

Complaint.

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FEDERAL TRADE COMMISSION

v.

LOUIS PHILIPPE, INC., AND PARK & TILFORD.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 771—July 21, 1922.

SYLLABUS.

Where a concern engaged in the manufacture and sale of toilet preparations which contained a constituent produced from lemon rind, but did not contain lemon juice, labeled the same "An exquisite French preparation of real lemons; cleansing and bleaching cream. * * * whitens the skin," "Creme Angelus, the lemon cleansing cream, * * *. Hygienic. Cleanses and softens the skin. Bleaches. A French preparation of lemon and oil emollients. Softens and whitens the skin. * * *," "An exquisite French retiring cream of real lemons for bleaching the skin. A superfine French skin food * * *," and "Creme Angelus, the lemon tissue cream, a superfine skin improver, * * *. A retiring cream of lemon and oil emollients. Softens. Whitens, * * *"; and

Where a corporation engaged in the sale as exclusive distributor of said concern's aforesaid products, in advertising the same described them as "made with real lemons. The juice of the lemon—Nature's own source of the beautiful complexion of Italy's and Spain's fairest daughters," etc.—as the "product of real lemons," and as "made from real lemons," and pictured a hand squeezing a lemon into an open jar of the cleansing cream and otherwise featured pictured lemons in connection with said preparations; With the effect of misleading purchasers and the general public into believing that through the use of said preparations they were obtaining the cleansing or detergent effects of lemon juice:

Held, That such mislabeling, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Louis Philippe, Inc., and Park & Tilford, hereinafter referred to as the respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Louis Philippe, Inc., is a corporation organized under the laws of the State of New York, with its principal place of business in New York City, in said State. That the respondent, Park & Tilford, is a corporation organized under the laws of the State of New Jersey, with its principal place of business in New York, N. Y.

PAR. 2. That the respondent, Louis Philippe, Inc., is engaged in the business of manufacturing a toilet preparation, known as "Creme Angelus," which it distributes to the trade throughout the several States of the United States, through the respondent, Park & Tilford, exclusively. That the respondent, Park & Tilford, is engaged in the business, among other things, of buying and selling, in wholesale quantities, toilet articles, including said preparation known as "Creme Angelus," and causes commodities sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and each of said respondents carries on its respective business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That pursuant to the terms of a certain contract theretofore entered into by and between the respondents herein, the respondent Park & Tilford extensively advertised the product "Creme Angelus," in newspapers of general circulation throughout the United States; and in circulars and other printed matter, which were given general circulation by said Park & Tilford; that said advertising matter contained numerous false and deceptive statements of and concerning said product; that among such false and deceptive statements were statements to the effect that "Creme Angelus" was a French lemon cleansing cream, "made with real lemons"; "compounded from real lemons," whereas it contains no juice of the lemon and is not manufactured in France; such advertisements were illustrated in some instances by the picture of a half lemon, the juice of which was being pressed into a jar of the product; that such advertisements illustrated as aforesaid were calculated to and do create a false belief in the minds of the purchasing public that said product "Creme Angelus" is a French preparation and contains, as a principal ingredient, the juice of lemons, and the public is induced to purchase said product by the means of the false and deceptive statements contained in such advertisements.

PAR. 4. That the original packages in which the product "Creme Angelus" has been marketed by respondents, and the individual jars

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containing said product, have placed thereon labels, upon which are printed "Creme Angelus"; "A Superfine French Skin Food and Perfect Massage Cream"; "An Unequalled French Retiring Cream of Real Lemons, For Bleaching the Skin"; which statements are false in that said product is of domestic manufacture and contains no juice of lemons, and such labels were calculated to and do mislead and deceive the purchasing public.

PAR. 5. That the false and deceptive statements contained in the advertisements and labels as set out in or referred to in paragraphs 3 and 4 hereof, are further calculated to and have the effect of stifling and suppressing competition in the sale of toilet preparations which have the general characteristics which respondents claim for the product "Creme Angelus," by hindering or preventing competitors of respondents from marketing similar toilet preparations which do in fact contain the juice of lemons.

