

IN THE MATTER OF
ROBERT C. TAYLOR TRADING AS MARVEL PRODUCTS
COMPANY

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

Docket 3316. Complaint, Jan. 27, 1938—Decision, Mar. 21, 1939

Where an individual engaged in manufacturing hair and scalp lotions including product designated as "Hair Marvel," and in selling same through wholesale barber supply houses, department stores, barber shops, beauty shops, drug stores, and by mail direct—

- (a) Represented, through statements circulated through newspapers, booklets, and labels, including therein purported testimonial quotations, directly and by implication, that said product was not a hair dye or was something other than a hair dye, and would restore the natural color of the hair, and that it did not have the detrimental qualities usually attributed to hair dyes and was unqualifiedly safe, and would stimulate the growth of the hair, and rejuvenate, invigorate, and nourish hair roots, and restore scalp to natural healthy condition; and
- (b) Represented, as aforesaid, that said preparation possessed germicidal antiseptic properties and would stop falling hair and eradicate dandruff, and constituted effective cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalp;

Facts being said product was a dye and not harmless, by virtue of lead acetate ingredient therein, which might prove harmful under some conditions of use, or used by certain persons, either children or adults, and said preparation would not effectively restore natural color of hair, stimulate growth thereof, etc., and aforesaid representations were false; and

- (c) Represented that he owned or controlled laboratory used in connection with scientific experiment, analyses, or manufacture of said "Hair Marvel," through use on letterheads, stationery, and other printed matter of legend including word "Laboratory," together with trade name employed, and address, facts being he neither owned, operated, nor controlled any such laboratory used as aforesaid;

With result that members of consuming public believed true such representations and statements as to said product not being dye and bought and used same in such belief, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and of inducing members of such public to buy and use said "Hair Marvel" because of such erroneous belief, and of diverting thereby trade to him from competitors engaged in sale in interstate commerce of hair color restorers and like and similar preparations and treatments for scalp and hair, and who, in sale of their said products, in no wise misrepresent their scientific or experimental equipment or efficiency or therapeutic value thereof; to the substantial injury and prejudice of competitors:

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Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward J. Hornabrook*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Norval B. Fast, of Detroit, Mich., for respondent.

COMPLAINT

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, having reason to believe that Robert C. Taylor, an individual, trading as Marvel Products Co., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in 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, Robert C. Taylor, is an individual doing business under the trade name of Marvel Products Co., with his principal office and place of business located at 1604 E. Jarvis Avenue, Hazel Park, Mich., a suburb of Detroit, Mich. Respondent is now, and has been for some years, engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, hair and scalp lotions, including a product designated "Hair Marvel."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from his office and place of business in the State of Michigan to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a course of trade and commerce in said products so manufactured, distributed, and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent is now, and has been, in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, distributing, and selling hair and scalp lotions or similar products designed, intended, and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of said product, designated as

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"Hair Marvel," respondent has caused his said product to be packed in bottles labeled in part as follows:

HAIR MARVEL
Promotes a Healthy Scalp
FREE FROM DANDRUFF
and Irritation
REVIVES LIFE—LUSTRE
and
NATURAL COLOR
to
GRAY HAIR
When used Consistently

PAR. 5. In the course of the operation of said business, respondent causes the interstate distribution of an advertising booklet, on the front page of which are set forth statements identical with those appearing on the label as hereinbefore set forth. Said booklet also contains many statements with respect to respondent's product, of which the following are typical:

Hair Marvel has proven very effective in stimulating the growth of new hair.

Hair Marvel contains several ingredients which are found in the human body, and it is our belief that the color cells which are nourished through the central shaft of hair are invigorated and nourished by Hair Marvel. Other Hair Marvel ingredients would break down the film or bubbles which surround the color pigment in the hair, thereby restoring natural color.

Many dyes, rinses, tints, etc. used in coloring the hair have proven detrimental in the giving of Permanent Waves. Where only Hair Marvel has been used Permanent Waves have been very successful.

For Restoration of Natural Color.

For Dandruff, Irritation and Falling Hair.

Hair Marvel is Very Effective in Eradicating Dandruff and Companionate Ailments, Restoring the Scalp to a Natural Healthy Condition.

Hair Marvel's germicidal effectiveness has been proven through its use in clearing up many apparently hopeless cases of Alopecia (Spotted baldness), Psoriasis (Itch), Eczema, Blotchy Scalps, etc. where hundreds of dollars had previously been spent without results.

A number of alleged testimonials are printed in the booklet. Certain of them represent:

Hair Marvel restored the natural color to my white hair. * * * removed the dandruff.

Now it has regained its natural dark brown color, bald spots are fast disappearing as new hair is starting to come in, and at the same time all of my hair is nearly back to its original color of black.

