

IN THE MATTER OF

J. W. MARROW MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 3626. Complaint, Oct. 8, 1938—Decision, Mar. 27, 1940

Where a corporation engaged in manufacture, sale, and distribution of face powders, creams, lotions, hair shampoos, and kindred cosmetics to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of similar products, and including those who do not in any way misrepresent the quality or character of the respective products made, sold, and distributed by them; in advertising its "massage," "tissue" and "acne" creams and its "muscle oil," "Mar-O-Oil Shampoo" and "Trimal for Cuticle," in advertisements in periodicals of national circulation and in radio broadcasts and through circulars—

- (a) Represented that its "massage" and "tissue" creams were nourishing and nutritive, and that latter prevented lines and corrected wrinkles, and that its said oil smoothed lines and wrinkles and was especially effective in removing fine lines around the eyes and mouth, facts being ingredients contained in products aforesaid do not supply nutrition to or nourish skin, and none of such products were nutrients when applied externally to skin, and would not smooth out lines and wrinkles from face and were not effective in removing, as aforesaid, lines around eyes and mouth;
- (b) Represented that its "acne" cream was antiseptic and aided in correcting blemishes, pimples and enlarged pores, facts being it was not an antiseptic, acne is due to disturbance of glands which feed pores of skin, commonly manifesting itself in form of pimples, and aforesaid cream did not correct blemishes, pimples, or enlarged pores;
- (c) Represented that its said shampoo revitalized starved dry hair and corrected cause of too oily hair, and that all beauty parlors and beauty shops gave "Mar-O-Oil" treatments, facts being not all beauty parlors and barber shops gave such treatments, cause of dry hair is failure of certain glands to secrete oil enough to keep hair in normal condition, it is impossible both to stimulate and, at same time, retard flow of oil from glands in question, and its said products had no value for causing such glands either to cease producing excessive amount of oil or start producing more, and its said shampoo did not accomplish results aforesaid with respect to either starved, or dry, or too oily hair;
- (d) Represented that its said "Trimal for Cuticle" would, among other things, leave live cuticle satin soft, while its "light nutrient oils" were "absorbed deeply by the nail roots to promote the healthy growth of flawless finger nails," facts being finger nails, are merely prolongations of skin, can be revitalized only through action of blood on tissues underlying nails, and its said preparation contained no oil or ingredient having effect on nails and did not revitalize same; and
- (e) Represented that scientists in motion picture studios who had devised definite rules for successful photographic beauty, invariably specified use

of said "Trimal" in studio make-up departments as indispensable speedy way to pictorially perfect finger tips, facts being representations aforesaid were false;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true, and with result, as consequence thereof, that number of consuming public purchased substantial volume of its products and trade was diverted unfairly to it from its competitors engaged in sale and distribution, in commerce as aforesaid, of products and preparations intended and used for purposes for which it recommended its products aforesaid, and who truthfully represent the effectiveness thereof:

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.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. A. McQuat for the Commission.

Mr. Carleton M. Tower, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. W. Marrow Manufacturing Co., a corporation, hereinafter referred to as the respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. W. Marrow Manufacturing Co., is a corporation organized under the laws of the State of Illinois with its principal office and place of business at 3037 North Clark Street, Chicago, Ill. For more than 2 years last past respondent has been and still is engaged in the business of manufacturing for sale and selling face powders, creams, lotions, tonics, hair oils, and shampoo preparations. Respondent causes its said products when sold to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective places of location in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains and during all the times herein mentioned has maintained a course of trade in said products so sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is and at all times herein mentioned has been in substantial competition with other corporations and with individuals, firms and partnerships engaged in the sale and distribution

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of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course of its said business as hereinabove described, and for the purpose of inducing the purchase of its said products, respondent has made many statements concerning the efficacy and effect of its products. Said statements are made by means of advertisements inserted in magazines, by means of statements and picturizations in pamphlets, and by means of radio broadcasting, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

Marrow's Massage Cream * * * Cleansing, nourishing and slightly stimulating. * * *

Marrow's Tissue Cream * * * Supplies the exact nutrition the skin needs, prevents lines, corrects wrinkles. * * *

Marrow's Acne Cream * * *

A very effective antiseptic cream. Aids in correcting blemishes, pimples and enlarged pores.

