

IN THE MATTER OF
**MONROE CHEMICAL COMPANY AND MARY T. GOLDMAN
COMPANY**

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

Docket 3274. Complaint, Nov. 26, 1937—Decision, Mar. 8, 1940

Where a corporation, and a second concern, which acquired controlling interest therein and controlled business policies thereof, engaged, as aforesaid, directly and indirectly, in manufacture and sale of various preparations, including said corporation's "Mary T. Goldman's Gray Hair Color Restorer," to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in distribution and sale, in commerce as aforesaid, of hair tonics, hair dyes, or other products for treating various conditions of hair and scalp, and for coloring or dyeing gray hair, and including many who distribute and sell such hair tonics and other preparations and who do not in any way misrepresent quality or character or effectiveness thereof; in advertising their said "Color Restorer" in newspapers and periodicals of general circulation and in advertising folders distributed to members of the purchasing public in various States—

- (a) Represented, directly or by implication, that use of product in question would restore original or youthful color to gray, streaked or faded hair and would erase or remove all trace of gray hair, through use of word "restorer" in designation of product in question, and through such statements as "Just comb colorless liquid through hair—youthful color comes—nothing to wash or rub off on clothing," and "Gray Hair Gone," and "We will show you how to bring youthful color in every hair in your head", facts being product in question does not restore original color to gray, faded or streaked hair of user, but acts as dye or stain, color produced by use thereof is artificial and it will not color or restore color to hair as aforesaid, except in the sense that it may dye the same, all trace of such hair is not removed or erased, as repeated applications are required in order to prevent new growth showing gray, faded or streaked above scalp line, and preparation acts, as above set forth, as dye or stain on that portion exposed above such line; and
- (b) Represented that originator of preparation in question was a living person, personally recommending use of such product and personally corresponding with users and prospective users thereof with respect thereto and effectiveness thereof, through displaying, in advertisements and other literature disseminated by them, purported facsimile signature of one Mary T. Goldman, notwithstanding fact individual in question, and originator of formula for producing so-called "restorer," and their predecessor in sale of preparation in question, had long since deceased and was not living at times letter and advertisements concerned were published and used by corporation and concern aforesaid;

With effect of misleading and deceiving members of the purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantity of their said preparations, and with result, as direct consequence of such belief induced by such false statements and representations, that trade was unfairly diverted to them from those likewise engaged in sale and offer of hair preparations and cosmetics and who truthfully advertise and represent their products; to the substantial injury of competition in commerce:

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

Mr. Robert Mathis, Jr. for the Commission.

Lancaster & Nichols, of Quincy, Ill., for respondents.

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 the Monroe Chemical Co. and the Mary T. Goldman Co., hereinafter referred to as respondents, have been and are now 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. The respondent, Mary T. Goldman Co., is a corporation, incorporated under the laws of Minnesota on or about February 7, 1927, and having a principal place of business at St. Paul, Minn., at all times since its incorporation.

The respondent, Monroe Chemical Co., is a corporation, incorporated prior to the year 1927, under the laws of Illinois and having its principal place of business at Quincy, Ill., at all times since its incorporation.

PAR. 2. At all times since its incorporation, the respondent, Mary T. Goldman Co., has been engaged in the business of the manufacture and sale of various toilet preparations, including a preparation designated Mary T. Goldman's Gray Hair Color Restorer. In or about August 1929, the respondent, Monroe Chemical Co., bought the capital stock, or a controlling interest therein, of the respondent, Mary T. Goldman Co., and at all times since the said date, has controlled the business policies of the Mary T. Goldman Co. and has operated that company for the manufacture and sale of various preparations, including the

Complaint

30 F. T. C.

preparation called Mary T. Goldman's Gray Hair Color Restorer. The respondents sell and cause others to sell said preparation for the purpose of giving color to the gray or faded hair of the user thereof.

