

It is further ordered, That the 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 this order.

IN THE MATTER OF
ALVA LABORATORIES, INC., ET AL.

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

Docket C-797. Complaint, July 30, 1964—Decision, July 30, 1964

Consent order requiring a Chicago distributor of a drug preparation designated "Alva-Tranquil," and its advertising agency, to cease representing falsely in advertising that all persons can take the preparation safely without a doctor's advice, and that the drug is a newly discovered kind of medicine and miraculous in results.

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 Alva Laboratories, Inc., a corporation, and Emile Gerchenson and Samuel Karper, individually and as officers of said corporation, and Olian and Bronner, Inc., a 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, Alva Laboratories, Inc., 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 1017 Diversey Parkway, in the city of Chicago, State of Illinois.

Respondents Emile Gerchenson and Samuel Karper 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 the corporate respondent.

Respondent Olian and Bronner, Inc., 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 35 East Wacker Drive, in the city of Chicago, State of Illinois.

PAR. 2. Respondents Alva Laboratories, Inc., and Emile Gerchenson and Samuel Karper are now, and for some time last past have been, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation and the formula thereof are as follows:

Designation: Alva-Tranquil.

Formula:

Each tablet contains in grams:

Potassium Bromide -----	0.1950
Potassium Salicylate -----	.0850
Methapyrilene HCl -----	.010
Thiamin HCl -----	.0025
Niacin -----	.0042
Niacinamide -----	.0042

PAR. 3. The respondents referred to in PARAGRAPH TWO hereof cause said preparation, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in 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.

Respondent Olian and Bronner, Inc., is now, and for some time last past has been, the advertising agency of the respondents referred to in Paragraph Two hereof, and now prepares and places, and for some time last past has prepared and placed, for publication, advertising material, including the advertising hereinafter set forth, to promote the sale of the said preparation. In the conduct of its business, at all times mentioned herein, respondent Olian and Bronner, Inc., has been in substantial competition in commerce, with other corporations, firms and individuals in the advertising business.

PAR. 4. In the course and conduct of their said business, respondents have disseminated and caused the dissemination of, certain advertise-

ments concerning said preparation by the United States mails and by various other 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 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 and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Alva-Tranquil tablets are 100% safe, taken as directed.

Faster * * * 100% safe.

* * * Alva-Tranquil tablets are a new and successful kind of medication.

* * * thanks to newly-discovered miracle-like Alva-Tranquil tablets.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. That all persons can safely take the preparation without the advice or direction of a physician if they follow the directions for use appearing on the label.

2. That said preparation is a newly discovered kind of medicine, different from other drugs available to the public and is miraculous in action and results.

PAR. 7. In truth and in fact:

1. The labeling for Alva-Tranquil states that certain persons should not use the preparation unless directed by a physician.

2. Said preparation is not materially different from certain other products on the market, its ingredients have been known to and prescribed by physicians for some time, and neither its actions nor results are miraculous.

Therefore, the advertisements referred to in Paragraph Five 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.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Alva Laboratories, Inc., 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 1017 Diversey Parkway, in the city of Chicago, State of Illinois.

Respondents Emile Gerchenson and Samuel Karper are officers of the corporate respondent, and their address is the same as that of said corporate respondent.

Respondent Olian and Bronner, Inc., 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 35 East Wacker Drive, in the city of Chicago, State of Illinois.

2. 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 respondents Alva Laboratories, Inc., a corporation, and its officers, and Emile Gerchenson and Samuel Karper, individually and as officers of said corporation, and Olian and Bronner, Inc., a corporation, and its officers, 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 product "Alva-Tranquil," or any other preparation of similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

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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 contains any representation:

(a) For safe use which, directly or by implication, is inconsistent with any statement appearing on the label or in the labeling as to groups of persons who should not use the product at all or groups of persons who should not use the product unless directed by a physician.

(b) That any such preparation is a new or different or unique medication, or is miracle-like in action or results.

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 of respondents' preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the 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 this order.

IN THE MATTER OF

THE NESTLE-LEMUR COMPANY AND LANOLIN PLUS,
INC.

ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE
CLAYTON ACT

Dockets 7716 & 7722. Complaints, Jan. 1960—Decisions, July 31, 1964*

Orders dismissing complaints charging two cosmetic manufacturers—one with main office in New York City and the other in Newark, N.J.—with discriminating in price in violation of Sec. 2(d) of the Clayton Act by such practices as paying allowances for advertising to J. Weingarten, Inc., of Houston, Tex., in connection with the sale of their products while not making proportionally equal payments available to Weingarten's competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more

*The Complaints were consolidated by the compiler.

particularly described, have violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PAR. 1. Respondent, The Nestle-LeMur Company, Docket No. 7716, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 902 Broadway, New York, New York.

Respondent, Lanolin Plus, Inc., Docket No. 7722, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 37 Empire Street, Newark, New Jersey.

PAR. 2. Respondent, the Nestle-LeMur Company, Docket No. 7716, is now and has been engaged in the manufacture, sales and distribution of cosmetics, toiletry items and pharmaceutical products. It sells its products to a large number of customers throughout the United States, including wholesalers, jobbers, retailers and large retail chain store organizations. Respondent The Nestle-LeMur Company is a substantial competitive factor in the cosmetic and toiletry field, having total sales for the year 1958 in excess of \$12,500,000. Respondent also makes sales of its cosmetics and toiletry items through other wholly-owned subsidiary corporations, including Harriet Hubbard Ayer, Inc., a New York corporation whose sales and business policies it directs, formulates and controls.

Respondent, Lanolin Plus, Inc., Docket No. 7722, is now and has been engaged in the business of manufacturing, selling and distributing cosmetics to retail chain store organizations, department stores, independent drug stores, wholesalers and jobbers. Sales made by respondent are substantial and exceed \$10,000,000 per annum.

PAR. 3. In the course and conduct of their business, respondents have engaged and are now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondents sell and cause their products to be transported from the respondents' principal place of business to customers located in other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid, or contracted for the payment of, something of value to or for the benefit of some of their customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondents, and such payments were not made available on proportionally equal terms to all customers competing in the sale and distribution of respondents' products.

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PAR. 5. For example, during the year 1958 respondent, The Nestle-LeMur Company, Docket No. 7716, contracted to pay and did pay to Sidney Myers, Inc., of Houston, Texas, a wholly-owned buying subsidiary of J. Weingarten, Inc. of Houston, Texas, \$1,500 as compensation or as an allowance for advertising or other service or facility furnished by or through J. Weingarten, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc. in the sale and distribution of respondent's products.

For example, during the year 1958 respondent, Lanolin Plus, Inc., Docket No. 7722, contracted to pay and did pay to J. Weingarten, Inc., Houston, Texas, \$881.14 as compensation or as an allowance for advertising or other services or facilities furnished by or through J. Weingarten, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc. in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 6. The acts and practices of respondents, as alleged above, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Frederic T. Suss for the Commission.

Whiteford, Hart, Carmody & Wilson, by *Mr. John J. Carmody*, Washington, D.C., for respondent, The Nestle-LeMur Company.

Rogers, Hoge & Hills of New York, N.Y., and *Obermayer, Rebmann, Maxwell & Hippel* of Philadelphia, Pa., for respondent, Lanolin Plus, Inc.

FINAL ORDERS*

Complaint counsel and respondents in these matters entered into consent agreements which provide, in essence, that the effective date of the orders therein shall be stayed pending the issuance of final orders by the Commission in the closely related cases of *Max Factor & Co.*, Docket 7717, and *Shulton, Inc.*, Docket 7721 [p. 184 herein]. The complaints in the present matters are in all material respects identical to the complaints in Dockets 7717 and 7721. The Commission, having determined that the public interest would not be served by

*In the related cases of The Nestle-LeMur Company, Docket No. 7716 and Lanolin Plus, Inc., Docket No. 7722.

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entry of cease and desist orders in Dockets 7717 and 7721, and that the complaints in those matters should be dismissed, has determined that the complaints in the present matters should be dismissed on the same grounds. Accordingly,

It is ordered, That the initial decisions be, and they hereby are, vacated and set aside.

It is further ordered, That the complaints against respondents be, and they hereby are, dismissed.
