendar	26 ml. Pine Oil
Distilled water	1 ml. Philocarpus Jabordani
Vegetable Color added	per gal. Hair Dress Base
Contents filtered	#96
#82	40 ml. Phenol
100 ml. Tincture capsicum	1 ml. Philocarpus Jaborandi
200 ml. sulfonated castor oil	per gal. Hair Dress Base.
1 c.c. Jaborandi	#92
28 grams tartaric acid	15 ml. Phenol
Distilled water	30 ml. glycerine
Vegetable color added	1 ml. Jaborandi
Contents filtered	Distilled water
#48	Contents filtered
11 oz. Boric Acid Crystals	#62
30 ml. Lactic Acid	76 oz. Alcohol
10 ml. Jaborandi	32 oz. Distilled Water
28 ml. sulfonated Olive Oil	20 oz. Tincture of capsicum
Distilled Water	Contents filtered
Vegetable color added	Solvent #20
Contents filtered	1½ qt. Sulfonated Castor Oil
#51	8 oz. Olive Oil Shampoo
35 grams Phenol	Distilled Water
1 c.c. Philocarpus Jaborandi	Contents filtered
Distilled water	Antiseptic #30
Vegetable color added	1 oz. Glycerine
Contents filtered	1 oz. Sulfonated Castor Oil
#25	1 ml. Eucalyptus Oil
28 gram Magnesium Chloride	2 ml. Oil of Lemon
14 gram Quinine Hydrochloride	20 ml. of a 9% solution resorcinol
3 ml. Jaborandi	¼ ₁₀ gram Thymol
64 oz. Alcohol	Distilled Water
Distilled Water	Vegetable color added
Vegetable Color added	Contents filtered
Contents filtered	Hair Dress #40
#23	Purchased
7 grams flowers of Sulphur	15 dr. resorcinol added per gal.
per gal. hair dress base	

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Formulas and Ingredients per Gallon—Continued

Shampoo #10	Vegetable color added
Purchased & packaged	Contents filtered
#55 Ointment (black)	no. 10 Antiseptic Shampoo
8 oz. Petroleum	no. 20 Solvent
4 oz. Lanolin	no. 30 Antiseptic
$\frac{3}{8}$ oz. sulphur	no. 40 Hair Dress
$\frac{1}{8}$ oz. Thymol iodide	Shampoo plus egg and Lanolin
$3\frac{1}{2}$ oz. Pine tar	Shampoo with protean (sic)
per pound	Cream Rinse
#97	no. 55 Ointment (black)
56 oz. Alcohol	"K" Ointment (tan)
$\frac{1}{8}$ gram Thymol	"K" Ointment (tan)
5 ml. Eucalyptus oil	Purchased & packaged
$\frac{3}{10}$ gram Benzoic Acid	Cream Rinse
47 oz. Distilled Water	Purchased & packaged
3 ml. Cassia	

PAR. 5. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, advertisements by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations; and respondents have disseminated, and have 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.

Among and typical of the statements contained in said advertisements, principally in newspapers, disseminated and caused to be disseminated as hereinabove set forth, are the following:

He Re-Grew Hair.

Hair Specialist Here Tomorrow; Will Show How To Save Hair and Prevent Baldness.

New home treatment for saving hair and improving its growth will be demonstrated * * *

The Lesley Specialists point out that remarkable results have been attained by means of a personal examination followed by simple individual treatments that anyone can easily carry out in the privacy of his or her own home. Regular checkups in your city by a Lesley Specialist assure success in a minimum period of time.

Your only obligation to yourself to ease your mind of hairworries by learning how to save and thicken your hair at home.

When you first notice your hair thinning, brought on usually by dandruff, itching, dryness, oiliness or follicles clogged with sebum or seborrhea, take positive action at once. See a Hair & Scalp Specialist.

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Of course, we must have a client who still has some hair. If a person is completely bald, he waited too long and is refused treatment. However, if your scalp is still producing short hair it is possible to at least save and thicken what you have.

Some conditions, such as "spot baldness" usually have complete coverage if caught in time!

Last year, the Lesley Organization was able to satisfy 96.3 per cent of its clients.

No Treatment Of Any Kind Is Administered At The Clinic.

Actually, the two most common causes of baldness are neglect and mis-treatment of the hair.

Baldness in its common forms does not come suddenly; it is a gradual starvation and shrinking of the hair follicles until no hair growing ability remains. Hair loss begins with its warning signs of dandruff, itchy or tender scalp, falling hair, or an excessive oily or dry scalp. Once these symptoms are noticed immediate steps should be taken to check these growth-destroying conditions before fatal follicle shrinkage ruins all hopes for hair replacement.

With Lesley's home treatment you can put your scalp in a healthy hair-growing condition. What's more, Lesley's method of hair care will enable you to keep it that way.

Written Guarantee.

WHY GO BALD?

THEY RE-GREW HAIR!

SAVE YOUR HAIR.

The findings of our trichologist who examined you have been checked in our laboratory.

You are under professionally supervised self-treatment * * *

Trichologist F. I. Brodie, representing the nationally-famous Lesley Hair & Scalp Specialists Organization, will personally examine hair-worried men and women from 1:00 to 8:00 P.M. tomorrow at the hotel * * *

PAR. 6. Through use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that by the use of their said preparations and methods of application in almost every case, or except in cases of persons who are completely bald, (a) baldness or excessive hair loss will be prevented and overcome and (b) hair will be induced to grow and the hair will become thicker.

