

Syllabus

IN THE MATTER OF

MARSAY SCHOOL OF BEAUTY CULTURE, O. C. MILLER,
A. J. WEBER AND IGNATIUS BARNARDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1504. Complaint, Mar. 16, 1928—Decision, Jan. 16, 1929*

Where a corporation engaged in furnishing courses of instruction by mail in various branches of beauty culture to students throughout the United States, and in the sale to pupils of equipment, supplies, and cosmetics, and its president, manager, and principal stockholder; in advertising its aforesaid courses in magazines and other publications of general circulation, and in catalogues, pamphlets, circular letters, and other printed, written, or mimeographed matter mailed to prospective pupils,

- (a) Invited them to write "for sample lessons of the wonderful Marsay Practice Method which turns out expert operators in a few months, at home in spare time", and advised those replying that it required "a year or less to prepare at home in spare time", and that a "Marsay Trained Beauty Culturist" could "earn a big salary as an all-around beauty operator", the fact being that the training and education offered would not make the pupil or graduate an "Expert Beauty Culturist or Expert Operator" or "all-around Beauty Culturist", and that such or similar terms and descriptions could not accurately and truthfully be applied to a graduate;
- (b) Represented that an expert beauty culturist commanded from \$50 to \$100 a week, that the pupil could make from \$10 to \$20 a week while preparing, and, when a Marsay trained beauty culturist could earn a big salary, that plenty of positions were open, and invited the prospective pupil to get a "Marsay license—join the Great National Organization—make profits of \$5,000 to \$25,000 a year", the fact being that earnings or profits were grossly exaggerated, and that in "closed" States the graduate could earn nothing by reason of the fact of graduation, and was likely to receive, in other States, upon graduation, wages, commissions, or profits of less than \$25 a week, and that amounts in excess thereof were unusual and improbable;
- (c) Represented that its school afforded the only home training meeting the requirements of many State laws calling for a minimum of 625 hours of study and practice, and advised pupils in "closed" States that while they were not allowed to charge for practice work, there was no law against persons given treatment paying pupils such sums as they wished, the fact being that the laws of some twenty closed States prohibited, under penalty, the practice of beauty culture, whether for pay or not, except by a duly examined and licensed beauty culturist, and that, under the provisions thereof, a course in a nonresident school did not and could not, in and of itself, qualify the graduate for the State examination for beauty culturist, or for practice as an apprentice; and
- (d) Falsely represented that a certain alleged professional expert beauty culturist of one of the large cities was a graduate of its school and was by the education so received, enabled to establish and maintain a highly successful and profitable business;

Complaint

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With the capacity and tendency to deceive the public and to induce persons to enroll as students of such school in reliance upon and by reason of their belief in the truth and accuracy of the representations in question:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Marsay School of Beauty Culture, an Illinois corporation with principal place of business in Chicago, engaged in the sale of courses of instruction by correspondence in the art, sciences, professions, or trades included by it under the term Beauty Culture,¹ together with "nine outfits" consisting of articles and appliances incidental and accessory to said course and to the acquirement of the art and use and practice thereof,² respondent O. C. Miller, respondent A. J. Weber, and respondent Ignatius Barnard, respectively, president, acting president and secretary, and treasurer of said respondent corporation, and actively engaged in the management and control of the business activities thereof, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, in its advertisements of its said courses and articles and things incidental and accessory thereto, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several States thereof and in catalogues, pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter, falsely and/or misleadingly represents that—

(1) It guarantees each pupil a beauty culture position and a 50 per cent increase in salary, the fact being that the purported guarantee is so adroitly worded as, while appearing upon a casual reading to constitute an unconditional guarantee as above set forth, it in fact

¹ Set forth in the complaint as including, among other things, the particular "services commonly known among women and girls as marcelling, permanent waving, water waving, paper curling, dyeing, rinses, make-up, hair dressing, shampooing, manicuring, facial and scalp treatments, and other arts intended to create, prolong, or restore youthful and attractive features and to give to one the physical conditions and outward appearance commonly thought of as embraced in the word 'beauty.'"

² Set forth in the complaint as including, among other things "a permanent waving machine, marcel iron, human hair for practice, a complete line of Marsay Harmonized Beauty Preparations, dozens of instruments, everything needed in the practice of said art, all complete, and without one cent of extra cost."

constitutes a mere guarantee to refund tuition of a pupil for whom no such position and increase shall be procured or who shall certify that the course has not benefited such pupil, said statement so denominated as a guarantee of a job and salary increase having the necessary tendency and capacity to deceive and mislead the public and prospective pupils into the erroneous belief that each pupil is guaranteed a desirable employment as an expert beauty culturist and being intended so to do.

