

Syllabus

IN THE MATTER OF

MADAME MARGUERITE TURMEL, INC., ALSO DOING
BUSINESS AS MADAME MARGUERITE TURMEL AND
MADAME TURMELCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3513. Complaint, July 27, 1938—Decision, Mar. 28, 1940*

Where a corporation engaged in sale and distribution of its "Knogray" for gray or streaked or faded hair, to purchasers in various States and in the District of Columbia, in competition with others engaged in sale, in commerce as aforesaid, of preparations for same general purposes, and including many who do not in any manner misrepresent their products or properties thereof; in advertising its said preparation in newspapers, circulars, bulletins, and other publications of interstate circulation—

Represented that product in question, applied to scalp and hair, would color roots thereof and affect color of new growth and eliminate necessity for repeated applications to prevent such new growth from showing gray, streaked, or faded above scalp line, and that product in question was not a dye, and that use thereof would cause natural color to be restored to hair, through such statements, among others, as " * * * colors hair roots perfectly," " * * * do not confuse * * * with ordinary hair 'dyes' where you must ask for a specific color * * *" and "You can match the exact natural color of your hair perfectly";

Facts being changed color by application of preparation to gray, streaked or faded hair of user was not color produced by latter's bodily functions, but results of product's dyeing or staining properties, and application thereof to hair had no effect in changing, and could not change, color of new growth hair appearing upon head as such, subsequent to application, unless thereafter repeated, and it did not color roots of hair so as to have substantial effect on color of new growth, and use did not eliminate the necessity for repeated applications in order to prevent such growth from showing gray, streaked or faded above scalp line

With effect of confusing, misleading, and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such statements and representations relative to efficacy and effectiveness of product in question were true, and into purchase thereof because of such beliefs, thus engendered, and of thereby diverting unfairly substantial trade in commerce to it from its competitors engaged in the sale and distribution of similar preparations or products designed and intended for similar usage, and who truthfully advertise extent of value and effectiveness thereof; to the 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.

Complaint

30 F. T. C.

Before *Mr. John J. Keenan*, trial examiner.

Mr. John N. Wheelock and *Mr. John R. Phillips, Jr.*, for the Commission.

Mr. Arthur B. Spingarn and *Mr. H. H. Zand*, of New York City, 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 Madame Marguerite Turmel, Inc., a corporation, doing business under its own name and under the trade names Madame Marguerite Turmel and Madame Turmel, hereinafter referred to as 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. The respondent, Madame Marguerite Turmel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its office and principal place of business at 256 West Thirty-first Street in the city of New York, State of New York. Respondent, under its own name and also in the trade names of Madame Marguerite Turmel and Madame Turmel, is now and has been for more than 2 years last past, engaged in the sale and distribution of a preparation designated as "Knogray," purporting to be for the treatment of human hair for the purpose of coloring gray hair or what is referred to as streaked or faded hair. Respondent offers for sale and sells such preparation to members of the public situated in various States of the United States and in the District of Columbia. Respondent causes such preparation to be transported from its place of business in the city of New York, State of New York, to purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia. In so carrying on its business, respondent maintains a course of trade in commerce in such preparation among and between the various States of the United States and the District of Columbia.

PAR. 2. During all of the times mentioned herein other corporations and firms, individuals, and partnerships in the various States of the United States have been and are engaged in the business of selling preparations designed and used for the same general purposes for which respondent represents the preparation "Knogray" to be effective, as herein set forth. Such other corporations and such firms,

individuals, and partnerships have caused and do cause their said preparations, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of the origin of the shipment thereof, to the respective purchasers thereof. In the course and conduct of its business of selling and distributing the preparation "Knogray" in commerce, as herein described, the respondent has been, during all of the times mentioned herein, and is now, in competition in said commerce with such other corporations and such firms, individuals, and partnerships.

PAR. 3. In the course and conduct of its business of selling the preparation "Knogray" in commerce, as herein described, and in furtherance of the sale thereof, the respondent, during the times mentioned herein, caused statements and representations to appear in newspapers, publications, circulars, and bulletins, having an interstate circulation, purporting to be descriptive of such preparation and of its effectiveness in use. In furtherance of the sale of such preparation, and to create a public demand therefor, the respondent, during the times mentioned herein, made, or caused to be made, the following statements and representations in advertisements inserted in various publications, newspapers, circulars, and bulletins, having interstate circulation:

Knogray colors hair roots perfectly.

Knogray colors the hair so satisfactorily (the roots as well as the tips of the hair).

Knogray will satisfy you as no other hair coloring can. Please do not confuse Knogray with ordinary hair "dyes" where you must ask for a specific color and use that color without any chance of varying it.

