

Syllabus

IN THE MATTER OF
VALLIGNY PRODUCTS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3602. Complaint, Sept. 23, 1938—Decision, Mar. 30, 1940*

Where a corporation engaged in manufacture, sale, and distribution of its "Shampoo-Kolor" hair preparation, to members of purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of other preparations and products for treatment of conditions of the hair for which it recommended use of its said preparation, and including many who do not in any manner misrepresent their products or properties thereof, and who do not make any other false statements in connection with their sale and distribution; in advertisements which it disseminated through newspapers and publications circulating throughout the various States, and through bulletins distributed among prospective purchasers, and through other means—

- (a) Represented that said "Shampoo-Kolor" would color roots of hair and affect color of new growth and eliminate necessity of repeated applications to prevent new hair growth from showing gray, streaked, or faded above scalp line, and would cause natural color to be restored to hair, facts being applications of such preparation did not have any effect on color of new growth and use thereof would not restore natural color or cause original natural color to be imparted to hair, and such product would not color roots of hair, and change in color produced by application thereof to gray, streaked, or faded hair was not produced by user's bodily functions, but was result of product's dyeing or staining properties, change in color of hair appearing after application could not be effected subsequent thereto, unless application was thereafter repeated, and its claims for its said product, as above indicated, were grossly exaggerated, false and deceptive, and greatly exceeded any claims as to efficacy thereof which might truthfully be made; and
- (b) Represented that such preparation was manufactured in France or imported therefrom into the United States, and was uniquely different or entirely revolutionary in methods or results, through such statements as "The uniquely different French hair-coloring preparation," "Entirely revolutionary in method and in results," "No other preparation can make same claim for coloring hair * * *," and "The modern French way * * *," etc., facts being it was not made or compounded in France or imported therefrom into the United States, but was domestically made product, mixture of aniline dyes contained therein was also contained in competitive products, similar results could be obtained from use of other hair dyes of similar nature, and it was not uniquely different or entirely revolutionary, etc., as above claimed;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said product possessed

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properties claimed and represented and would accomplish results indicated, and with result of causing substantial portion of such public, because of such belief, to purchase substantial quantities of its preparation aforesaid, and of thereby diverting trade unfairly to it from its said competitors who truthfully advertise the effectiveness of their respective preparations and products; 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 in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Edward E. Reardon*, trail examiner.

Mr. George Foulkes and *Mr. John R. Phillips, Jr.*, for the Commission.

Mr. Arthur B. Spingarn, 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 Valligny Products, Inc., a corporation, 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, Valligny Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business at 254 West Thirty-first Street, New York City, N. Y.

PAR. 2. The respondent is now and has been for more than 2 years last past engaged in the business of manufacturing, selling, and distributing a preparation designated as "Shampoo-Kolor" purporting to be for the treatment of human hair for the purpose of coloring gray hair or streaked or faded hair. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and the District of Columbia, and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing other preparations and products designed and intended for, and used in, the treatment of the conditions of the human hair for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said preparation, respondent has caused false advertisements, containing representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers and other publications having a circulation throughout the various States of the United States, through bulletins distributed among prospective purchasers of said preparation and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

The uniquely different French hair-coloring preparation.

Entirely revolutionary in method and in results.

Colors roots; leaving hair soft, natural.

Colors roots.

No other preparation can make same claim for coloring hair as Shampoo-Kolor does.

The modern French way, producing even, natural, lasting shades always.

Will color every gray hair at roots near scalp as no other preparation does.

Most natural color ever used.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of the human hair for the purpose of coloring gray, streaked, or faded hair, respondent has represented, directly and by implication, among other things: (1) That the preparation "Shampoo-Kolor," 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 the

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use of such preparation causes the natural color to be restored to the hair; (3) that such preparation is manufactured in France or is imported into the United States from France; and (4) that such preparation is uniquely different or entirely revolutionary in methods or results.

PAR. 6. The aforesaid representations, used and disseminated by respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, the preparation "Shampoo-Kolor" will not color the roots of the hair when applied to the scalp and hair. Applications of such preparation do not have any effect on the color of new growth hair. The use of such preparation will not restore or cause the original natural color to be imparted to the hair. The change in 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 affect 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.

The aforesaid preparation which is sold and distributed in the United States by the respondent is not manufactured or compounded in France and such preparation is not imported into the United States from France. Such preparation is compounded or manufactured by the respondent in the United States. Such preparation contains a mixture of aniline dyes and is not "uniquely different" for the reason that various other hair dyes which are sold and distributed in the United States by competitors of the respondent contain a mixture of aniline dyes. Such preparation is not "entirely revolutionary in methods or results," for similar results can be secured by the use of various other hair dyes of a similar nature.

Respondent's claims as to the efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of a cosmetic.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. In consequence thereof, 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 aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 September 23, 1938, issued, and on September 26, 1938, served, its complaint in this proceeding upon respondent, Valligny Products, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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, Valligny Products, 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 prin-

principal place of business at 254 West Thirty-first Street, New York, N. Y.