PAR. 6. That by reason of the facts recited, the respondents are using an unfair method 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 an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Louis Philippe, Inc., and Park & Tilford, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act. The respondents having appeared by attorneys, Ellis, Ferguson & Colquitt, and having filed their answers, and said Louis Philippe, Inc., having also filed an amended answer, and being desirous of expediting this proceeding and avoiding the expense incident to the taking of testimony, have, each of them separately, stipulated and agreed with W. H. Fuller, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, that these statements or stipulations signed by said W. H. Fuller and Ellis, Ferguson & Colquitt, attorneys for both respondents, should be taken as the facts in this proceeding, and that such facts should be in lieu of evidence and testimony, and that the Federal Trade Commission shall proceed forthwith upon said statements of fact or stipulations to make and enter a report stating its findings as to the facts and its conclusion therefrom, and issue an order disposing of this proceeding, without the introduction of testimony in support of the same, the parties to that agreement

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waiving any and all rights they may have to require the introduction of such testimony.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That both respondents, Louis Philippe, Inc., and Park & Tilford, are corporations organized under the laws of the State of New York, with their principal places of business in the city of New York, N. Y.

PAR. 2. That Louis Philippe is the president and treasurer and owns and controls the majority of the capital stock of Louis Philippe, Inc., which corporation was organized under his direction in 1915; Louis Philippe was formerly a citizen of and a resident in France, until 1910, when he came to the United States, and is now a naturalized citizen of this country. In 1905 he began the production of a toilet preparation which he designated "Creme Angelus," and marketed the same in France for about five years. Since he came to the United States in 1910 he has manufactured and marketed this toilet preparation as an individual and through the corporation which he formed, until the year 1920, when Louis Philippe, Inc., entered into a contract with Park & Tilford, by the terms of which said Park & Tilford agreed to purchase the entire output of manufactured toilet preparations of Louis Philippe, Inc., the delivery of the same to take place at the factory of Louis Philippe, Inc., in the city of New York; that prior to the delivery of these toilet preparations they were completely labeled and fully prepared at the factory of Louis Philippe, Inc., and ready for distribution upon their delivery to Park & Tilford.

PAR. 3. The contract further provided that the advertising of these products should be entirely under the control and direction of Park & Tilford as to the subject matter, style and arrangement; the cost, however, of said advertising to be borne equally by the two respondents in this proceeding. Prior to November, 1920, the "Angelus Cleansing Cream" labels contained the following matter:

An exquisite French preparation of real lemons; cleansing and bleaching cream. Instantly removes dust and make-up. Whitens the skin.

That since November, 1920, said labels contained the following printed matter:

Creme Angelus, the lemon cleansing cream, cleans and instantly removes dirt, dust, and powder from the pores. Hygienic. Cleanses and softens the skin. Bleaches. A French preparation of lemon and oil emollients. Softens and whitens the skin. For sunburn, freckles and tan. Reg. U. S. Pat. Off., Louis Philippe, Inc., N. Y. Made in U. S. A.

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That in November, 1920, and prior thereto, labels for the preparation now known as "Tissue Cream" contained the following printed matter:

An exquisite French retiring cream of real lemons for bleaching the skin. A superfine French skin food and perfect massage cream.

Since that date said labels contain the following printed matter:

Creme Angelus, the lemon tissue cream, a superfine skin improver, invigorates and strengthens the tissue by careful massage. A retiring cream of lemon and oil emollients. Softens. Whitens, soothes and refreshes. Reg. U. S. Pat. Off., Louis Philippe, Inc., N. Y. Made in U. S. A.

PAR. 4. That the toilet preparations of "Creme Angelus" are made through a secret formula known only to Louis Philippe; that these preparations contain no juice of lemons, but do contain as one of the ingredients, a constituent produced from lemon rind or skin known as "Oil of Lemon, U. S. P. B. F., hand pressed"; and all of these preparations herein referred to are made in the United States.

