

IN THE MATTER OF
GUSTAVE GOLDSTEIN TRADING AS HUMANIA HAIR
GOODS & SPECIALTY CO.

COMPLAINT, AND MODIFIED FINDINGS AND ORDER IN REGARD TO THE AL-
LEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26,
1914

Docket 5249. Complaint, Nov. 21, 1944—Decision, June 16, 1950

Where an individual engaged in the interstate sale of certain cosmetic prepara-
tions for the skin, hair, and scalp; in advertising in catalogs distributed
throughout the United States by the mails and by other means in commerce—

- (a) Represented that his "B. Paul's Compound" for coloring the hair was com-
posed of harmless ingredients and could be used without harmful effects;
notwithstanding the fact that by virtue of its pyrogallic acid content, a
caustic, use thereof would under certain conditions irritate the skin and
mucous membranes;
- (b) Falsely represented that "Herolin Skin Cream" provided a competent and
effective treatment for superficial pimples and skin marks of external origin;
- (c) Represented that "Henry's Super-Light Working Oil," "Working Oil," and
"Henry's Sulphur Lanolin Treatment for Hair and Scalp" were competent
and effective treatments for itchy scalp and dandruff, and that "Henry's
Sulphur Lanolin Treatment" for hair and scalp was a competent and effec-
tive treatment for baldness, falling hair, itchy scalp, and dandruff;

The facts being that while said preparations might in most cases temporarily
relieve itching of the scalp caused by minor scalp disorders and might make
loose dandruff scales less noticeable by matting them to the hair and scalp,
none of them was a competent, effective, or adequate treatment for many
of the underlying causes of itching scalp or dandruff; use thereof would not
relieve itching in some scalp conditions; and use of said last-named prep-
aration would not prevent falling hair or baldness and was not a competent
or effective treatment therefor; and

- (d) Falsely represented that "Humania Dandruff Treatment" was a competent
and effective treatment for dandruff and would cure it;

With tendency and capacity to mislead and deceive a substantial portion of the
purchasing public into the erroneous belief that such representations were
true and thereby induce its purchase of substantial quantities of his said
preparations:

Held, That such acts and practices, under the circumstances set forth, were all
to the prejudice and injury of the public and constituted unfair and decep-
tive acts and practices in commerce.

In said proceeding in which the complaint also charged, and in which the Com-
mission had theretofore found, as set forth in its prior findings issued on
April 27, 1945, 40 F. T. C. 466, that respondent's advertisements concerning
certain of his preparations constituted false advertisements for failure to
reveal certain potential dangers in the use thereof, in that—

1. Said "B. Paul's Compound," when applied to the skin was potentially
dangerous by reason of its pyrogallic acid content—as to which it appeared,

Complaint

after the reopening of the instant proceeding, that it consisted of 98 to 99 percent of henna (varying with the shade), together with small percentages of copper sulphate and pyrogalllic acid, and that, when used in accordance with directions, it is unlikely to be seriously injurious to health;

2. Said "Apex Skin Bleach," when applied to the skin was similarly dangerous, by reason of its ammoniated mercury content—as to which it similarly appeared that a product of the composition of said bleach containing less than 5 percent of ammoniated mercury, when used in accordance with the directions therefor, it is unlikely to be seriously injurious;

3. Said "Magic Shaving Powder," a depilatory, when applied to the skin was potentially dangerous by reason of its irritating ingredients, which included barium sulfide, calcium hydroxide, calcium carbonate, and powdered corn starch (in different proportions for its "full strength" and "medium strength" products)—as to which it similarly appeared from the evidence that products of such composition when used in accordance with directions are unlikely to be seriously injurious; and

4. Certain hair dye preparations, namely, "Luxe Hair Coloring," "Eau Sublime," and "Godefroy's Lariouse" when applied to the skin were potentially dangerous by reason of their para-phenylenediamine content—as to which it similarly appeared from the record that the cautionary statement on the label and the accompanying directions were in all respects adequate to enable purchasers to make preliminary safety tests with respect to the individual skin sensitiveness, and that the Commission had determined on November 24, 1948 (acting under its statement of policy promulgated on December 11, 1946, as amended on March 2, 1948), that it would not thereafter consider any advertisement of the coal tar hair dye of the "para" type as false merely because of its failure to reveal that the preparation was potentially dangerous by reason of its aforesaid content when the label bore such a statement and the accompanying directions were adequate for preliminary testing:

The Commission was of the opinion and found that respondent's advertisements of his various aforesaid preparations, as set forth in paragraphs 1 to 3 above, did not constitute false advertisements because of their failure to reveal that such preparations are potentially dangerous by reason of the facts above set forth; and was accordingly of the opinion that said previous findings to the contrary should be set aside; and

The Commission was of the further opinion and found, as respects said last-named preparations, that respondent's advertisements under the Commission's present policy did not constitute false advertisements because of their failure to reveal that they are potentially dangerous by reason of their para-phenylenediamine content, and that by reason of said fact it would be in the public interest for its previous findings to such effect to be set aside.

Mr. B. G. Wilson for the Commission.

Reeves, Todd, Ely & Beaty, of New York City, for respondent.

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 Gustave Goldstein, an individual, trading as Humania Hair Goods & Specialty Co., hereinafter referred to as respondent, has violated the provisions of the 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. The respondent Gustave Goldstein is an individual trading as Humania Hair Goods & Specialty Co., with his office and principal place of business at 303 Fourth Avenue, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing cosmetic preparations under various names, among them being: Luxe Hair Coloring, Eau Sublime, B. Paul's Compound, Herolin Skin Cream, Godefroy's Lariouse, Apex Skin Bleach, Magic Shaving Powder, Henry's Super-Light Working Oil, Working Oil, Henry's Sulphur Lanolin Treatment for Hair and Scalp, and Humania Dandruff Treatment, in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes said preparations, when sold, to be transported from his said 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.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said preparations in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparations by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive and misleading statements and representations contained in the false advertisements disseminated and caused to be disseminated, as hereinabove set forth, in catalogs distributed throughout the United States by United States mails, and by other means in commerce, are the following:

Representations with respect to B. Paul's Compound:

Made of pulverized roots and other harmless ingredients.

Representations with respect to Herolin Skin Cream:

If your surface skin is too dark due to exposure to sun and wind, and is blemished by superficial pimples and marks of external origin, try Herolin Skin Cream.

Representations with respect to Henry's Super-Light Working Oil and Working Oil:

Wonderful for itchy scalp and dandruff.

Representations with respect to Henry's Sulphur Lanolin Treatment for Hair and Scalp:

Baldness, Itchy-Scalp, Falling out Hair; Dandruff, etc., are not inherited * * * Don't let dry, itchy scalp or dandruff drive you mad. * * * Start Using Henry's Treatment tonight.

Representations with respect to Humania Dandruff Treatment:

Dandruff, the greatest foe of beautiful hair and a healthy scalp is responsible for a large percent of all cases of baldness and falling hair. It is a serious affection and must be given persistent treatment. When the white flakes or scales that indicate this condition begin to disappear, do not stop—but continue the Humania dandruff treatment regularly.

PAR. 7. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that the preparation, B. Paul's Compound, is composed of harmless ingredients and can be used without harmful effects; that Herolin Skin Cream provides a competent and effective treatment for superficial pimples and skin marks of external origin; that Henry's Super-Light Working Oil and Working Oil are competent and effective treatments for itchy scalp and dandruff; that Henry's Sulphur Lanolin Treatment for Hair and Scalp is a competent and effective treatment for baldness, falling hair, itchy scalp and dandruff and that Humania Dandruff Treatment is a competent and effective treatment for dandruff and will cure dandruff.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, the preparation B. Paul's Compound is not harmless as it contains pyrogallic acid, which is a caustic and irritates the skin and mucous membranes. Herolin Skin Cream is not a competent and effective treatment for superficial pimples and will not remove many marks on the skin, although of external origin. While Henry's Super-Light Working Oil, Working Oil, and Henry's Sulphur Lanolin Treatment for the Hair and Scalp

Complaint

46 F. T. C.

may, in most cases, temporarily relieve itching of the scalp caused by minor scalp disorders and may make loose dandruff scales less noticeable by matting them to the hair and scalp, none of these preparations is a competent, effective, or adequate treatment for many of the underlying conditions which cause itching scalp, or for dandruff. Their use will not relieve itching in some scalp conditions. Henry's Sulphur Lanolin Treatment for Hair and Scalp will not prevent falling hair or baldness and is not a competent or effective treatment therefor. Humania Dandruff Treatment will not cure dandruff and is not a competent or effective treatment for dandruff.

