

Complaint

IN THE MATTER OF

C. H. SELICK, INCORPORATED

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

Docket 1672. Complaint, May 23, 1929—Decision, Feb. 1, 1930

Where a domestic corporation engaged in the sale of perfumes made by it in the United States of the cheaper grades of essential oils produced in foreign countries and by it purchased from a New York concern,

- (a) Labeled the bottles thereof "L'Are Narcisse—Jardeau—New York, Paris", "Lucienne—Paris, New York", and (at request of dealer customers) "Jay's Narcissus—Jay et Cie—Paris, New York", or "Bea Van et Cie—Paris, New York", together with the word "France" on the reverse side and in conspicuous letters on the bottle containers, in which displayed, offered and sold, thus labeled and designated, to the consuming public by dealer vendees; and
- (b) Depicted said labels and bottles first above referred to, in circulars distributed to the trade;

With the capacity and tendency to mislead and deceive vendees and many of the consuming public into believing said products to be perfumes made in Paris or France, long widely popular with and in demand by the domestic trade and consuming public and considered by many thereof as more desirable in the matter of quality and other characteristics than the home product and by them bought in preference thereto, and into purchasing its said perfumes in such belief, and with the result of placing in the hands of its dealer and peddler vendees the instrument and means for committing a fraud upon a substantial portion of the consuming public by enabling them to represent, offer and sell the same as made in the aforesaid city or country, and tendency to divert business from and otherwise injure and prejudice competitors importing and dealing in perfumes in fact there made or compounded and rightfully and lawfully so represented by them, and competitors dealing in the domestic product without in any manner misrepresenting the same as above set forth:

Held, That such practices were all to the prejudice of the public, and competitors and constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

Santangelo & Lukas, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in compounding perfumes and other toilet preparations and in the sale thereof to retail dealers and peddlers, and with principal office and place of business

in New York City, with misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth in compounding its perfumes with the cheaper grades of essential oils to which are added alcohol and water in the proportion of 4 ounces of the oil to 1 gallon of alcohol, at its place of business in New York City, labels the 1-ounce bottles and vials in which it principally sells its product with one of the four following brand names, to wit—"L'Are Narcisse—Jardeau—New York, Paris"—and on the back "France"; "Lucienne—Paris, New York"—and on the back "France"; "Bea Van et Cie—Paris, New York"; "Jay's Narcisse—Jay et Cie—Paris, New York". Respondent, further, as charged, features the word "Paris" upon the containers in which it packs its said perfumes and distributes circulars carrying reproductions of the aforesaid bottles and containers.

Said acts and practices, as alleged, have the capacity and tendency to mislead and deceive its vendees and many of the consuming public into believing said perfumes to have been manufactured in Paris, France, and imported into the United States and into purchasing the same in such belief,¹ and the effect of placing in the hands of its dealer and peddler vendees the instrument and means of committing a fraud upon a substantial portion of the consuming public by enabling them to offer and sell its perfumes as and for products made in Paris, France, and have the further tendency to divert business from and otherwise injure and prejudice competitors who deal in perfumes in fact there made and imported therefrom and rightfully and lawfully represent the same as such, and those who deal in domestic perfumes without any such misrepresentation; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 issued and served its complaint upon the respondent, C. H. Selick, Inc., a corporation, charging it with

¹ The complaint alleging that many of the trade and consuming public in the United States believe that French perfumes, long widely popular and in demand therein, are superior to the domestic perfumes and purchase the French imported product in preference to those made in the United States.

the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of the said act of Congress.