By the said means and in the manner aforesaid, the respondent makes and has made to the general public many false and misleading statements with reference to the alleged therapeutic value of said

product and its effect upon the users thereof, and through the statements herein set out, and others of similar import and effect, the respondent represents, either directly or through implication, that the use of said preparation—

1. Will effectively restore the natural color of the hair.
2. Stops falling hair and eradicates dandruff.
3. Acts on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp.
4. Has a rejuvenating, invigorating, and nourishing effect upon the roots of the hair.
5. Stimulates the growth of new hair and restores the scalp to a natural healthy condition.
6. Is effective as a cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalps, and possesses germicidal or antiseptic properties; and
7. Is not a dye and achieves the results claimed for it in restoring natural color because of its nourishing and invigorating effect on the color cells of the hair.

PAR. 6. The representations made by the respondent with respect to the nature and effect of his product are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said product when applied to the hair, will not impart nourishment to such hair through the "central shaft" or the roots of the hair so as to revive or bring back to its original natural color the hair which has turned gray, white, or faded. To date medical science has not found a means of restoring natural color to hair. The only method of lending color to hair is by process of dyeing. There is no preparation known to medical science at the present time which can be truthfully claimed to restore the natural color to hair. In fact, "Hair Marvel" is a dye, and will not color or restore color to gray, white, or faded hair, except in the sense that it may dye the hair. It contains lead acetate, sulphur, and ammonia among its ingredients. Ammonia with sulphur forms ammonium sulphide, which reacts with lead acetate and results in the formation of lead sulphite, which is a black precipitate, and an application of this preparation will give or tend to give a black color to hair. Application of "Hair Marvel" to persons originally with blonde, red, brown, or black hair will in all cases tint the hair black, and does not restore the natural color to hair. "Hair Marvel" is therefore a dye, and the lead acetate contained therein is an accumulative poison which may prove harmful under some conditions of its use, or when used by certain persons, either children or adults. The consequences of lead poisoning may be rheumatic and arthritic pains, digestive disturbances, painter's colic, and other ailments.

Said preparation does not possess germicidal or antiseptic properties and its use will not promote a healthy scalp or restore the scalp

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to a healthy condition. Said preparation will not stop falling hair or eradicate dandruff nor will it stimulate the growth of new hair or restore new life to hair. Said preparation does not contain "several ingredients that are found in the human body" and does not contain ingredients capable of replacing the natural oils of the hair and scalp, and will not prevent or stop falling hair or grow new hair. Said preparation is not a competent and effective cure or remedy for alopecia, psoriasis, eczema, or dandruff. Psoriasis is a chronic skin disease, the cause of which is unknown, but there is no specific cure or remedy for psoriasis. Eczema may be due to a number of causes such as digestive disturbances and cannot be remedied by respondent's preparation. There is no known preparation for external application that serves as a competent and effective cure or remedy for dandruff. Alopecia is in most cases due to some internal disorder or maladjustment of the nervous system and there is no preparation for external application to the scalp that will cure alopecia.

PAR. 7. Through statements such as—

MARVEL PRODUCTS CO.

Detroit, Michigan

Office and Laboratory

the respondent represents that he owns and operates or controls the laboratory used in connection with scientific experimentation and analysis.

In truth and in fact said respondent does not own and operate or directly and absolutely control any laboratory or place devoted to experimental study in any branch of science by the application of scientific principles in making tests and analyses of said preparation so as to warrant the representation that he owns and operates a laboratory.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in designating or describing his product and the effectiveness of said product for treating hair and scalp conditions, as hereinabove set out, in offering for sale and selling his product known as "Hair Marvel" was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs induced by the misrepresentations of respondent as hereinabove enumerated, a number of the consuming public purchases a substantial volume of respondent's preparation known as "Hair Marvel," with the result that trade has been unfairly diverted to the respondent from individuals, partnerships, firms, and corporations likewise engaged in the

business of manufacturing, distributing, and selling hair-color restorers and like and similar preparations and treatments for the scalp and hair, who truthfully advertise their respective products and the effectiveness thereof in use. As a result thereof, substantial injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent herein have been, and are, all to the prejudice and injury of the public and of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent of Section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondent, Robert C. Taylor, an individual, trading as Marvel Products Co., charging respondent with the use of unfair methods of competition in interstate commerce in violation of section 5 of said act. After the issuance of said complaint respondent entered his appearance and filed his answer herein. Hearings were held and testimony was introduced by Merle P. Lyon, attorney for the Commission in support of the allegations of the complaint, and by Norval B. Fast, attorney for respondent in opposition to the allegations of the complaint, before Edward J. Hornibrook, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence has been duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and other evidence, the brief of counsel for the Commission in support of the complaint, and respondent's exceptions to the report of the trial examiner upon the evidence; and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Robert C. Taylor is an individual doing business under the trade name of Marvel Products Co. with his office

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and principal place of business located at 1604 East Jarvis Avenue, Hazel Park, Mich., a suburb of Detroit, Mich., is now, and has been for more than 1 year last past, engaged in the business of manufacturing, distributing, and selling in commerce through the medium of wholesale barber supply houses, department stores, barber shops, beauty shops, drug stores, and by direct mail, hair and scalp lotions including the product designated as "Hair Marvel."

