

sion 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
LIVIGEN LABORATORY SALES CORP. ET AL.

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

Docket 7469. Complaint, Apr. 8, 1959—Decision, Sept. 23, 1961

Order requiring the inventor of "Livigen" cosmetic cream to cease representing falsely, in advertisements in newspapers, magazines, etc., that the product "is a super-powerful skin food concentrate that . . . renourishes and replenishes skin tissues and glands".

Proceedings as to all other respondents were terminated Aug. 22, 1961, by a consent order (p. 237, *supra*).

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 formula-

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tion, 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.

Malis, Malis & Malis, Philadelphia, Pa., by *Mr. Robert H. Malis*, for respondent Max Laserow.

INITIAL DECISION AS TO RESPONDENT MAX LASEROW, BY EDWARD CREEL,
HEARING EXAMINER

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence and proposed findings of fact, conclusion and order filed by counsel for respondent Max Laserow and by counsel supporting the complaint. By order contained in an initial decision dated July 6, 1961, proceedings before the hearing examiner were terminated as to all other respondents. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by both parties and adopts all the proposed findings of fact, conclusion and proposed order of counsel supporting the complaint and rejects all the proposals of counsel for respondent Max Laserow. Respondent Max Laserow contends that he had no connection with the other respondents herein except as a vendor to them of the product involved in this proceeding

and is not responsible for the representations charged in the complaint. The evidence, however, shows the respondent, Max Laserow, to have been an officer of respondent Livigen Laboratory Sales Corp., to have been a consultant to this corporation, and to have participated in its activities.

It is now contended for the first time in the proposed findings of fact submitted by counsel for respondent Max Laserow that the complaint herein was not served upon Max Laserow. The record shows the complaint was served upon his attorney, who answered the complaint for him and appeared for him at hearings. This respondent cannot now be heard to claim improper service of the complaint.

The hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusion drawn therefrom and order:

FINDINGS OF FACT

1. Respondent Max Laserow has been an officer of Livigen Laboratory Sales Corp., a corporation (hereinafter referred to as Livigen corporation), and as such participated in the direction and control of the acts and practices thereof.

2. The Livigen corporation and respondent Max Laserow, as an officer thereof, have been engaged in the sale and distribution of a preparation which comes within the classification of a cosmetic, as the term "cosmetic" is defined in the Federal Trade Commission Act.

3. The aforesaid cosmetic preparation, which has been designated "Livigen", was invented by respondent Max Laserow, and a chemical analysis shows it to be essentially a white perfumed water-in-oil cream containing hydrocarbons, glycerides, lanolin and/or sterols and borax.

4. Respondent Max Laserow contracted to sell to the Livigen corporation whatever quantity of "Livigen" it could sell; therefore, he was vitally interested in the selling impact of the Livigen corporation's advertising because the more "Livigen" sold by the corporation the greater his income.

5. The aforesaid preparation, when sold, was transported from the place of business of the Livigen corporation in the State of New York to purchasers thereof located in various other states of the United States; therefore, a course of trade in said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, was maintained by the Livigen corporation, and by respondent Max Laserow as an officer thereof.

6. In the course and conduct of the business of selling "Livigen", respondent Max Laserow was a party to, and caused the dissemination of, certain advertisements concerning said preparation by the United States mails and by various means in commerce, as "commerce" is

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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; he was also a party to, 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.

7. 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.

8. Through the use of said statements, and others similar thereto, not specifically set out herein, respondent Max Laserow has represented, directly and by implication, that the said preparation is a skin food which, when used as directed, will rejuvenate the skin of the user thereof.

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

CONCLUSION

The dissemination by respondent Max Laserow of the false advertisements, as aforesaid, constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Max Laserow, individually and as an officer of Livigen Laboratory Sales Corp., and his 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, 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 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

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision as to respondent Max Laserow by the hearing examiner shall, on the 23rd day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Max Laserow, individually and as an officer of Livigen Laboratory Sales Corp., shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

PERFECTION GEAR COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF THE CLAYTON ACT

Docket 7861. Complaint, Apr. 8, 1960—Decision, Sept. 23, 1961

Consent order requiring a manufacturer of automotive repair and replacement parts in Harvey, Ill., with sales in 1958 approximating 6¼ million dollars, to cease discriminating in price among competing customers in violation of Sec. 2(a) of the Clayton Act by giving a number of jobber customers, referred to as "group buyers", the classification of "warehouse distributors" and the more favorable discounts allowed warehouse distributors, when in fact the buying groups did not perform the functions of a warehouse distributor—thus favoring jobbers of "buying groups" over their non-group-buying jobber competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Perfection Gear Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 152nd and Stone Streets, Harvey, Illinois. Perfection Gear Company is engaged in the manufacture, sale and distribution of automotive repair or replacement parts including transmission gears and components, differential gears, clutch drive plates, pressure assembly parts, timing gears, flywheel gears, and universal joints and kits. Perfection Gear Company's total volume of sales during the year 1958 amounted to approximately \$6,748,000.

Respondent competes with other manufacturers and sellers of similar automotive repair or replacement products.

