

Decision

IN THE MATTER OF
HOWARD NUSSBAUM, INC.,
TRADING AS BENTON FURS ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7382. Complaint, Feb. 2, 1959—Decision, May 20, 1959

Consent order requiring furriers in Los Angeles to cease violating the Fur Products Labeling Act by such practices as labeling certain fur products with the names of animals other than those which produced the fur, affixing tags bearing excessive fictitious prices represented thereby as usual retail prices, advertising which represented prices of fur products falsely as reduced, and failing in other respects to comply with the labeling, invoicing, and other requirements of the Act.

Mr. Eugene Kaplan for the Commission.

Harry Cohen, Esq., for *Jerome Weber*, of Los Angeles, Calif.,
for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on February 2, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 27, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of March 25, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Howard Nussbaum, Inc., is a corporation existing and doing business under and by virtue of the laws of the

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State of California, with its office and principal place of business located at 714 South Hill Street, Los Angeles 14, Calif.

Respondent Howard Nussbaum is president of said corporate respondent and formulates, directs, and controls the acts, policies, and practices of said corporate respondent. His address and principal place of business is the same as that of said corporate respondent.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the

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Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Howard Nussbaum, Inc., a corporation, trading as Benton Furs, or under any other name, and its officers, and Howard Nussbaum, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such

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fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce;

(6) The name of the country of origin of any imported furs contained in a fur product.

B. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

C. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Setting forth on labels affixed to fur products:

(1) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

(2) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with non-required information;

(3) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

E. Failing to set forth the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels.

F. Failing to set forth the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(4) That the fur product is composed in whole or in substan-

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tial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name and address of the person issuing such invoice;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product.

B. Setting forth information required under §5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Making price claims and representations respecting price reductions unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

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 20th day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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
KEELE HAIR & SCALP SPECIALISTS, INC., ET AL.

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

Docket 6589. Complaint, July 17, 1956—Decision, May 21, 1959

Order requiring two distributors of hair and scalp preparations in Oklahoma City, Okla., and Wichita, Kans., respectively, along with their advertising agency, to cease advertising falsely that their said preparations would be effective in checking thinning hair and overcoming baldness, including male pattern baldness; to reveal clearly that the great majority of cases of thinning hair and baldness are of the male pattern type and that their preparation would be ineffective in such cases; and to cease claiming that they and their agents were "Trichologists" or had training in dermatology or other branches of medicine.

Mr. Harold A. Kennedy for the Commission.

Mr. Richard M. Welling, of Charlotte, N.C., for respondents Keele Hair & Scalp Specialists, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Rogers Hair Experts, Inc., and American Advertising Bureau, Inc.

No appearance for respondents Lorene Firsching, Vangie Clendenin, J. Wayne Green, John Shiflet, Mrs. Lorraine Shiflet and David A. Miller.

John H. Kennedy, *pro se*.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The Commission's complaint in this matter charges the respondents with disseminating false advertisements in connection with various cosmetic and drug preparations intended for use in the treatment of the hair and scalp. After the filing by certain of the respondents of their answers to the complaint, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by counsel supporting the complaint, and a motion to dismiss the complaint has been filed by counsel for respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele and J. H. Keele. The case has been argued orally and is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Keele Hair & Scalp Specialists, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 710 Leonhardt Building, Oklahoma City, Okla. Respondents William L. Keele, Thelma P. Keele, and J. H. Keele are officers of the corporation, their addresses being as follows: William L. Keele, 710 Leonhardt Building, Oklahoma City, Okla.; Thelma P. Keele, 905 NW. 40th Street, Oklahoma City, Okla.; and J. H. Keele, Red Rock, Okla. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

3. Respondent Rogers Hair Experts, Inc., is a corporation organized and existing under the laws of the State of Kansas, with its office and principal place of business at 426 East Central Avenue, Wichita, Kans. Respondents Lorene Firsching and Vangie Clendenin are officers of the corporation, their addresses being as follows: Lorene Firsching, Range Road, Wichita, Kans.; Vangie Clendenin, Michigan, Kans. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

4. Respondent J. Wayne Green, joined as a respondent individually and as an officer of Rogers Hair Experts, Inc., was not served with process, and the complaint must therefore be dismissed as to him. The term respondents as used hereinafter will not include this individual.

5. Respondent American Advertising Bureau, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 704 Leonhardt Building, Oklahoma City, Okla. Respondents John Shiflet, Mrs. Lorraine Shiflet and David A. Miller are officers of the corporation, their address being the same as that of the corporation. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

6. Respondent John H. Kennedy, joined as a respondent individually and as an officer of American Advertising Bureau, Inc., is a practicing attorney in Oklahoma City, Okla. While for a period of approximately three months (September 1 to December 3, 1954) he was vice president of the corporation, he has at no time participated actively in the management of its affairs. Since December 3, 1954, he has had no connection whatever with the company. The complaint is therefore being dismissed

as to him, and the term respondents as used hereinafter will not include this individual.