Thereupon the said respondent entered its appearance and filed its answer to the said complaint, and hearings were had before an examiner of this Commission duly appointed, and testimony was offered and received in support of the charges of the complaint and testimony was offered and received in defense of the charges of the complaint, all of which said testimony was reduced to writing and filed in the office of said Commission; and thereafter the proceeding came on for final hearing on the record, briefs and oral arguments, and the Commission having duly considered the same and being fully advised in the premises, now makes this its report and states its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the City of New York, in said State. Respondent is now and for more than fifty years has been engaged in the business of compounding perfumes and other toilet preparations and in the sale of said products chiefly to retail dealers and peddlers located in various States of the United States. Respondent causes said products, when so sold, to be transported from its place of business in the City of New York, State of New York, into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business, said respondent is in competition with other corporations and with partnerships and individuals engaged in the sale of perfume and other toilet preparations in commerce between and among the various States of the United States.

PAR. 2. All of respondent's products are manufactured in the United States. The body of its perfumes is alcohol, to which are added certain essential oils purchased by respondent from Norda Essential Oil & Chemical Co. of New York City. These essential oils are produced in a large number of foreign countries, including France. The respondent, in compounding its products, uses the cheaper grades of essential oils and the process of manufacture consists of adding to the essential oils alcohol and water in the approximate proportion of 4 ounces of the essential oil to 1 gallon of alcohol. The product is then filtered, bottled, labeled, and packed for shipment.

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PAR. 3. The perfumes sold by respondent in interstate commerce, as in paragraph 1 hereof set out, are sold principally in 1-ounce bottles and vials, and principally under two brands. For more than two years such bottles have been labeled, and still are labeled: "L'Are Narcisse—Jardeau—New York, Paris" and "Lucienne—Paris, New York". From July, 1928, to November, 1928, bottles carrying the label "L'Are Narcisse—Jardeau—New York, Paris" bore on their reverse side the word "France" on a label.

Circulars carrying reproductions of such labels and bottles are distributed to the trade by respondent. Respondent packs said bottles of perfume so labeled, in certain containers upon which respondent causes to be set forth the word "Paris" printed in conspicuous letters. Respondent delivers said perfumes so bottled, labeled, designated, and packed as aforesaid, to its aforesaid vendees, and said perfumes still so bottled, labeled, designated, and packed are by said vendees displayed, offered for sale, and sold to the consuming public.

Respondent, prior to the issuance of the complaint herein, manufactured and still manufactures perfumes for one J. Cohen, of New York City, who resells such perfumes to retail stores, many of which are located outside of the State of New York, and respondent, for the account of said J. Cohen, ships such perfumes in bottles to such customers, and directly to said J. Cohen, which bottles carry the following described label furnished to respondent by said J. Cohen: "Jay's Narcissus—Jay et Cie—Paris, New York".

Respondent, prior to the issuance of the complaint herein, manufactured and still manufactures perfumes for Cosmetics & Drugs, Inc., of Boston, Mass., which perfumes said Cosmetics & Drugs, Inc., resells, chiefly to retail stores located outside of the State of New York, and respondent, for the account of said Cosmetics & Drugs, Inc., ships such perfumes in bottles to such customers of said Cosmetics & Drugs, Inc., and directly to said Cosmetics & Drugs, Inc., which bottles carry the following described label furnished to respondent by said Cosmetics & Drugs, Inc.: "Bea Van et Cie—Paris, New York".

The above are complete descriptions of the labeling on said four brands of perfume, except that bottles bearing the label "Bea Van et Cie—Paris, New York" carry an additional label reading, "Eau de Toilette". Nowhere on the labels or on the boxes containing the individual bottles of said four brands of perfumes does the name of respondent appear.

PAR. 4. Perfumes manufactured in France have for many years enjoyed widespread popularity, good will, and demand among the

trade and consuming public throughout the United States, many of whom believe and consider that perfumes manufactured in France are superior in quality to perfumes manufactured in the United States and that such perfumes manufactured in France have other characteristics more desirable than have perfumes manufactured in the United States, and many of the consuming public throughout the United States purchase perfumes manufactured in France and imported into the United States, in preference to purchasing perfumes manufactured in the United States.