Marrow's Muscle Oil * * *

Smooths lines and wrinkles, especially effective in removing the fine lines around eyes and mouth. * * *

Mar-O-Oil Shampoo * * *

All beauty parlors and barber shops give Mar-O-Oil treatments. * * * It revitalizes starved, dry hair and corrects the cause of hair that is too oily.

Trimal for Cuticle * * *

You'll be amazed to see distended, dead cuticle melt away before your eyes, to leave the live cuticle satin soft; while at the same time, "Trimal's" light nutrient oils are absorbed deeply by the nail roots, to promote the healthy growth of flawless finger nails.

Scientists in motion picture studios who have devised definite rules for successful photographic beauty, today invariably specify the use of Trimal in studio make-up departments as the indispensable, speedy way to pictorially perfect finger tips.

All said statements, together with similar statements and picturizations appearing in respondent's advertising literature but not set out herein, purport to be descriptive of respondent's products. In all of its advertising literature and through other means, respondent represents, directly or by inference, through the statements and representations herein set out and other statements of similar import and effect that Marrow's Massage Cream is cleansing, nourishing and slightly stimulating; that Marrow's Tissue Cream supplies nutrition to the skin and thereby prevents lines and corrects wrinkles; that Marrow's Acne Cream contains astringent properties and is of aid in correcting blemishes, pimples, and enlarged pores; that Marrow's Muscle Oil smooths lines and wrinkles, and is especially effective in removing the fine lines around eyes and mouth; that

Mar-O-Oil Shampoo revitalizes starved, dry hair and corrects the cause of hair that is too oily; that all beauty parlors and barber shops give Mar-O-Oil treatments to their customers; that Trimal contains oils which are absorbed by the nail roots and aid in the healthy growth of finger nails; and that scientist in motion picture studios invariably specify the use of Trimal in order to take better pictures of finger tips.

PAR. 4. The representations made by the respondent with respect to the nature and effect of its products when used are grossly exaggerated, deceptive, misleading, and false. In truth and in fact Marrow's Massage Cream is not cleansing, nourishing, or stimulating. Respondent's "Creams" and "Oils" do not supply nutrition to the skin or correct lines, wrinkles, blemishes, pimples, and enlarged pores. No product is a nutrient when applied externally to the skin of a human being. Mar-O-Oil Shampoo does not revitalize starved, dry hair nor does it correct the cause of hair that is too oily. All beauty parlors and barber shops do not give Mar-O-Oil treatments. Trimal does not contain any oil whatever. It has no effect upon live cuticle nor any effect upon the growth of the finger nails. Scientists in motion pictures do not specify the use of Trimal as the indispensable way to pictorially perfect finger tips.

The true facts are that the ingredients of respondent's products are not absorbed by or through the skin. The skin is a protective organ and anything placed upon it and massaged into the pores is eventually discharged or removed. The primary function of the skin is to rid itself of foreign matter. Medication for any disease of the skin must come from the inside and all nutriments must be delivered through the blood stream. Wrinkles and lines upon the face are caused by nerve decay. Any benefit to the muscles or nerves is given because of the massage while applying the particular product and not because of the cream or lotion used. Acne is a disturbance of the glands which feed the pores of the skin and occurs in the form of pimples. The cure for acne is by internal medication. The hair is kept in a normal condition by the sebaceous glands. A dry scalp results from a failure of the glands to secrete normally while in the case of an oily scalp the glands secrete too freely. It is impossible for one substance to cause these glands to secrete more freely and at the same time restrict excessive secretions. The ingredients of Trimal are such that if any oil were added to it, it would be destroyed by the alkaline solution. Trimal has no effect upon the cuticle nor upon the finger nails except in so far as the glycerine therein contained tends to soften the skin.