By the use of the word "Trichologist" and by other means in said advertisements, respondents have represented, directly or by implication, that they 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.

PAR. 7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the great majority of cases of baldness and excessive hair loss is the

common type known as male pattern baldness. Regardless of the exact formulae or combination of ingredients of the preparations, or the method of application, the use of said preparation or the use of any other preparations, regardless of their composition or method of application, will not in such cases (a) prevent or overcome baldness, or excessive hair loss or (b) induce hair to grow or cause the hair to become thicker.

Respondents have not undergone competent training having to do with the diagnosis or treatment of scalp disorders affecting the hair.

PAR. 8. Respondents' 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 their preparations will cause hair to grow and will overcome baldness, respondents suggest that there is a reasonable probability that hair loss or baldness in any particular case may involve a condition in which their preparations would be of benefit, or will constitute an effective treatment therefor. In truth and in fact, the instances in which respondents' 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 cases respondents' preparations are of no value whatever in the treatment thereof. Thus there is no reasonable probability that any particular case of hair loss or baldness is a condition for which respondents' preparations would be beneficial, and respondents' advertising is misleading because of respondents' failure to reveal the material fact that the great majority of cases of loss of hair or baldness is the type known as male pattern baldness and when hair loss or baldness is of that type, respondents' preparations are of no value in the treatment thereof.

PAR. 9. The dissemination by respondents of the false advertisements, as herein alleged were, and are, all to the prejudice and injury of the public and constituted, and and now constitute, unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael J. Vitale for the Commission.

Brown, Ardery, Todd & Dudley, of Louisville, Ky., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued March 2, 1961, charged the respondents, Forrest I. Brodie and Alberta L. Brodie, indi-

vidually and as copartners, trading and doing business as Brocress Laboratories, Lesley Hair and Scalp Consultants and Lesley Hair and Scalp Specialists, all located at 2531 West Broadway, Louisville, Kentucky, with violation of the provisions of the Federal Trade Commission Act, by misrepresenting the results which may be obtained from the use of drug and cosmetic preparations sold and distributed by them in commerce and by misrepresenting the extent of their training in dermatology or other branches of medicine in connection with their efforts to sell and distribute such preparations.

After the issuance of the complaint, respondents (with the advice of their attorneys), and counsel supporting the complaint entered into an agreement, containing consent order to cease and desist, thus disposing of all the issues as to all parties to this proceeding.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith.

Respondents agreed further that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and, upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms thereof, the hearing examiner finds that the Federal Trade Com-

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mission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Forrest I. Brodie and Alberta L. Brodie, individually and as copartners, trading and doing business as Brocress Laboratories, Lesley Hair and Scalp Consultants and Lesley Hair and Scalp Specialists, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic and drug preparations, 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 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 respondents, their 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

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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

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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.

IN THE MATTER OF

B. LOWENSTEIN & BROTHERS, INC., ET AL.*

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7981. Complaint, June 24, 1960—Decision, June 3, 1961*

Order in Fur Products Labeling Act case dismissing charges of false advertising as to a former vice-president of respondent company, who was neither served with the complaint nor employed by respondent company when it was issued.

Mr. Charles S. Cox for the Commission.

Mr. Irving J. Zipin of New York City, for respondent.

INITIAL DECISION AND ORDER DISMISSING COMPLAINT AS TO
RESPONDENT PHILIP DE JORNO BY HERMAN TOCKER,
HEARING EXAMINER

The complaint in this proceeding was issued on the 24th day of June 1960. Named as respondents in the complaint were B. Lowenstein & Brothers, Inc., Stanley Fried and Philip De Jorno.

By decision dated November 23, 1960, the initial decision of Hearing Examiner Harry R. Hinkes accepting a consent order to cease and desist, submitted on behalf of the respondents B. Lowenstein & Brothers, Inc. and Stanley Fried, became the Decision of the Commission. The making of that order did not dispose of the

* Settled by consent order Nov. 24, 1960, 57 F.T.C. 1182, as to all respondents other than the individual herein concerned.

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complaint herein in so far as Philip de Jorno (named therein as Philip De Jorno) is concerned. Counsel supporting the complaint has moved that the complaint herein be dismissed as to said respondent Philip de Jorno.

It now appears that the said respondent, Philip de Jorno, at the time of the issuance and service of the complaint herein was no longer an officer or employee of the corporate respondent herein, was not served with a copy of the complaint herein, but on the contrary, was employed by a department store in Grand Rapids, Michigan, which department store is not connected with either the respondent corporation or the corporation which owns and controls the respondent. Consequently, it does not appear that the public interest requires that this proceeding be continued against the said respondent Philip de Jorno. Accordingly,

It is hereby ordered, That the complaint herein in so far as the respondent Philip de Jorno (named therein as Philip De Jorno) is made a party hereto, be, and the same hereby is dismissed.

DECISION OF THE COMMISSION AS TO PHILIP DE JORNO

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to respondent Philip de Jorno (named in the complaint as Philip De Jorno) shall, on the 3rd day of June, 1961, become the decision of the Commission.