PAR. 2. Respondent in the regular course and conduct of his business, upon receipt of orders, causes and has caused his products to be transported, from his place of business in Hazel Park, Mich., to the purchasers thereof located in California, Arkansas, Ohio, and other States of the United States, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade in said product so sold, distributed, and transported by respondent in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his business respondent is now and has been in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, distributing, and selling hair and scalp lotions or similar products designed, intended and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business as set forth in paragraph 1, respondent has, for the purpose of inducing the purchase of the product "Hair Marvel," offered for sale and sold by him, published representations and statements with reference to the manufacture and quality of the said product. Such representations, among others, set forth and circulated through the medium of newspapers, booklets, and labels, are as follows:

HAIR MARVEL

Promotes a Healthy Scalp
FREE FROM DANDRUFF
and Irritation

REVIVES LIFE—LUSTRE
and

NATURAL COLOR
to

GRAY HAIR

When used Consistently

Hair Marvel has proven very effective in stimulating the growth of new hair.

Hair Marvel contains several ingredients which are found in the human body, and it is our belief that the color cells which are nourished through the central shaft of hair are invigorated and nourished by Hair Marvel. Other Hair Marvel ingredients would break down the film or bubbles which surround the color pigment in the hair, thereby restoring natural color.

Many dyes, rinses, tints, etc. used in coloring the hair have proven detrimental in the giving of Permanent Waves. Where only Hair Marvel has been used Permanent Waves have been very successful.

For Restoration of Natural Color.

For Dandruff, Irritation and Falling Hair.

Hair Marvel is Very Effective in Eradicating Dandruff and Companionate Ailments, Restoring the Scalp to a Natural Healthy Condition.

Hair Marvel's germicidal effectiveness has been proven through its use in clearing up many apparently hopeless cases of Alopecia, (Spotted baldness), Psoriasis (Itch), Eczema, Blotchy Scalps, etc. where hundreds of dollars had previously been spent without results.

Hair Marvel restored the natural color to my white hair. * * * removed the dandruff.

Now it has regained its natural dark brown color, bald spots are fast disappearing as new hair is starting to come in, and at the same time all of my hair is nearly back to its original color of black.

Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's product, the respondent represents either directly or through implication that the use of said preparation will effectively restore the natural color of the hair; stop falling hair and eradicate dandruff; act on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp; that it has a rejuvenating, invigorating, and nourishing effect upon the roots of the hair; that it stimulates the growth of new hair and restores the scalp to a natural healthy condition; that it is effective as a cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalps, and possesses germicidal or antiseptic properties; that it is not a dye and achieves the results claimed for it in restoring natural color because of its nourishing and invigorating effect on the color cells of the hair.

Furthermore, the respondent represents that he owns or controls a laboratory used in connection with scientific experiment analyses or manufacture of said product, "Hair Marvel," by use of the following legend on letterheads, stationery, and other printed matter.

MARVEL PRODUCTS CO.

Detroit, Michigan

Office and Laboratory

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PAR. 5. The formula used by the respondent in the manufacture of 6½ gallons of "Hair Marvel" is as follows:

18 ounces of	glycerin
32 " "	bay rum
4 " "	5½% ammonia
16 " "	chloride of sodium
3¼ " "	precipitated sulphur
1¾ " "	lead acetate
¾ " "	perfume
6 gallons of	distilled water

PAR. 6. The testimony shows and the Commission so finds as a fact that the product "Hair Marvel" is a dye and will not effectively restore the natural color of the hair; stimulate the growth of new hair and restore the scalp to a natural healthy condition; rejuvenate, invigorate and nourish the roots of the hair; stop falling hair and eradicate dandruff; act as an effective cure or remedy for alopecia, psoriasis, itch, eczema, or blotchy scalp; and it is not a harmless preparation because the lead acetate contained in the product "Hair Marvel" is an accumulative poison which may prove harmful under some conditions of its use or when used by certain persons, either children or adults.

PAR. 7. Respondent neither owns, operates, nor controls any laboratory used in connection with scientific experiment analysis or manufacture of the product "Hair Marvel."

PAR. 8. The testimony is to the effect and the Commission so finds as a fact that members of the consuming public believed the representations and statements of respondent that "Hair Marvel" is not a dye and bought and used same under such belief.