7. The respondents answering the complaint and contesting the proceeding are the three corporate respondents and William L. Keele, Thelma P. Keele and J. H. Keele. The other respondents are in default, having neither filed answers to the complaint nor appeared at any of the hearings.

8. Respondents Keele Hair & Scalp Specialists, Inc., and Rogers Hair Experts, Inc., are engaged in the business of selling and distributing various cosmetic and drug preparations intended for external use in the treatment of conditions of the hair and scalp. The sales of the preparations include sales made in connection with and as a part of treatments administered by respondents and their employees. Respondents have caused their preparations, when sold, to be transported from their respective places of business in the States of Oklahoma and Kansas to purchasers located in various other States of the United States. Respondents have maintained a course of trade in the preparations in commerce between and among the various States of the United States.

9. Respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Lorene Firsching, and Vangie Clendenin have acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter set forth.

10. One of the methods used by respondents Keele Hair & Scalp Specialists, Inc., and Rogers Hair Experts, Inc., in operating their business is as follows: Employees of the two corporations, and also respondent William L. Keele, travel extensively in the United States, with stops at various cities. Through newspaper advertisements respondents invite members of the public in each locality to visit a temporary office set up by respondents in that location, the office usually being set up in a hotel room. Members of the public are invited to visit the office in order that they may receive diagnosis and advice by respondents as to their hair and scalp conditions. Frequently, as a result of such interviews the use of certain of respondents' preparations is recommended by them. If successful in their efforts, respondents sell the preparations to such customers for use by them in their homes. The preparations, together with instructions for their use, are shipped to the purchasers from the place of business of one of the corporate respondents.

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Respondent Keele Hair & Scalp Specialists, Inc., by means of newspaper advertisements also invites members of the public to come to its place of business in Oklahoma City for diagnosis and treatment. To those coming to such place of business a certain series of treatments is usually recommended. If the treatments are agreed to, they are administered by respondent, and in connection with and as a part of the treatments certain of the preparations are used. Respondent also sells home treatment kits, along with instructions for the use thereof, to individuals visiting its place of business as a result of the advertisements. These home treatment kits include certain of the preparations.

11. The following ingredients are used in respondents' preparations, the ingredients being used in various combinations in the several preparations:

- Ammoniated Mercury
- Ammonium Lauryl Sulfate
- Benzoyl Peroxide
- Beta Naphthol
- Boric Acid
- Carbowax 1500 (a solid polyethylene glycol made by Carbide & Carbon Chemicals Co.)
- Castor Oil
- #77 Detergent (a general household and industrial cleaner made by Peck's Products Co.)
- Dyes
- Emcol 5130 (an alkanolamine condensate detergent made by Emulsol Chemical Co.)
- Eucalyptol
- Glycerol 40% Liquid Soap
- Hyamine #1622 (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride made by The Rohm & Haas Co.)
- Hydrophilic Ointment Base
- Isopropyl Alcohol
- Lanolin
- Methylcellulose
- Methyl Para Hydroxy Benzoate
- Mineral Oil
- Nopco #1034 (a sulfonated oil made by Nopco Chemical Co.)
- Oil of Bay, Terpeneless
- Oil of Cade
- Oil of Tar, Rectified
- Oil of Thyme
- Oxyquinolin
- Petrolatum
- Perfume
- Phenol
- Propylene Glycol

Resorcinol
Salicylic Acid
Sulfonated Caster Oil
Sulfur, Precipitated
Tincture Capsicum
Tincture Green Soap
Tween 60 (Polyoxyethylene Sorbitan Monostearate made by Atlas Powder Co.)
Unsaturated Fatty Acid
Veegum (Colloidal Magnesium silicate made by R. T. Vanderbilt Co., Inc. Water

12. Respondents American Advertising Bureau, Inc., John Shiftet, Mrs. Lorraine Shiftet and David A. Miller are engaged in the business of conducting an advertising agency. In the operation of such agency they have prepared, disseminated and caused the dissemination of advertising for the preparations in question. They have acted in conjunction and cooperation with the other corporate and individual respondents in the performance of the acts and practices hereinafter described.

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

By means of these advertisements, respondents have represented, directly or by implication, that through the use of their preparations thinning hair will be checked, baldness prevented and overcome, new hair induced to grow, and the hair become thicker.

By referring to respondent William L. Keele and certain of their other representatives as "trichologists," respondents have also represented in their advertisements that such persons have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

14. The scientific evidence in support of the complaint consists of testimony from three highly qualified and experienced

physicians. In substance their testimony is that the great majority of cases of baldness and thinning hair fall in the category of "male pattern baldness." While scientists are not entirely certain as to the cause of this type of baldness, the consensus is that the condition is due to hereditary factors. In any event, the witnesses are unanimous in their opinion that there is no known cure or effective treatment for the condition (except possibly hormone injection and castration).