PAR. 3. Said respondents, being engaged in business as aforesaid, cause said Gray Hair Color Restorer, when sold, to be transported from their places of business in the States of Illinois and Minnesota to purchasers thereof located at various points in States other than Illinois and Minnesota and in the District of Columbia. There is now, and has been during all of the time referred to herein, a constant current of trade and commerce in said Gray Hair Color Restorer so manufactured, distributed and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of manufacturing, distributing and selling hair tonics, hair dyes, and various gray hair color restorers, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. In the course of the operation of said business, and for the purpose of inducing the purchase of said Gray Hair Color Restorer, respondents have caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and have printed and circulated throughout the several States, to customers and prospective customers, through the United States mails and otherwise, advertising folders and literature in which the following statements and representations, among others, are made:

* * * they restore original color in a scientific way which gives perfect results quickly.

Just begin complete restoration of your hair and soon you will be delighted by the beauty of the perfectly restored natural shade.

Besides restoring your hair to its natural color, Mary T. Goldman's makes your hair soft and fluffy.

There is but one scientific hair color restorer and that is Mary T. Goldman's. Watch the gray disappear—the youthful shade return.

Just comb colorless liquid through hair—youthful color comes—nothing to wash or rub off on clothing.

Erase away all trace of gray. * * * Brings warm, youthful color.

Goodbye gray hairs—free test shows way to end them.

We will show you how to bring youthful color to every hair in your head.

Have ever-youthful looking hair.

Faded—streaked—dull strands—all vanish at the touch of this famous clear water-like liquid.

The respondents also cause the name of the product, Mary T. Goldman's Gray Hair Color Restorer, to be conspicuously placed on labels on the bottles in which said product is contained, and on the outside of the cartons, and in all of their pamphlets and other advertising literature above referred to.

All of said statements, together with similar statements appearing in respondents' advertising literature, including the use of the word "Restorer" in the name by which the preparation is designated, purport to be descriptive of respondents' product and its effectiveness in use. In all of their advertising literature, and through other means, respondents represent, through the statements and representations herein set out, and through other statements of similar import and effect, that said preparation designated as Mary T. Goldman's Gray Hair Restorer will (1) restore gray, streaked or faded hair of the user to its original or youthful color; (2) erase or remove all trace of gray hair; and (3) bring warm, youthful color or original color of the user's gray, streaked or faded hair as a result of the use thereof.

Said preparation does not restore the original color or the youthful color to the gray, faded or streaked hair of the user thereof. The preparation acts as a dye or stain and the color produced by its use is artificial. Said preparation will not color or restore color to gray or faded hair except in the sense that it may dye the hair. All trace of gray, faded or streaked hair is not removed or erased in the sense that repeated applications of said preparation will not be required in order to prevent the new growth of hair from showing gray above the scalp line. Youthful color or original color of the user's hair is not restored and does not come as a result of the use thereof, except insofar as the preparation acts as a dye on that portion of the hair already exposed above the scalp line.

PAR. 6. During all of the time referred to herein, the advertisements and other literature referred to have been signed with the name Mary T. Goldman. Such use of the name Mary T. Goldman serves as a representation that Mary T. Goldman was the originator of said preparation and is a living person personally recommending the use of said preparation and personally corresponding with users and prospective users of said preparation with respect to the product and its effectiveness in use.

PAR. 7. Mary T. Goldman was the originator of the formula for producing the preparation referred to above and was the predecessor

Complaint

30 F. T. C.

of the respondents in the business of the sale of the preparation. The said Mary T. Goldman has long since deceased. She was not living at the times the letters and advertisements above mentioned were published and used by the respondents.

PAR. 8. There are among respondents' competitors many who manufacture, distribute, and sell hair tonics, hair dyes, and various gray hair color restorers, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair, who do not, in any way, misrepresent the quality or character of their respective products or the effectiveness of such products in use.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondents in designating and describing said preparation and the effectiveness thereof for restoring original and natural color to gray, faded or streaked hair, in their advertising literature as hereinabove set out, in offering for sale and selling said preparation, were, and are, calculated to, and have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs induced by the representations of the respondents as aforesaid, a number of the consuming public have purchased a substantial volume of respondents' preparation with the result that trade has been unfairly diverted to respondents from competitors likewise engaged in the business of manufacturing, distributing and selling similar preparations, or hair dyes, or other products, designed, intended and sold for the purpose of treating gray, faded or streaked hair and who truthfully advertise their respective products and effectiveness thereof in use. As a result thereof, substantial injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts, practices, and representations of the respondents are all to the prejudice of the public and respondents' competitors, as hereinabove alleged, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 26, 1937, issued and subsequently served its complaint in this proceeding upon said respondents, Monroe Chemical Co., a corporation, and Mary T. Goldman Co., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 11, 1937, the respondent Monroe Chemical Co. filed its answer in this proceeding, there being no answer filed on behalf of Mary T. Goldman Co. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, and in opposition thereto, and that the said Commission may 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 disposing of the proceedings without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Mary T. Goldman Co., is a corporation, incorporated under the laws of Minnesota on or about February 7, 1927, and having its principal place of business at St. Paul, Minn.