(2) A pupil successfully taking its course thereby becomes an all-around beauty expert, capable of taking and qualifying in a fine position as such, further setting forth that there are thousands of jobs paying from \$50 to \$100 a week open to each pupil completing the course, and that thousands of such positions are advertised at big pay, offering 50 per cent to 65 per cent commission, the fact being that a pupil completing the course does not become such an expert, but must serve an apprenticeship under a person who is such an expert and lawfully entitled to carry on business as such, in order to become and qualify as such beauty expert, that said pupil completing said course can not secure a position as above set forth, but may hope to receive not more than \$12 to \$20 a week, and that there are not jobs in sufficient numbers available to enable more than a fraction of such pupils to obtain jobs as beauty experts or expert beauty culturists.

(3) The school guarantees each pupil a job and a 50 per cent increase in pay, the fact being that it neither procures such job for each pupil completing the course nor assists in so procuring such jobs, and that each pupil is not able to procure such a job, such jobs not being available and open to each such pupil.

(4) A pupil who has completed the course and accorded a Marsay license may safely count on making profits of \$5,000 to \$25,000 a year, the fact being that such a pupil may not safely count on any employment or profits and is likely, when engaged in business or employed, to receive wages or profits of less than \$25 a week, a net revenue in excess thereof being unusual and improbable.

(5) The Marsay school is the only home training school enabling its graduates to meet the requirements of laws enacted by many States regulating the practice of beauty culture, the fact being that it does not meet such requirements, and pupils completing its course do not become qualified to meet such requirements, nor able by reason of said course to pass the State examinations and become entitled to practice the profession or art in question under the statutes and in the States concerned.

(6) More jobs are open to real experts than the school is able to furnish graduates for, setting forth further that every graduate is a real expert who can command and secure a job paying from \$50 to \$100 a week, the fact being that a graduate of respondent school is not by reason thereof a real expert in the profession or art concerned within the meaning of the terminology thereof or of the statutes regulating the practice thereof, nor qualified to accept and fill the employments asserted to be open to such real experts.

(7) A certain alleged professional beauty culture specialist, one Peggy Pratt, of Minneapolis, is a graduate of the school and was enabled by the education there received to establish and maintain a highly successful business as such expert, the fact being that the person in question is not a graduate thereof and did not receive her education therein.

The use by respondent school, under the control and management of respondent individuals, of the methods and practices as above alleged, and the promises, statements, and representations so made, as charged, "have the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief that said promises, statements, and representations are true, and that pupils of respondent school receive from such course of instruction the benefit and advantages that would inhere in or flow from such course of instruction, did respondent keep such promises, and were said statements and representations true in fact and in reality; and that, therefore, said respondent school offers to prospective pupils the best available opportunity for education and for an established gainful pursuit in life that is pleasant, of certain success, and highly profitable"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes", the Federal Trade Commission on the 16th day of March, 1928, issued and thereafter served upon respondents named, Marsay School of Beauty Culture, O. C. Miller, A. J. Weber, and Ignatius Barnard, a complaint charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondents, Marsay School of Beauty

Culture and A. J. Weber, having entered their appearances and filed their answer herein, a hearing was had and evidence was thereupon introduced and received on behalf of both the Commission and the respondents before an examiner of the Commission theretofore duly appointed. Thereafter this proceeding came on for decision upon the record and the brief of counsel for the Commission, no brief having been filed by counsel for the respondents, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Marsay School of Beauty Culture is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in said State. Respondent A. J. Weber is now and has been since January 1, 1928, a principal stockholder in, and president and manager of said respondent. Respondents O. C. Miller and Ignatius Barnard do not have now, nor have they had since November, 1927, any interest in said corporation respondent by reason of ownership of stock therein or otherwise.

PAR. 2. Respondent corporation is now, and has since its incorporation in 1925, been engaged in the business of conducting a correspondence school at Chicago and furnishing by mail, instruction in beauty culture including marcelling, permanent waving, hairdressing, shampooing, manicuring, and facial and scalp treatments to students throughout the United States. It also sells and has since its incorporation sold to its students certain equipment and supplies and cosmetics. In the course and conduct of its business said corporation sells and delivers from time to time to its pupils the course consisting of 146 printed or mimeographed lessons containing the instruction, and also the equipment, supplies, and cosmetics above mentioned, and causes such lessons and articles of merchandise to be transported in interstate commerce to its several students, from its principal place of business into and through the several States of the United States, and delivered to such several pupils at their respective places of residence in the various States of the United States.