PAR. 6. Respondent has disseminated and is now disseminating advertisements, in the manner aforesaid, with respect to his preparations designated Luxe Hair Coloring, Eau Sublime, Godefroy's Larieuse in which advertisements these preparations are offered as hair dyes. These advertisements, as well as the advertisements above quoted with respect to B. Paul's Compound, a hair dye; and Apex Skin Bleach, and Magic Shaving Powder, both offered as preparations to be applied to the skin, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations therein contained or material with respect to the consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary and usual. The preparations Luxe Hair Coloring, Eau Sublime, and Godefroy's Larieuse are para-phenylenediamine hair dyes and are potentially dangerous in that their use may cause skin irritations. Said preparations should not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness. They should not be used in any event when there is any disease of or eruptions on the skin or the scalp, nor until after a proper patch test has demonstrated that the person is not sensitive to and can resist the effects of said preparation without harmful effects.

The preparation B. Paul's Compound contains pyrogalllic acid, which is a caustic and may cause skin irritation. It should not be permitted to remain on the skin or scalp for prolonged periods of time, should never be used when the skin or scalp is broken or where an eruption is present, and should not be permitted to come into contact with the eyes.

The preparation Apex Skin Bleach contains ammoniated mercury and is potentially dangerous as it may cause skin irritations. It should not be applied to an area of the skin larger than the face and neck at any one time. Too frequent applications and use over ex-

cessive periods of time should be avoided and adequate rest periods between series of treatments should be observed.

This preparation should not be used where the skin is cut or broken and in all cases a proper patch test should be made to determine whether the user is sensitive to the preparation. The preparation Magic Shaving Powder contains ingredients which have an irritating effect upon the skin and should not be used by those having tender skins. It should not be allowed to come into contact with the eyes; to do so would cause extreme irritation.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements are true, and that the preparations enumerated in paragraph 6 hereof are harmless and may be used without ill effects to the user, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said cosmetic preparations.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all 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.

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 21, 1944, issued and thereafter served upon the respondent, Gustave Goldstein, an individual trading as Humania Hair Goods & Specialty Co., its complaint in this proceeding, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and the filing of the respondent's answer thereto, a stipulation was entered into by and between the respondent, Gustave Goldstein, and Richard P. Whiteley, Assistant Chief Counsel of the Commission, in which stipulation it was agreed that, subject to the approval of the Commission, the statement of facts contained therein might be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order dis-

posing of the proceeding. In said stipulation the respondent expressly waived the filing of a trial examiner's report upon the evidence. Subsequently, this proceeding regularly came on for final consideration by the Commission upon the complaint of the Commission, the respondent's answer thereto, and the stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter, on April 27, 1945, made and issued its findings as to the facts, its conclusion drawn therefrom, and its order to cease and desist disposing of said proceeding. Thereafter, on April 25, 1949, pursuant to a motion filed by counsel in support of the complaint and consented to by the respondent (which motion was supplemented by additional material filed April 20, 1950) the proceeding was reopened for the purpose of receiving such supplemental evidence as might be offered to determine whether or not changed conditions of fact or the public interest, or both, require a modification of the aforesaid findings as to the facts and order to cease and desist, and, in accordance with this direction, certain supplemental evidence was subsequently received and filed; and the Commission, having duly considered said supplemental evidence and the entire record and being of the opinion that its findings as to the facts and its conclusion issued herein on April 27, 1945, should be modified in certain respects, now makes this its modified findings as to the facts and its conclusion drawn therefrom, the same to be in lieu of said findings as to the facts and conclusion issued on April 27, 1945.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Gustave Goldstein, is an individual trading as Humania Hair Goods & Specialty Co., with his office and principal place of business located at 303 Fourth Avenue, New York, N. Y.

PAR. 2 The respondent is now, and for a number of years last past he has been, engaged in the business of selling and distributing certain cosmetic preparations. Included among said preparations are those sold under the following names: "Luxe Hair Coloring," "Eau Sublime," "B. Paul's Compound," "Herolin Skin Cream," "Godefroy's Larieuse," "Apex Skin Bleach," "Magic Shaving Powder," "Henry's Super-Light Working Oil," "Working Oil," "Henry's Sulphur Lanolin Treatment for Hair and Scalp," and "Humania Dandruff Treatment." The respondent causes said preparations, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States