The respondent, Monroe Chemical Co., is a corporation, incorporated prior to the year 1927, under the laws of Illinois and having its principal place of business at Quincy, Ill.

PAR. 2. At all times since its incorporation, the respondent, Mary T. Goldman Co., has been engaged in the business of the manufacture and sale of various toilet preparations, including a preparation designated "Mary T. Goldman's Gray Hair Color Restorer." In August 1929, the respondent Monroe Chemical Co., bought the capital

stock, or a controlling interest therein, of the respondent, Mary T. Goldman Co., and at all times since that date, has controlled the business policies of the Mary T. Goldman Co. and has operated that company for the manufacture and sale of various preparations, including the preparation called "Mary T. Goldman's Gray Hair Color Restorer." Subsequent to the issuance and service of the complaint herein the respondents changed the designation of said preparation to "Mary T. Goldman's Gray Hair Coloring Preparation."

PAR. 3. Respondents cause said preparation, when sold, to be transported from their places of business in the States of Illinois and Minnesota to purchasers thereof located at various points in States other than Illinois and Minnesota and in the District of Columbia. There is now, and has been during all of the time referred to herein, a course of trade and commerce in said preparation by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other corporations and with firms and individuals also engaged in the business of distributing and selling in commerce among and between the various States of the United States and in the District of Columbia, hair tonics, hair dyes, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair.

PAR. 5. In the course and conduct of their aforesaid business, the respondents have caused various statements and representations relative to said preparation and its effectiveness in use to be inserted in advertisements in newspapers and magazines having a general circulation throughout the United States and in advertising folders distributed to members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

Just comb colorless liquid through hair—youthful color comes—nothing to wash or rub off on clothing.

Erase away all trace of gray. * * * Brings warm, youthful color.

Goodbye gray hairs—free test shows way to end them.

We will show you how to bring youthful color to every hair in your head.

Have ever-youthful looking hair.

Gray Hair Gone.

In addition to the statements and representations set out above, the respondents caused many other statements and representations of similar import or meaning to be published and circulated as described above. Respondents also caused the name of the product, "Mary T. Goldman's

Gray Hair Color Restorer" to be conspicuously placed on the labels on bottles in which said product is contained and on the outside of the cartons and in the other pamphlets and advertising literature above referred to.

Prior to the acquisition by the Monroe Chemical Co. of the Mary T. Goldman Co. as hereinabove described, the respondent Mary T. Goldman Co. caused statements to be made in advertisements disseminated as above described containing representations that the use of Mary T. Goldman's Hair Color Restorer restored the natural color to gray hair.

PAR. 6. Through the use of the aforesaid statements and representations, including the use of the word "restorer" in the designation of said preparation, the respondents have represented directly or by implication that the use of said preparation will restore the original or youthful color to gray streaked or faded hair, and will erase or remove all trace of gray hair.

PAR. 7. Said preparation does not restore the original color to the gray, faded or streaked hair of the user thereof. The preparation acts as a dye or stain and the color produced by its use is artificial. Said preparation will not color or restore color to gray or faded or streaked hair except in the sense that it may dye the hair. All trace of gray, faded, or streaked hair is not removed or erased as repeated applications of said preparation are required in order to prevent the new growth of hair from showing gray, faded or streaked above the scalp line. The natural, youthful, original color of the user's hair is not restored and does not come as a result of the use thereof. The preparation acts as a dye or stain on that portion of the hair already exposed above the scalp line.