You can match the exact natural color of your hair perfectly.

Not alone can you secure a perfect match for your own hair, but any member of your household annoyed with gray hair, can do the same out of your bottle, whatever the color of their hair.

Before hearing of Knogray you never knew that there was a preparation which by a very simple and easy process, would enable you to get a perfect and exact color match of your hair or any natural shade you desire; and

With Knogray you can match exactly the natural shade of your hair before it starts to turn gray.

The aforesaid statements, together with many others similar thereto, not set out herein, but of the same tenor and meaning, serve as representations on the part of the respondent to members of the purchasing public: (1) That the preparation "Knogray" when applied to the human scalp and hair will color the roots of the hair and effect the color of new growth hair, and eliminate the necessity for repeated applications of such preparation in order to prevent the new growth of hair from showing gray, streaked, or faded above the scalp line;

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(2) that such preparation is not a dye; (3) that the use of such preparation causes the natural color to be restored to the hair.

PAR. 4. In truth and in fact, the preparation "Knogray" will not color the roots of the hair when applied to the scalp and hair so as to have any substantial effect on the color of new growth hair, and its use will not eliminate the necessity for repeated applications in order to prevent new growth hair from showing gray, streaked, or faded above the scalp line.

The effect upon the color of the hair of the user of such preparation is that of a stain or dye. It acts upon the hair as a stain or dye in causing the hair of the user thereof, that has become gray, streaked, or faded, to appear of a different color.

The use of such a preparation will not restore or cause the original natural color to be imparted to the hair. The changed color produced by the application of such preparation to the gray, streaked or faded hair of the user is not a color produced by the bodily functions of such user, but is a result of the dyeing or staining properties of such preparation. The application of such preparation to the human hair has no effect in changing, and cannot effect a change in, the color of the hair which appears upon the head of the user as new growth subsequent to such application, unless the application of such preparation is thereafter repeated.

PAR. 5. The aforesaid statements and representations of respondent relative to the efficacy and of the effectiveness in use of the preparation "Knogray" have a capacity and tendency to and do confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken beliefs that such statements and representations are true, and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Substantial trade in said commerce is thereby unfairly diverted to respondent from its competitors who are engaged in the sale and distribution of similar preparations, or other preparations, designed and intended for similar use, who truthfully advertise the extent of the value and effectiveness of their respective preparations. In consequence thereof, injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 July 27, 1938, issued, and on July 28, 1938, served its complaint in this proceeding upon respondent, Madame Marguerite Turmel, Inc., a corporation doing business under its own name and also in the trade names of Madame Marguerite Turmel and Madame Turmel, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter respondent filed its answer. After hearings had begun, respondent, with the permission of the Commission, withdrew its answer and substituted therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, 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. The respondent, Madame Marguerite Turmel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its office and principal place of business at 256 West Thirty-first Street in the city of New York, State of New York. Respondent, under its own name and also in the trade names of Madame Marguerite Turmel and Madame Turmel, is now and has been for more than 2 years last past, engaged in the sale and distribution of a preparation designated as "Knogray," purporting to be for the treatment of human hair for the purpose of coloring gray hair or what is referred to as streaked or faded hair. Respondent offers for sale and sells such preparation to members of the public situated in various States of the United States and in the District of Columbia. Respondent causes such preparation to be transported from its place of business in the city of New York, State of New York, to such purchasers. In so carrying on its business, respondent maintains a course of trade in such preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. During all of the times mentioned herein other corporations and firms, individuals, and partnerships in the various States

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of the United States have been and are engaged in the business of selling preparations designed and used for the same general purposes for which respondent represents the preparation "Knogray" to be effective, as herein set forth. Such other corporations and such firms, individuals, and partnerships have caused and do cause their said preparations, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of the origin of the shipment to the purchasers thereof. In the course and conduct of its said business in commerce, as herein described, the respondent has been, and is now, in competition in commerce with such other corporations and such firms, individuals, and partnerships, many of whom do not in any manner misrepresent their said products or the properties thereof.

PAR. 3. In the course and conduct of its said business in commerce, as herein described, and in furtherance of the sale of its said preparation, the respondent has caused statements and representations to appear in newspapers, circulars, bulletins, and other publications having an interstate circulation, concerning and descriptive of such preparation and of its effectiveness in use, as follows:

Knogray colors hair roots perfectly.

Knogray colors the hair so satisfactorily (the roots as well as the tips of the hair).

Knogray will satisfy you as no other hair coloring can. Please do not confuse Knogray with ordinary hair "dyes" where you must ask for a specific color and use that color without any chance of varying it.