Respondent, Perfection Gear Company, in the course and conduct of its business as aforesaid, has caused, and now causes the said parts to be shipped and transported from the state of location of its principal place of business to the purchasers thereof located in states other than the state wherein said shipments originated. Said parts have been, and are, sold to different purchasers for use or resale within the United States and the District of Columbia. In the sale of said parts, respondent has been, at all times relevant herein, engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 2. Purchasers of respondent's automotive replacement parts are classified by respondent generally within two separate classifications, namely, "jobbers" and "warehouse distributors". Respondent extends and sets terms and conditions of sale for each such classification as follows:

Jobbers—A purchaser classified as a "jobber" is normally engaged in reselling replacement parts to automotive vehicle fleets, garages, gasoline service stations, and others in the automotive repair trade serving the general public. Jobbers purchase at a net price set out in respondent's "Confidential Jobber Net Cost Prices" bulletins. Jobbers are given a discount of 15% from jobber net prices on the purchase of 100 or more assorted universal joints and a discount of 10% from jobber net prices on the purchase of 100 or more in quantity of any one part number of timing gears. Respondent sells to approxi-

mately 2100 such jobber purchasers located throughout the United States.

Warehouse Distributors—A purchaser classified as a “warehouse distributor” normally resells only to jobbers. A warehouse distributor purchases from respondent’s “Confidential Jobber Net Cost Prices” bulletins less discounts ranging from 10% to 28%, depending on the class of respondent’s parts purchased and whether such parts are purchased from respondent’s factory or from one of the branch or service warehouses. Respondent’s schedule of discounts for warehouse distributors is as follows:

	From factory	From branch
	Percent	Percent
Clutch plates and clutch bearings.....	20	15
Automatic transmission parts.....	20	15
Timing gears.....	20	15
Timing chains and sprockets.....	20	15
Universal joints.....	20-10	15-10
Transmission gears and parts.....	15	10
Differential gears and parts.....	15	10
Flywheel gears.....	15	10

Respondent sells to approximately 25 such warehouse distributors.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, has been, and now is discriminating in price between different purchasers of its automotive replacement parts of like grade and quality by selling said parts at higher and less favorable prices to some purchasers than the same are sold to other purchasers, many of whom have been, and now are, in competition with the purchasers paying the higher prices.

For example, among respondent’s customers are a number of jobbers which are referred to as “group buyers” and classified by respondent as “warehouse distributors” when in fact such classification is fictitious since such “buying groups” do not perform the normal functions of a warehouse distributor. Respondent’s classification of such “buying groups” as “warehouse distributors” results in the granting of higher and more favorable purchase price discounts to these group buying jobbers than are granted to the respondent’s non-group-buying jobber customers who purchase at respondent’s regular jobber prices and do not receive the additional discounts available to respondent’s “warehouse distributor” classification. Many of these group-buying jobbers are in competition with respondent’s non-group-buying jobber customers and are also potential customers of respondent’s warehouse distributor purchasers.

As a sample illustration, respondent in June 1959, appointed Automotive Jobbers, Inc., 2050 Irving Boulevard, Dallas, Texas, as a so-

called warehouse distributor of its automotive replacement parts. Automotive Jobbers, Inc., is in reality a "buying group" through which its jobber members purchase respondent's automotive replacement parts at the lower warehouse distributor prices which would otherwise not be available to such jobbers.

As another sample illustration, until February 26, 1959, National Parts Warehouse, 308 Whitehall Street, S.W., Atlanta, Georgia, acted as one of two independently owned branch or service warehouses maintained by respondent in the City of Atlanta, Georgia. On February 26, 1959, National Parts Warehouse discontinued such operation as a branch or service warehouse of respondent. National Parts Warehouse is a so-called "buying group" and after that date was paid, each month, a rebate or commission equal to 12½% of the price of clutch plates and parts, and 7½% of the price of other lines purchased from respondent by the approximately fifty-two jobber members, or so-called "limited partners" of National Parts Warehouse.

PAR. 4. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality, sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the respondent and the aforesaid favored purchasers are engaged, or to injure, destroy, or prevent competition with respondent, said favored purchasers, or with customers of either of them.

PAR. 5. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Messrs. Eldon P. Schrup and Richard B. Mathias for the Commission;

Sonnenshein, Lautman, Levinson, Rieser, Carlin & Nath, by Mr. Earl E. Pollock, Chicago, Ill., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 8, 1960, charging the Respondent with violation of § 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, § 13), by discriminating in price between different purchasers of its automotive replacement parts of like grade and quality.

Thereafter, on June 16, 1961, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter,

on August 9, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Perfection Gear Company as an Illinois corporation, with its office and principal place of business located at 152nd and Stone Streets, Harvey, Illinois.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

All parties further agree that the allegations of "primary line injury" in the complaint, namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which Respondent is engaged, or to injure, destroy or prevent competition with Respondent, may be dismissed for the reasons set forth in the appendix attached to and made a part of the agreement; and, further, that the agreement does not preclude a further investigation and the issuance of a complaint against Respondent (or a subsidiary thereof) in connection with the sale of replacement parts to original equipment manufacturers, if such be indicated.

The agreement sets forth that the term "purchaser", as used in the order to cease and desist contained therein, shall include any purchaser buying directly or indirectly from Respondent (or a subsidiary thereof) by means of group buying or any related device but shall not be construed in this proceeding to include an original equipment manufacturer (or a subsidiary thereof) purchasing automotive parts from Respondent for replacement use or sale.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory dis-

position of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That the Respondent Perfection Gear Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale to purchasers engaged in jobber distribution or redistribution to jobbers of automotive replacement parts, supplies and tools in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Discriminating in the price of such automotive products of like grade and quality by selling such products to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of Respondent's said products.

It is further ordered, That the allegation in the complaint that the effect of Respondent's alleged discriminations in price may be substantially to lessen, injure, destroy or prevent competition between Respondent and competing sellers of similar automotive products, be dismissed.

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 23rd day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Perfection Gear Company, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.