PAR. 9. The representations of respondent, as aforesaid, have had, and now have, a tendency and capacity to mislead and deceive, and did deceive, a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, said representations of respondent have had and do have a tendency and capacity, to induce, and have induced, members of the purchasing public to buy and use respondent's "Hair Marvel" because of the erroneous belief as set forth above, and to divert and have diverted, trade to the respondent from competitors engaged in the sale, in interstate commerce, of hair color restorers and like and similar preparations and treatments for the scalp and hair who, in the sale of their products, in no wise misrepresent their scientific experimental equipment or the efficiency or the therapeutic value of their competing products; and respondent's acts and practices are to the substantial injury and prejudice of his competitors.

CONCLUSION

The aforesaid acts and practices of the respondent have been, and are, all to the prejudice and injury of the public and said respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward J. Hornibrook, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief of counsel for the Commission in support of the complaint, no brief having been filed on behalf of the respondent and no oral arguments having been requested or made, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Robert C. Taylor, individually and trading as Marvel Products Co., or trading under any other name, his agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of hair and scalp lotion or preparation now designated by the name of "Hair Marvel," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties, whether sold under that name or under any other name, do forthwith cease and desist from:

1. Representing through the use of the word "laboratory" or any other word or words of similar import and meaning, in advertising, circulars, letterheads, and other printed matter, or in any other manner, that the respondent owns, operates or controls a scientific laboratory, employs trained scientists and technicians, and is equipped to test his products in the manner and with the methods used by recognized scientific laboratories.

2. Representing that said preparation is not a hair dye or is something other than a hair dye or that it will restore the natural color of the hair.

3. Representing that said preparation will stimulate the growth of hair or restore the scalp to a natural, healthy condition.

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4. Representing that said preparation will rejuvenate, invigorate, or nourish the roots of the hair.

5. Representing that said preparation will stop falling hair or eradicate dandruff.

6. Representing that said preparation is an effective cure or remedy for alopecia, psoriasis, itch, eczema, or blotchy scalp.

7. Representing that said preparation possesses germicidal or anti-septic properties.

8. Representing directly or indirectly that said preparation does not have the detrimental qualities usually attributed to hair dyes or that it is unqualifiedly safe for use.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and, if so, setting forth in detail the manner and form in which he intends to comply; and that, within 60 days after service upon him of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF
K & K SUPPLY COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3454. Complaint, June 11, 1938—Decision, Mar. 21, 1939*

Where a corporation engaged in importing, and in buying from local sources, bicycles and bicycle frames, parts, and accessories, and in selling and distributing such products and, as thus engaged, in (1) importing from Japan bicycle parts, accessories, and frames upon which were marked name of country of origin and, in many cases, upon which were set forth, stamped, or marked by decalcomania in said country, words "Made in Japan," in accordance with tariff law and custom regulations of the United States requiring disclosure of source of origin, and in (2) selling and distributing, as aforesaid, bicycle frames and parts and, after assembly, complete bicycles and accessories to purchasers in the various States and in the District of Columbia from its place of business in New York, and including among such products made in Japan, completely assembled bicycles there made and others with frames and essential parts of Japanese origin, to which had been added some American parts, and (3) possessed of number of name plates or emblems, purchased by it from New York manufacturer of such products who had made same for American manufacturer and for wholesale distributor upon order, for use on American-made bicycles;

In selling its Japanese-made bicycle frames, parts and accessories, and bicycles composed of frame and other parts of Japanese origin combined with some American parts, and for purpose of inducing public to purchase such frames and bicycles—

- (a) Placed thereon name plates of American manufacturers and distributors in such manner as to completely cover up notice of origin denoted by words "Made in Japan" or other designation placed thereon in said country; and
- (b) Removed, in many instances, notice of origin denoted by words "Made in Japan" placed thereon as aforesaid, and attached to such bicycles and frames name plates or emblems of American manufacturers, over part on said frames from which notice of origin denoted by words "Made in Japan," had been erased or otherwise obliterated; and
- (c) Furnished, in other instances, name plates or emblems of said American manufacturer, or made for use by New York distributor on American-made bicycles, to customers or dealers to whom it had sold and shipped bicycles and bicycle frames, and by whom such name plates or emblems were placed upon such Japanese bicycle frames in exactly same manner in which said corporation had placed name plates or emblems on bicycles which it had, in many instances, sold and shipped from its place of business to the dealers;

With result of thereby placing in the hands of its retail dealer customers instruments and means of deceiving and misleading public, and with effect of deceiving and misleading prospective purchasers of such bicycles and members of purchasing public, on part of substantial portion of which there is decided preference for such products made in the United States over those