PAR. 5. There are among respondent's competitors many who manufacture, distribute, and sell products similar to respondent's who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 6. The exaggerated, deceptive, misleading, and false representations used by the respondent, as herein set forth, in connection with the sale of its products have the capacity to, and do mislead members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the exaggerated, deceptive, misleading, and false representations of the respondent and the mistaken and erroneous beliefs induced thereby, the purchasing public has purchased a substantial amount of respondent's products from it with the result that trade in said commerce has been diverted unfairly to the respondent from competitors engaged in the business of selling similar products who truthfully advertise and represent the efficacy and effect of their products. As a result thereof, injury has been, and is now being done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 8, 1938, issued and thereafter served its complaint in this proceeding upon respondent J. W. Marrow Manufacturing Co. charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent entered an appearance and filed an answer to the complaint, and thereafter, beginning on January 23, 1939, testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to said complaint by Carleton M. Tower, attorney for the respondent, before A. F. Thomas, an examiner of the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto and oral arguments of

counsel aforesaid, and the Commission having duly considered the matter, 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, J. W. Marrow Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located in the city of Chicago, State of Illinois, and is engaged in the business of the manufacture, sale, and distribution of face powders, creams, lotions, hair shampoos, and kindred cosmetics. Respondent has caused and causes its products when sold, to be transported from its place of business in the city of Chicago, State of Illinois, to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. It maintains a course of trade and commerce in said products among and between the various States of the United States and in the District of Columbia. Respondent is now, and for several years last past has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the sale and distribution of similar products in commerce among and between various States of the United States. There are competitors of respondent who manufacture, sell, and distribute products similar to those of respondent, who do not in any way misrepresent the quality or character of their respective products.

PAR. 2. In the course and conduct of its business respondent caused to be circulated throughout various States of the United States, by the insertion of advertisements in magazines having a national circulation, by radio broadcasts, and in circulars, the following statements:

Marrow's Massage Cream * * *

Cleansing, nourishing and slightly stimulating. * * *

Marrow's Tissue Cream * * *

Supplies the exact nutrition the skin needs, prevents lines, corrects wrinkles.

* * *

Marrow Acne Cream * * *

A very effective antiseptic cream. Aids in correcting blemishes, pimples and enlarged pores.

Marrow's Muscle Oil * * *

Smoothes lines and wrinkles, especially effective in removing the fine lines around the eyes and mouth. * * *

Mar-O-Oil Shampoo * * *

All beauty parlors and beauty shops give Mar-O-Oil treatments. * * * It revitalizes starved, dry hair and corrects the cause of hair that is too oily.

Trimal for Cuticle * * *

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You'll be amazed to see distended, dead cuticle melt away before your eyes, to leave the live cuticle satin soft; while at the same time "Trimal's" light, nutrient oils are absorbed deeply by the nail roots to promote the healthy growth of flawless finger nails.

Scientists in motion picture studios who have devised definite rules for successful photographic beauty, today invariably specify the use of Trimal in the studio make-up departments as the indispensable, speedy way to pictorially perfect finger tips.

PAR. 3. The ingredients contained in respondent's cream and oils do not supply nutrition to the skin or nourish the skin. None of the products are nutrients when applied externally to the skin, and will not smooth out lines and wrinkles from the face, and are not effective in removing fine lines around the eyes and mouth. Acne cream is not an antiseptic and does not correct blemishes, pimples, or enlarged pores, because acne is due to a disturbance of the glands which feed the pores of the skin, and commonly manifests itself in the form of pimples.

Mar-O-Oil Shampoos do not revitalize starved, dry hair, nor correct the cause of hair that is too oily. The cause of dry hair is the failure of the sebaceous glands to secrete enough oil to keep the hair in its normal condition. Respondent's oil has no value for causing the glands in question to cease producing an excessive amount of oil or to start producing more oil. It is impossible to stimulate the flow of oil from the glands, and at the same time to retard it. Trimal contains no oil and none of the ingredients of Trimal have any effect on the nails, nor does it revitalize fingernails, because fingernails are merely a prolongation of the skin, and the only way that they can be revitalized is through action of the blood on the tissues underlying the nails. Not all beauty parlors and barber shops give Mar-O-Oil treatments. Scientists in motion pictures do not specify the use of Trimal as an indispensable way to pictorially perfect the fingertips.