In the course and conduct of its business respondent corporation is in competition with other persons and corporations in the United States, engaged in furnishing instruction by correspondence in beauty culture and in sending and transporting lessons and other printed matter, and articles of merchandise, into and through the various States of the United States in interstate commerce.

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PAR. 3. In all of its said business and for the purpose of inducing prospective pupils to enroll as such, and to purchase of it the courses of instruction and the articles and things above enumerated, said respondent corporation causes advertisements of its said school and courses of instruction to be inserted and made accessible to the public and prospective pupils in magazines, periodicals, and other publications of general circulation throughout the United States and also in catalogues, pamphlets, circular letters, and other forms of printed, written, or mimeographed matter, which are mailed to such prospective pupils.

PAR. 4. Since the month of January, 1927, respondent has advertised in numerous magazines circulating in every State of the United States as follows:

Write to-day for sample lessons of the wonderful Marsay Practice Method, which turns out expert operators in a few months, at home in spare time! *Earn as you learn!* You can make from \$10 to \$20 a week even while learning.

\$50 to \$100 a week. Plenty of positions now open.

In a catalogue which has since January 1, 1927, been sent by respondent to every person answering the foregoing advertisement the following representations are made:

(a) \$50 to \$100 a week as an Expert Beauty Culturist. Requires a year or less to prepare at home in spare time. Pleasant work. Wonderful opportunities. Profits in business \$4,000 to \$10,000 a year.

(b) When you are a Marsay-trained Beauty Culturist you can earn a big salary as an all-around Beauty Operator.

(c) When you have finished my training, when you are a real Marsay Beauty Culturist, you will want and we will send you this handsome engrossed Diploma.

(d) Many State laws require a minimum of 625 hours of study and practice. The Marsay School is the only home training in Beauty Culture which meets this requirement.

(e) Get a Marsay License—Join the Great National Organization—make profits of \$5,000 to \$25,000 a year!

PAR. 5. The statutes of the State of Illinois and those of nineteen other States of the United States provide that it shall be unlawful for any person to practice or attempt to practice beauty culture without a certificate of registration as a registered beauty culturist issued by constituted authority upon an examination of the applicant, and that it shall be unlawful for any person to serve or attempt to serve as an apprentice under a registered beauty culturist without a certificate of registration as a registered apprentice, issued upon examination. Such laws further provide that no registered apprentice may independently practice beauty culture, but such registered apprentice may, under the immediate personal supervision of a regis-

tered beauty culturist, assist a registered beauty culturist in the practice of beauty culture. Such laws further provide that no person is qualified to receive a certificate of registration as a registered beauty culturist who has not studied beauty culture for one year as a registered apprentice under a beauty culturist registered under the laws of the State, or has not graduated from an approved resident school of beauty culture, having a minimum requirement of a course of study consisting of not less than 625 hours.

PAR. 6. The States above referred to in paragraph 5 hereof are termed by respondents' witnesses as "closed" States, and it is conceded in respondents' answer and is the fact, that in the "closed" States, graduates of correspondence schools are not allowed to participate in the examination for registration as a beauty culturist. The statements and representations set out in paragraph 4 hereof are circulated in and pupils solicited and enrolled in every State of the United States. The representation contained in subdivision (d) of paragraph 4 hereof is false and misleading in that the course of instruction furnished by respondent school, does not and can not meet the requirements of the State laws as claimed in said representation.

PAR. 7. The representation mentioned in paragraph 4 hereof as appearing in magazines of general circulation throughout the United States, and also the representations contained in subdivisions (a), (b), (c), and (e) of paragraph 4 are respectively false and misleading, in that, (a) the training and education received by a graduate of respondent school does not make her an "expert beauty culturist" or an "expert operator" or an "all-around beauty culturist," and such or similar terms and descriptions can not accurately and truthfully be applied to such graduates, and (b) the amounts directly or inferentially represented as probable earnings or profits to be realized by a graduate, are grossly exaggerated, the fact being that in the "closed" States such graduate can earn nothing by reason of such graduation, and in the States having no laws on the subject, such graduate when employed is likely to receive upon graduation wages, commissions, or profits less than \$25 per week, an amount in excess of such sum being unusual and improbable.

PAR. 8. In a circular letter which has been sent and is now being sent by the respondents in the solicitation of persons residing in the "closed" States to enroll as pupils, respondents, after calling the addressee's attention to the fact that the law of her State requires that every beauty culturist must have a State license, states that its students, "while studying their training devote their time and efforts to showing women the correct methods of taking care of their skin and scalp, and showing them the correct kind of cosmetics to use.