PAR. 2. The respondent is now and has been for more than 2 years last past engaged in the business of manufacturing, selling, and distributing a preparation designated as "Shampoo-Kolor" purporting to be for the treatment of human hair for the purpose of coloring gray hair or streaked or faded hair. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to such purchasers. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing other preparations and products designed and intended for, and used in, the treatment of the conditions of the human hair for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business, in commerce, as herein described, for the purpose of inducing the purchase of its said preparation, respondent has caused representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers and other publications having a circulation throughout the various States of the United States, through bulletins distributed among prospective purchasers of said preparation and through other means. Among and typical of the representations so used and disseminated as aforesaid are the following:

The uniquely different French hair-coloring preparation.
Entirely revolutionary in method and in results.
Colors roots; leaving hair soft, natural.
Colors roots.

No other preparation can make same claim for coloring hair as Shampoo-Kolor does.

The modern French way, producing even, natural, lasting shades always.

Will color every gray hair at roots near scalp as no other preparation does. Most natural color ever used.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of the human hair for the purpose of coloring gray, streaked, or faded hair, respondent has represented, directly and by implication, among other things: (1) That the preparation "Shampoo-Kolor," 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 the use of such preparation causes the natural color to be restored to the hair; (3) that such preparation is manufactured in France or is imported into the United States from France; and (4) that such preparation is uniquely different or entirely revolutionary in methods or results.

PAR. 6. The aforesaid representations, used and disseminated by respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, the preparation "Shampoo-Kolor" will not color the roots of the hair when applied to the scalp and hair. Applications of such preparation do not have any effect on the color of new growth hair. The use of such preparation will not restore the natural color to hair or cause the original natural color to be imparted to the hair. The change in 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 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.

The aforesaid preparation which is sold and distributed in the United States by the respondent is not manufactured or compounded in France and such preparation is not imported into the United States from France. Such preparation is compounded or manufactured by the respondent in the United States. Such preparation contains a mixture of aniline dyes and is not "uniquely different" for the reason that various other hair dyes which are sold and distributed in the

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United States by competitors of the respondent contain a mixture of aniline dyes. Such preparation is not "entirely revolutionary in methods or results," for similar results can be secured by the use of various other hair dyes of a similar nature.

Respondent's claims as to the efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the efficacy of said preparation which might truthfully be made.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result, trade has been diverted unfairly to the respondent from its competitors in commerce as herein described who truthfully advertise the effectiveness in use of their respective preparations and products. In consequence thereof, 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.

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 and unfair and deceptive acts and practices 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 and the answer of 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, Valligny Products, Inc., 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 cosmetic preparation designated "Shampoo-Kolor," 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 anything less than repeated applications of said preparation will cause the hair to retain the color imparted to it by said preparation.

3. Representing that said preparation is compounded or manufactured in France or in any country other than the United States.

4. Representing that said preparation is "unique" or "revolutionary" in methods or results.

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.

IN THE MATTER OF
JOHN F. JELKE 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 3347. Complaint, Mar. 3, 1938—Decision, Apr. 3, 1940

Where a corporation engaged in manufacture of a certain oleomargarine product composed of vegetable fat added to that portion of milk from which butterfat had been removed, and of added vitamin concentrates, so that emulsion in question contained vitamins A and D, and in sale and distribution of said product for use as a spread for bread, seasoning, cooking, and for same or similar purposes as those for which butter is used, through wholesalers and retailers and by sale directly to consumers, to purchasers in various other States and District of Columbia, in substantial competition with others engaged in making and selling oleomargarine and butter and sale and distribution of such products in commerce among the various States and in the District of Columbia, including those who make, distribute, and sell former without in any way misrepresenting the content thereof or method by which made; in advertising its said product in magazines and other media having general circulation among purchasers and prospective purchasers at various points throughout the United States and in the District of Columbia—

- (a) Represented and implied that its said oleomargarine product was made in or from whole milk or milk from which no part of the cream or butterfat content had been removed, and that it contained butterfat extracted from whole milk or cream taken therefrom by a process of churning as used in the making of butter, through use of such terms and words as "fresh pasteurized milk," "pastuerized milk," "churn," "churned," and "churnery," and depiction of old-fashioned dasher butter churn in connection with aforesaid words and terms, and term "milk solids" as used in such statements as "made entirely from pure vegetable oils, churned in **FRESH, PASTEURIZED MILK,**" and depiction above referred to, together with such statements as "From a sunlit churnery," etc., and "made from wholesome American vegetable oils churned in a large percentage of pasteurized milk," etc.;

Facts being product in question was not made in or from whole milk, but from skim or skimmed milk from which cream or butterfat content had been removed, and contained no butterfat extracted from whole milk or cream taken therefrom by process of churning, as used in the making of butter, and was not "churned," as used and understood by purchasing public; and

- (b) Represented, imported, and implied that its said product contained an appreciable quantity of milk solids, including butterfat extracted from whole milk, and contained more of such solids than butter, and had more food value than butter, through statement that there were "43.8% more milk solids" in its said margarine "than in expensive spreads for bread," and such statements as "Milk Solids Contain Protein—Milk Sugar—and Minerals * * *";

Facts being that said product did not contain the butterfat solid from milk, the principal, most valuable, and commonly known milk solid, less than 1½