PAR. 4. The aforesaid acts and practices and each and all of these false and misleading statements and representations made by the respondent in describing its said products, as hereinabove set out, were and are calculated to, and have had the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a result of this erroneous belief, a number of the consuming public has purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from its competitors engaged in the business of selling and distributing in commerce among and between various States of the United States, products and preparations intended and used for

the purposes for which respondent recommends its said products, and who truthfully represent the effectiveness of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of 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 the respondent, testimony, and other evidence taken before A. F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein and oral arguments by R. A. McQuat, counsel for the Commission, and by Carleton M. Tower, attorney for respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, J. W. Marrow Manufacturing Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its various cosmetic preparations, known as "Marrow's Massage Cream," "Marrow's Tissue Cream," "Marrow Acne Cream," "Marrow's Muscle Oil," "Mar-O-Oil Shampoo," and "Trimal," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names, or under 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 that respondent's preparations, or any of them, will nourish the skin, or prevent, remove, or correct lines or wrinkles.
2. Representing that respondent's preparation "Marrow Acne Cream," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, will correct or remove blemishes, pimples, or enlarged pores, or that said preparation has antiseptic properties.
3. Representing that respondent's preparation "Mar-O-Oil," or any other cosmetic preparation composed of substantially similar ingredi-

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ents or possessing substantially similar properties, will revitalize dead hair or correct the cause of excessive oiliness of the hair.

4. Representing that respondent's preparation "Trimal," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, contains oil or has any effect upon live cuticle or upon the growth of finger nails.

5. Falsely representing the extent to which those who professionally treat the hair or skin have adopted and use respondent's preparations.

6. Falsely representing the extent to which scientists or other experts, who supervise and direct make-up in moving picture studios, recommend or specify the use of respondent's cosmetics.

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

Syllabus

IN THE MATTER OF

STANDARD EDUCATION SOCIETY, STANDARD ENCYCLOPEDIA CORPORATION, AND H. M. STANFORD, W. H. WARD, AND A. J. GREENER, INDIVIDUALLY AND AS OFFICERS, ETC., OF SAID CORPORATIONS

MODIFIED CEASE AND DESIST ORDER

Docket 1574. Order, Mar. 28, 1940

Modified order, pursuant to provisions of Subsections (h) to (k), inclusive, of section 5 of the Federal Trade Commission Act, in proceeding in question in which (1) original order issued on December 24, 1931, 16 F. T. C. 1, and in which (2) the Circuit Court of Appeals for the Second Circuit, on December 14, 1936, in *Federal Trade Commission v. Standard Education Society, et al.*, 86 F. (2d) 692, 24 F. T. C. 1591, handed down its opinion and decision, reversing, in part, and modifying and affirming in part, Commission's order, and on December 21, 1936 rendered its decree, modifying, as above indicated, Commission's order; (3) Supreme Court of the United States on November 8, 1937, in 302 U. S. 112, 25 F. T. C. 1715, reversed said decree of Circuit Court of Appeals, modifying in certain respects Commission's order to cease and desist, excepting modification of Clause 10 of such order (relating to offer and sale of course as a "Special Introductory Enrollment"), and issued its mandate remanding case to said Court of Appeals for further proceeding in conformity with opinion in question; and in which (4) court of appeals in question on December 10, 1937, ordered that such decision of Supreme Court be made its decision, and on May 20, 1938 in *Federal Trade Commission v. Standard Education Society, et al.*, 26 F. T. C. 1524¹ resettled its aforesaid order of December 10, 1937, and issued its final decree in conformity with aforesaid mandate of the Supreme Court—

- (a) Requiring respondent corporations and respondents Stanford, Ward and Greener, and each of them, their officers, etc., in connection with offer for sale of any books or set of books or publications in commerce among the several States or in the District of Columbia, to cease and desist from advertising or representing in any manner, when such is not the fact, (1) to purchasers or prospective purchasers, that any books or set of books offered or sold by them will be given free of cost to such purchasers or prospective purchasers; (2) that a certain number of sets or any set offered and sold as aforesaid has been reserved to be given away free of cost to selected persons as means of advertising, or for any other purpose; (3) that purchasers or prospective purchasers of their publications are only buying or paying for loose-leaf supplements to keep books up to date for a period of 10 years; and (4) that their publication is a recently completed, new and up to date encyclopedia; and from (5) selling or offering any set of books of same text and content material under more than one name or title; and from (6) advertising, etc., as above set forth, that usual price at which their publications are sold is higher than that at which they are offered

¹Decree in question, which Court in decision on June 13, 1938, 97 F. (2d), 513, 27 F. T. C. 1680, declined to modify, is not reported in Federal Reporter.