

Complaint

IN THE MATTER OF

LIVIGEN LABORATORY SALES CORP. ET AL.

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

Docket 7469. Complaint, Apr. 8, 1959—Decision, Aug. 22, 1961

Consent order requiring two associated corporations and their common officer, all at the same address in New York City, to cease representing falsely in advertisements in newspapers, magazines, etc., that the cosmetic preparation "Livigen", which they distributed, was a skin food which, when used as directed, would rejuvenate the skin of the user.

As to respondent Max Laserow, consent order issued September 22, 1961.

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 Livigen Laboratory Sales Corp., a corporation, and Biotex, Ltd., a corporation, and David L. Ratke, individually and as an officer of said corporations, and Max Laserow, individually and as an officer of Livigen Laboratory Sales Corp., 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. Respondent Livigen Laboratory Sales Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 42 West 38th Street, New York, New York.

Respondent Biotex, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 42 West 38th Street, New York, New York.

Respondent David L. Ratke is an officer of both corporate respondents and he participates in the formulation, direction and control of the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

Respondent Max Laserow is an officer of corporate respondent Livigen Laboratory Sales Corp., and he participates in the formulation, direction and control of the acts and practices hereinafter set

forth. He resides in Malmo, Sweden and has a mailing address at: c/o Malis, Malis & Malis, 6 Penn Plaza, Philadelphia, Pa.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drug and cosmetic as the term "drug" and "cosmetic" are defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the contents thereof and directions for use are as follows:

Designation: Livigen.

Chemical analysis shows preparation to be essentially: A white perfumed water-in-oil cream containing hydrocarbons, glycerides, lanolin and/or sterols and borax.

Directions: Dr. Laserow's 30-Day Plan For Beauty Follow closely this simple, 4-step plan before retiring:

1. Every night, wash your face carefully with warm water. Then dab and pat dry . . . do not rub!
2. Next apply LIVIGEN to your face and softly work your fingers together to reactivate it.
3. Softly, lightly, apply LIVIGEN to your skin . . . to wrinkles, lines; to the sagging flesh at the chin and neck. Then observe how it starts to be absorbed into your skin . . . how it begins to go to work for you!
4. Then relax, sleep, dream of beauty because LIVIGEN is working for you . . . working for natural, youthful-looking skin beauty.

PAR. 3. Respondents cause the said preparation, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements contained in said advertisements disseminated as hereinabove set forth are the following:

LIVIGEN is a super-powerful skin food concentrate that gives natural nourishment to undernourished skin tissues. As the skin absorbs LIVIGEN, it provides new nourishment and helps provide the normal oils and fluids the skin needs for natural beauty. With this new nourishment, the skin is once again able to work for natural, youthful-looking beauty. . . .

Now You Can Feed Youthful-looking Beauty Back Into Your Skin.

. . . this new skin food formula renourishes and replenishes skin tissues and glands.

PAR. 6. Through the use of said statements, and others similar thereto not specifically set out herein, respondents have represented, and are now representing, directly and by implication, that their said preparation is a skin food which, when used as directed, will rejuvenate the skin of the user thereof.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondents' said preparation does not constitute a skin food; nor will it rejuvenate the skin of the user thereof.

PAR. 8. The dissemination by respondents of the false advertisements, as aforesaid, constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs supporting the complaint.

Bass & Friend, New York, N.Y., by *Mr. Milton A. Bass* and *Mr. Edwin Kaplan* for respondents *Livigen Laboratory Sales Corp.*, *Biotex, Ltd.*, and *David L. Ratke*.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT MAX LASEROW*
BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 8, 1959, charging them with misrepresenting their "Livigen" skin cream in violation of the Federal Trade Commission Act.

On July 3, 1961, there was submitted to the hearing examiner an agreement between certain respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of said agreement, *Livigen Laboratory Sales Corp.*, a corporation, *Biotex, Ltd.*, a corporation, and *David L. Ratke*,

* Consent order as to Max Laserow issued Sept. 22, 1961.

individually and as an officer of said corporations, admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of § 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding as to said respondents, hereby accepts the agreement, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued:

1. Respondent Livigen Laboratory Sales Corp., is a New York corporation with its office and principal place of business located at 42 West 38th Street, New York, New York.

Respondent Biotex, Ltd., is a New York corporation with its office and principal place of business located at 42 West 38th Street, New York, New York.

Respondent David L. Ratke is an individual and an officer of both corporate respondents, and he participates in formulating, directing and controlling the policies, acts and practices of both corporate respondents, and his address is the same as that of the corporate respondents.

2. The agreement does not dispose of this proceeding as to Max Laserow, who is subject to further proceedings.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents Livigen Laboratory Sales Corp., a corporation, and its officers, Biotex, Ltd., a corporation, and its officers and respondent David L. Ratke, individually and as an

237

Order

officer of said corporations, 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 preparation designated livigen, or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, 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, said preparation:

(a) Is a skin food;

(b) Will rejuvenate the skin of the user thereof.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, any advertisement which contains any of the representations prohibited in Paragraph 1 above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed July 10, 1961, accepting an agreement containing a consent order theretofore executed by certain of the respondents herein and by counsel in support of the complaint; and

It appearing that through inadvertence the date "April 8, 1961" is given in the initial decision as the date on which complaint issued; and

The Commission being of the opinion that this error should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by striking the date "April 8, 1961" as it appears in the second line of the first paragraph of said decision and substituting therefor the date "April 8, 1959".

It is further ordered, That the initial decision, as so amended, shall, on the 22d day of August 1961, become the decision of the Commission.

It is further ordered, That respondents Livigen Laboratory Sales Corp., a corporation, Biotex, Ltd., a corporation, and David L. Ratke, individually and as an officer of said corporations, 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.

Complaint

59 F.T.C.

IN THE MATTER OF

THE STANDARD MATTRESS COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8135. Complaint, Oct. 7, 1960—Decision, Aug. 22, 1961*

Consent order requiring Hartford, Conn., distributors of mattresses to retailers for resale, to cease setting forth excessive amounts as usual retail prices on attached labels and in advertising material; using such terms as "10 year . . .", "15 year . . .", and "20 year registered guarantee" in advertising certain mattresses when the guarantees furnished were limited and conditional; stating falsely in advertising that a national survey had determined that "American Dream" mattress should sell for \$69.98; and representing falsely, by use of such terms as "Orthopedic Construction" and "Medic Rest" and otherwise, that their stock mattresses would correct bodily deformities and disorders; and to disclose clearly that use of their mattresses would relieve backache only when caused by sleeping on a soft mattress.

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 The Standard Mattress Company, a corporation, and N. Aaron Naboi-check, Louis H. Naboi-check and Max H. Kaminsky, individually and as officers of said corporation, 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. Respondent The Standard Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 55 North Street in the City of Hartford, State of Connecticut.

Respondents N. Aaron Naboi-check, Louis H. Naboi-check and Max H. Kaminsky are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of mattresses to retailers for resale to the public.