PAR. 5. Respondent does no business of any kind whatsoever, and has never done any business, in Paris, France, or in France; about sixty days prior to August 19, 1929, and after the issuance of the complaint in this proceeding, respondent entered into an arrangement with a French firm not engaged in any branch of the perfumery business, whereby said firm undertook, for a stated sum, to send to respondent samples of French perfumes and samples of French bottles. All of the transactions between respondent and said French firm during the time such arrangement was in effect, up to August 19, 1929, consisted of a letter written by respondent to said firm, a letter sent by said firm to respondent, and a cablegram.

PAR. 6. Respondent's aforesaid labeling, advertising, and designating of its perfumes as set out herein have the capacity and tendency to mislead and deceive its vendees and many of the consuming public into the belief that its said perfumes are manufactured or compounded in Paris, France, or in France, and imported into the United States, and to purchase said perfumes in that belief, when in truth and in fact respondent's said perfumes are manufactured and compounded in the United States.

PAR. 7. Further, respondent's said labeling, advertising, and designating of its perfumes, as set out herein, places in the hands of aforesaid dealer and peddler vendees the instrument and means whereby said dealers and peddlers may commit fraud upon a substantial portion of the consuming public by enabling said dealers and peddlers to represent, offer for sale, and sell respondent's said perfumes as perfumes manufactured or compounded in Paris, France, or in France.

PAR. 8. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who deal in and sell perfumes manufactured or compounded in Paris, France, or in France, and imported into the United States, and who rightfully and lawfully represent said perfumes to be such. There are others of said competitors who deal in and sell perfumes manufactured and compounded in the United States and who in no manner represent their

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said perfumes to be manufactured or compounded in Paris, France, or in France. Respondent's acts and practices hereinbefore set out, tend to divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings are all to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation 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".

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 evidence submitted, briefs and arguments of counsel, and the Commission having made its findings as to the facts and entered its conclusion that the respondent has violated section 5 of the 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",

It is now ordered, That respondent, C. H. Selick, Inc., its representatives, agents, servants, employees, and successors, forthwith cease and desist from using directly or indirectly the word "Paris" and/or the word "France" on the labels of bottles of perfumes manufactured or compounded by it and by it sold, offered for sale, or shipped in interstate commerce, and/or on the containers of said bottles of perfume unless such perfumes be manufactured or compounded in Paris, France, or in France, and from, in any other way, labeling, advertising and designating its perfumes sold, offered for sale, or shipped in interstate commerce, as being manufactured or compounded in Paris, France, or in France, unless such perfumes be manufactured or compounded in Paris, France, or in France.

And it is further ordered, That the respondent, C. H. Selick, Inc., shall, within 60 days from service upon it of a copy of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order by this Commission herein set forth.

Complaint

IN THE MATTER OF
THE ANITA INSTITUTE

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

Docket 1690. Complaint, Aug. 29, 1929—Decision, Feb. 1, 1930

Where a corporation engaged in the manufacture and sale of so-called "Nose Adjusters"; in advertising and describing the same in newspapers, magazines, periodicals and other publications of general circulation in the United States, and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed or printed matter,

Stated, represented, and promised that said device would give the purchaser a perfect looking nose, correcting all defects excepting those resulting from injuries requiring surgical operations, the fact being that the device could not change the shape of any bone or bony structure, or make any changes in shape or appearance that can only thus be made;

With the tendency and capacity to mislead and deceive the public and prospective purchasers into believing that purchasers and users would receive the full benefits thus set forth and to injuriously affect the public, prospective purchasers, and competitors by inducing purchase of said article for the sake of benefits that can not be realized, and thereby divert purchasers from competitors; to their prejudice and that of the public:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

Herrigel, Lindabury & Herrigel, of Newark, N. J., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture of so-called Anita Nose Adjusters and in the sale of said devices to purchasers among the various States and Territories and with principal office and place of business in Newark, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its said devices in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter, falsely and misleadingly represents that the device in question, used in accordance with in-