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For practice work, they are giving the various treatments to these women, and showing them how to continue the treatments in their own homes." * * * "Over 95 per cent of our students pay their way through school by their practice work alone. In your State you are not allowed to charge for practice work, and for this reason, we have worked a cosmetic-selling plan for the students in those States. While you are taking your training you can not charge your friends for the work you do. There is, of course, no law against their paying you what they wish, but you are to make no charge of your own whatsoever." Such statements and representations are unfair and misleading for the reason that the laws of the several "closed" States referred to prohibit under penal provisions the practice of beauty culture, except by a person licensed to practice beauty culture, regardless of whether the same be done for pay or without pay.

PAR. 9. Respondents also in the catalogue referred to in paragraph 4 hereof, advertise and represent that a certain alleged professional expert beauty culturist of Minneapolis, Minn., is a graduate of respondents' school, and was by the education so received enabled to establish and maintain a highly successful and profitable business, when in truth and in fact said person is not a graduate of respondents' school and did not receive her education therein.

PAR. 10. The false and misleading statements and representations set forth in paragraphs 4, 7, 8, and 9 hereof, and each of them, has the capacity and tendency to deceive the public and to induce persons to enroll as students of the respondent school in reliance upon and by reason of their belief in the truth and accuracy of such representations.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, Marsay School of Beauty Culture and A. J. Weber, the evidence introduced on behalf of the Commission and said respondents and briefs filed, and the Commission having made its findings as

to the facts and its conclusion that said respondents, Marsay School of Beauty Culture and A. J. Weber, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes".

It is now ordered, That this proceeding as to the respondents, O. C. Miller and Ignatius Barnard be, and the same is hereby dismissed, for the reason that said respondents had, at the time of the issuance of the complaint herein, no interest in the respondent Marsay School of Beauty Culture either by way of ownership of stock or otherwise.

It is further ordered, That respondents, Marsay School of Beauty Culture, its officers, agents, and employees, and the respondent A. J. Weber, in offering for sale or selling courses of instruction or articles of merchandise in interstate commerce do cease and desist from—

(1) Representing in their advertising or otherwise to prospective pupils or to the public that the course of instruction and training furnished by respondent, Marsay School of Beauty Culture, enables a graduate to be an expert "beauty culturist", or an "all around beauty culturist", or an "expert operator", or using any equivalent term in describing the qualifications of graduates of said school. 1

(2) Making exaggerated statements either by way of advertisements or by circular letters, or otherwise, as to the earnings or profits to be derived by a graduate of said school in the practice of beauty culture.

(3) Representing to persons residing in States having laws regulating the practice of beauty culture, described in the record as "closed" States, that a graduate of the Marsay School of Beauty Culture can, by the reason of such graduation, be entitled to practice beauty culture or derive any earnings or profits from such practice.

(4) Representing in its advertising, literature, or otherwise to prospective pupils residing in said "closed" States that they may, while studying the course, practice beauty culture or give treatments in beauty culture.

(5) Representing that persons who are not in fact graduates of the Marsay School of Beauty Culture are such graduates.

It is further ordered, That the respondents, Marsay School of Beauty Culture and A. J. Weber, shall within 60 days after the service upon them of a copy 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 hereinafore set forth.

IN THE MATTER OF

CHICAGO CORRESPONDENCE SCHOOL OF MUSIC
AND J. PETER BERINGER

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1506. Complaint, Mar. 25, 1928—Decision, Jan. 17, 1929

Where a corporation engaged in the sale of correspondence courses in instrumental music; and its president and manager; in their advertisements in magazines of general circulation and in the blanks, circular letters, and other printed or mimeographed matter sent to those making inquiry,

- (a) Represented that the appropriate musical instrument was given to the student without compensation to the school or cost to the pupil, making such statements as "We will give you free a \$20 quality Violin, Tenor Banjo", etc. "Our FREE distribution of 1,000 high-grade musical instruments is already started. Your chances to get one of them without a cent of cost depends upon how quickly you can decide and act", the fact being that the usual price of the various instruments, excepting the piano and organ, was included in and constituted a part of the specified selling price of the course; and
- (b) Represented their courses as offered at a special price, lower than that regularly charged, making such statements as "VIOLIN FREE with complete course of 56 lessons. Regular price of course \$42; now * * * \$36"; the fact being that the purported reduced price was the usual charge;

With the capacity and tendency to deceive the public and to induce persons to enroll as students in reliance upon the truth and accuracy of the aforesaid representations:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Chicago Correspondence School of Music, Inc., an Illinois corporation engaged in furnishing courses of instruction in music, by correspondence, to persons or pupils at various places in the several States, and respondent J. Peter Beringer, its president, actively engaged in the management and control thereof, with advertising falsely or misleadingly in violation of the provisions of section 5