You can match the exact natural color of your hair perfectly.

Not alone can you secure a perfect match for your own hair, but any member of your household annoyed with gray hair, can do the same out of your bottle, whatever the color of their hair.

Before hearing of Knogray you never knew that there was a preparation which by a very simple and easy process, would enable you to get a perfect and exact color match of your hair or any natural shade you desire: and

With Knogray you can match exactly the natural shade of your hair before it started to turn gray.

The aforesaid statements, together with many others similar thereto, not set out herein, but of the same tenor and meaning, serve as representations on the part of the respondent to members of the purchasing public: (1) That the preparation "Knogray" when applied to the human scalp and hair will color the roots of the hair and affect the color of new growth hair, and eliminate the necessity for repeated applications of such preparation in order to prevent the new growth of hair from showing gray, streaked, or faded above the scalp line; (2) that such preparation is not a dye; (3) that the use of such preparation causes the natural color to be restored to the hair.

PAR. 4. In truth and in fact, the preparation "Knogray" will not color the roots of the hair when applied to the scalp and hair so as to have any substantial effect on the color of new growth hair, and its use will not eliminate the necessity for repeated applications in order to prevent new growth hair from showing gray, streaked, or faded above the scalp line.

The effect upon the color of the hair of the user of such preparation is that of a stain or dye. It acts upon the hair as a stain or dye in causing the hair of the user thereof, that has become gray, streaked, or faded, to appear of a different color.

The use of such preparation will not restore or cause the original natural color to be imparted to the hair. The changed color produced by the application of such preparation to the gray, streaked, or faded hair of the user is not a color produced by the bodily functions of such user, but is a result of the dyeing or staining properties of such preparation. The application of such preparation to the human hair has no effect in changing, and cannot effect a change in, the color of the hair which appears upon the head of the user as new growth subsequent to such application unless the application of such preparation is thereafter repeated.

PAR. 5. The aforesaid statements and representations of respondent relative to the efficacy and of the effectiveness in use of the preparation "Knogray" have a capacity and tendency to and do confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken beliefs that such statements and representations are true, and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Substantial trade in said commerce is thereby unfairly diverted to respondent from its competitors who are engaged in the sale and distribution of similar preparations, or other preparations, designed and intended for similar usage, who truthfully advertise the extent of the value and effectiveness of their respective preparations. In consequence thereof, injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

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

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint, and states that it waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Madame Marguerite Turmel, Inc., a corporation, trading as Madame Marguerite Turmel and as Madame Turmel, or trading under any other name or names, 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 cosmetic preparation designated "Kno-gray," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar 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 that said preparation will color the roots of the hair or have any effect thereon or on new hair growth, or will restore the natural or original color to the hair, or will affect the color of the hair in any way other than as a dye.

2. Representing that said preparation is not a dye or is anything other than a dye.

3. Representing that anything less than repeated applications of said preparation will cause the hair to retain the color imparted to it by said preparation.

It is further ordered, That the respondent shall, within 60 days after 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.

Complaint

IN THE MATTER OF

JOSEPH T. GIBBONS, TRADING AS WASHINGTON
LAUNDRY

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

Docket 3930. Complaint, Oct. 18, 1939—Decision, Mar. 28, 1940

Where an individual engaged, in the city of Washington, in the laundry, dry cleaning, and dyeing business, and in collecting clothes, linens, and other articles from customers in the District of Columbia and in the States of Maryland and Virginia, and transporting such clothes, etc., to his place of business in said District, and thereafter delivering from said place such clothes, etc., cleaned, dyed, or laundered, to such various customers, and collecting therefrom his charges for so cleaning, etc., and maintaining, as thus engaged, course of trade and commerce in and between said District and States referred to—

Represented, through statement on laundry boxes or other containers in which were placed many of the clothes, linens, and other articles, "We wash everything with Ivory Soap," that he washed with soap in question all clothes, linens, and other articles submitted for laundering, facts being he had ceased, prior to time concerned, to use such soap exclusively, and did not wash therewith all clothes, etc., thus submitted;

With capacity and tendency to cause members of purchasing public to have erroneous and mistaken belief that he washed with soap in question, well and favorably known over period of years by substantial number of purchasing public and preferred by many for such purpose, all clothes, etc., placed with him for cleaning, and, by reason of such belief, to tender to him substantial quantities of clothes and other articles, as aforesaid, for cleaning and laundering with such soap, and pay him substantial sums therefor:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Lynn C. Paulson for the Commission.

Mr. Ross H. Snyder, of Washington, D. C., 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 Joseph T. Gibbons, an individual, trading as Washington Laundry, hereinafter referred to as respondent, has been and 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