While two highly qualified physicians were called as witnesses by respondents, their testimony was not in conflict with the opinions expressed by the witnesses called in support of the complaint. On the contrary, the testimony of respondents' witnesses in substance was corroborative of the testimony of the three witnesses called on behalf of the Commission.

15. The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. Respondents' advertisements, however, include claims such as "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or excessive hair fall will be aided by the preparations. Some of the respondents' advertisements, but not all, seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented their preparations to be effective in such cases. Respondents' preparations, whether used singly or in combination, and regardless of the method of treatment followed in connection with the preparations, will have no effect upon male pattern baldness. In such cases the preparations are wholly incapable of checking thinning hair, preventing or overcoming baldness, inducing new hair to grow, or causing the hair to become thicker. It follows, therefore, that the representations in respondents' advertisements to the contrary are misleading in a material respect.

Respondents' representation that respondent William L. Keele and certain of their other representatives are trichologists is also misleading in a material respect. None of these individuals

is a trichologist. None is a physician and none has had any competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

16. Respondents' advertisements are misleading in a further material respect in that they fail to reveal facts material in the light of the advertisements' other representations respecting baldness or hair loss. As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations, could have been prevented and may yet be overcome. In all except a few "hopeless cases," they have said, amounting to no more than 5%, a full head of healthy hair can be grown and the condition of baldness relieved. Obviously, such advertisements, when read by a person who has lost or is losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined by the statute.

As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the

further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

17. It is therefore concluded that respondents' advertisements, as charged by the complaint, constitute false advertisements within the meaning of the Federal Trade Commission Act.

18. The use by respondents of the false advertisements described above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' preparations and the benefits to be derived from the use thereof, and to cause such persons to purchase such preparations as a result of the erroneous and mistaken belief so engendered. The present proceeding is therefore in the public interest.

19. The acts and practices of respondents as herein found are to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Keele Hair & Scalp Specialists, Inc., a corporation, and its officers, and William L. Keele, Thelma P. Keele, and J. H. Keele, individually and as officers of said corporation, and Rogers Hair Experts, Inc., a corporation, and its officers, and Lorene Firsching and Vangie Clendenin, individually and as officers of said corporation, and American Advertising Bureau, Inc., a corporation, and its officers, and John Shiflet, Mrs. Lorraine Shiflet, and David A. Miller, individually and as officers of said corporation, 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 various cosmetic or drug preparations referred to in the findings herein, or any other preparations intended for use in the treatment of hair or scalp conditions, 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, that the use of said preparations, alone or in conjunction with any method of treatment:

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Will check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause the hair to become thicker, unless such representations be expressly limited to cases other than those of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male pattern baldness and that said preparations will not in such cases check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause hair to become thicker.

2. 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 respondents or any of their agents or employees are trichologists, or that they have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair or scalp.

3. 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraphs 1 and 2 hereof.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents J. Wayne Green and John H. Kennedy.

It is further ordered, That the motion of respondents, Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele, and J. H. Keele, to dismiss the complaint be, and it hereby is, denied.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

The complaint in this matter charges the respondents with violating the Federal Trade Commission Act in connection with the dissemination of false advertisements concerning various cosmetic and drug preparations intended for use in the treatment

of the hair and scalp. In an initial decision, filed August 28, 1958, the hearing examiner held that the charges in the complaint were sustained in part and included in his decision an order directing certain of the respondents to cease and desist the practices found to be unlawful.¹

Counsel for the respondents and counsel in support of the complaint have filed cross-appeals from the aforesaid initial decision. The contentions of each will be separately considered below.

Respondents' Appeal

Respondents take exception to the examiner's finding that by referring to respondent William T. Keele and some other representatives as "trichologists" in their advertisements they have represented that such persons have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp. The respondents' position is that "trichologist" means nothing more than one experienced in the hair. The record, however, supports the finding of the examiner. There is evidence that a trichologist is one who has had medical training, a medical degree and some special training in dermatology. Moreover, in the context in which the word "trichologist" appears in respondents' advertisements, the impression created thereby that certain personnel have special training in medicine is further enhanced by picturing a representative in a white coat before an enlarged photograph of hair follicles and by the use of words with medical associations, such as "specialists." The examiner's finding in this connection is consistent with prior Commission rulings as to the meaning conveyed by the use of such term. Cf. *William T. Loesch, et al.*, Docket No. 6305 (decided November 14, 1957), affirmed C.A. 4, 257 F. 2d 882 (1958).

The respondents' next exception is directed to the hearing examiner's finding that respondents have falsely advertised that their preparations will be effective in cases of male pattern baldness.

The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. It is also shown by the great weight of the evidence that respondents' preparations, in such cases, are incapable of checking thinning

¹ The examiner dismissed the complaint as to respondents J. Wayne Green and John H. Kennedy.