PAR. 5. The respondent Park & Tilford is engaged in the business, among other things, of buying and selling in wholesale quantities, all of the output of toilet preparations of Louis Philippe, Inc., and causes such commodities when sold by it to be transported to the purchasers thereof, from the State of New York through and into other States of the United States, and carries on said business in direct and active competition with other persons, partnerships and corporations similarly engaged, and in promoting the sale and distribution of these products, advertised the cleansing cream trade-marked "Creme Angelus" on the 31st day of October, 1920, as follows:

Made with real lemons. The juice of the lemon—Nature's own source of the beautiful complexion of Italy's and Spain's fairest daughters—now for the first time skillfully blended with the choicest oil emollients by Louis Philippe into a superfine cleansing cream.

Accompanying this advertisement was a pictorial illustration showing a hand holding half of a cut lemon, from the pulp of which lemon, drops of lemon juice were being squeezed. That advertisement, which appeared in the New York Times of October 31, 1920, was repeated, similarly illustrated, in the same paper of November 11, 1920, and in the New York World of December 12, 1920, but the printed matter did not contain any statement that the cream contained lemon juice. The arrangement of this advertising matter was changed at different times, both as to wording and as to the pictorial illustrations. The New York Times issue of September 12, 1920, contained the advertisement of Angelus cleansing cream de-

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scribing it as the "product of real lemons." The pictorial illustration was the hand holding a half of a cut lemon and squeezing from the pulp, drops of lemon juice into an open jar of the cleansing cream; beside the jar was the half of a cut lemon; and this advertisement, as illustrated, was repeated October 10, 1920, and November 7, 1920, in the same newspaper. That respondent, in the latter part of 1920, caused advertisements of "Angelus" products to be inserted in various publications of general circulation in the State of New York and States adjacent thereto, in which advertisements said products were described as being "made from real lemons." Then and thereafter the illustration was changed so as to show a hand holding half a lemon suspended over a jar of "Creme Angelus," with no drops dripping into the jar, and with the top of the jar closed and sealed.

PAR. 6. The advertising campaign of these products was conducted by a reputable advertising agency in the city of New York, under the direction of Park & Tilford. During this campaign Park & Tilford gave directions to this advertising agency to omit from the advertisements statements that "Creme Angelus" contained lemon juice. Through an inadvertence on the part of the advertising agency, twice after notice were statements made that lemon juice was used in the preparations.

PAR. 7. That since June 1, 1921, the advertisements of these preparations have not contained statements that they are made from lemon juice, nor have any of the illustrations contained pictures of real lemons.

PAR. 8. That the effect of such labeling and advertising as herein set forth, where the printed statements referred to the preparations as containing the "juice of lemons," or where the pictorial illustrations showed real lemons from which juice was being squeezed, or other similar illustrations of real lemons, whether associated together or used separately, has been to mislead purchasers and the general public into believing that they are obtaining through the use of these preparations, the cleansing or detergent effects of lemon juice, when in fact there is not nor never has been lemon juice therein.

CONCLUSION.

That the practices of said respondents, under the conditions and circumstances described in the foregoing findings and condensed in the eighth paragraph thereof, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled, "An Act to create a

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Federal Trade Commission, to define its powers and duties, and for other purposes.”

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission under the pleadings and the stipulations received by an examiner duly appointed by the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated 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,” which said report is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondents, Louis Philippe, Inc., and Park & Tilford, or either of them, their officers, directors, agents and employes, cease and desist from directly or indirectly making or causing to be made, statements or representations in labels, advertisements in newspapers, magazines and other publications of general circulation, or in other advertising matter which respondents, or either of them cause to be given general circulation, which statements or representations relate to toilet preparations offered for sale or sold by respondents or either of them in the due course of commerce among the several States of the United States, or with foreign nations, and announce in express terms or by implication that such toilet preparations contain the juice of lemons, except and unless such preparations do in fact contain such juice of lemons; or from illustrating such advertisements or advertising matter with pictures which may have the capacity or tendency to create in the minds of the purchasing public, the erroneous belief that such preparations contain the juice of lemons.

It is further ordered, That the respondents file a report in writing with the Commission, three months from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

Commissioner Van Fleet dissenting.

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