PAR. 8. The respondents have caused advertisements and other literature referred to above to be disseminated as above described bearing what purports to be the facsimile signature of Mary T. Goldman. Mary T. Goldman was the originator of the formula for producing the Mary T. Goldman Hair Color Restorer and was the predecessor of the respondents in the business and the sale of the preparation. Said Mary T. Goldman has long since deceased. She was not living at the times the letters and advertisements above mentioned were published and used by the respondents. The use by the respondents of what purports to be the facsimile signature of Mary T. Goldman in the manner described above serves as a representation by the respondents that Mary T. Goldman (the originator of said preparation) is a living person personally recommending the use of said preparation and personally corresponding with the users and prospective users of said preparation with respect to the preparation and its effectiveness in use.

PAR. 9. There are among respondents' competitors many who distribute and sell hair tonics, hair dyes, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair, who do not, in any way, misrepresent the quality or character of their respective products or the effectiveness of such products in use.

PAR. 10. The use by the respondents of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of a substantial quantity of respondents' preparation. Further, as a direct consequence of the mistaken and erroneous belief induced by the false statements and representations of respondents, as hereinabove enumerated, trade has been unfairly diverted to respondents from corporations, firms and partnerships likewise engaged in the selling and offering for sale of hair preparations and cosmetics, who truthfully advertise and represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' 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 Monroe Chemical Co., a corporation, and the stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Monroe Chemical Co., a corporation and Mary T. Goldman Co., a corporation, their respective

616

Order

officers, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their cosmetic preparation designated "Mary T. Goldman's Gray Hair Color Restorer" or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name or names, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that said preparation is not a dye, or is other than a dye, or will cause gray or faded or streaked hair to change color without dyeing the hair; or that said preparation will restore the natural, original or youthful color to gray hair; or that said preparation will remove all trace of gray hair in any other manner than as a dye.

2. Representing by any means that Mary T. Goldman is a living person personally recommending said preparation or personally corresponding with the users or prospective users of said preparation.

3. Representing that anything less than repeated applications of said product will change the color of the user's hair; or representing that in the use of said product anything less than repeated applications of said product will cause the user's hair to maintain the color imparted to the hair by said product.

4. Using the word "restorer" or any other word or term of similar import or meaning as part of the brand name for its products.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING COMPANY, CARLYLE SERVICE, MARVO MANUFACTURING COMPANY, AND PEERLESS MANUFACTURING COMPANY.¹

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

Docket 3712. Complaint, Feb. 14, 1939—Decision, Mar. 8, 1940

Where an individual engaged in sale and distribution of his Supreme, Marvel, Marvo, or Peerless product, represented as preservative of silk hosiery and lingerie, through direct selling methods and sales persons and representatives who traveled from State to State canvassing cities and towns therein and in District of Columbia, and using in their general house-to-house solicitation of orders stereotyped sales talk furnished by said individual, and, as thus engaged, in substantial competition with others selling and distributing, in commerce among the States and in said District, preparations for treating said products to increase their durability and resistance to snags and runs, and including many who do not misrepresent that they are manufacturers of the products sold and do not misrepresent quality or effectiveness thereof or make other similar false statements in connection with their sale and distribution—

- (a) Represented, through statements on labels affixed to containers of his said product, and through agents' sales talks to prospective customers, that said product would prevent runs and snags in hosiery and lingerie, and rotting or fading thereof, and strengthen heels and toes of silk hosiery substantially, and that through use thereof purchaser could save 50 percent of cost of said various products, facts being use thereof would not save approximately such amount, and product was not permanent and would not strengthen heels and toes of silk hosiery or in other respects accomplish results claimed therefor as aforesaid; and
- (b) Included word "manufacturing" in various trade names made use of by him, notwithstanding fact he was not manufacturer of said product, which was actually made by independent manufacturer, with capacity and tendency thereby to cause purchasing public to believe that he was manufacturer of products sold, and that by purchasing from him direct, as manufacturer, without intervention of middleman, they would, as believed by many members of such public, secure advantages in price, service, and in other particulars not to be had in purchasing from competitors who do not represent themselves as manufacturers of products sold by them;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said representations as to efficacy of said product were true, and that he was manufacturer thereof, and of causing substantial portion of said public to purchase his said product in preference to those of his competitors, and of thereby diverting unfairly to him from them trade in commerce as aforesaid:

¹ Original findings and order, 29 F. T. C. 1270, were vacated and set aside Dec. 20, 1939 (see *infra* page 1386).