

IN THE MATTER OF
V. VIVAUDOU, INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1464. Complaint, May 27, 1927—Decision Apr. 28, 1930

Where a corporation engaged in the manufacture and sale of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, with factories in New York City, Paris, and Canada, and with principal office and place of business in New York, and branch offices in Chicago and Los Angeles; selling throughout the United States to the retail and jobbing trade, department stores, and syndicate stores, under extensively advertised and known trade names, complete lines of toilet articles made in its aforesaid New York factory and in its aforesaid subsidiary operated Paris and Canadian factories, as well as products made by a Spanish company, and distributed by it therefor; and doing an annual business of several millions, and an important factor in the industry concerned.

- (a) Acquired the stock of a concern similarly engaged, in substantial competition with it, in the sale of complete lines of corresponding competitive toilet articles sold throughout the United States under extensively advertised and known trade names, of the same price class and similarly sold to and through jobbers and retailers, etc., as above set forth, made in said competitor's New York Factory and also by a French company for which it distributed, with a highly profitable business, running into millions, and in a prosperous and strong financial condition, free from funded debt, and thereafter chose the officers and directors of said concern, made use of the equipment and other assets thereof, and dominated and controlled it; with the result that the effect of such acquisition might be and was to substantially lessen competition between the two, restrain commerce throughout the United States, and tend to create a monopoly in it in the business concerned; and
- (b) Acquired the stock of a company which it created and which, under a prior contract made by it, took over and carried on the domestic and foreign business of an organization, theretofore similarly engaged, in substantial competition with it, in the sale of complete lines of corresponding competitive toilet articles, sold throughout the United States, under extensively advertised and known trade names, of the same price class and similarly sold to and through the retail and jobbing trade, etc., as above set forth, made in the Chicago factory of said organization and abroad by it and its foreign subsidiaries, doing an annual domestic business of about \$2,000,000, and theretofore constituting an important factor in the industry involved, but obligated by the contract concerned, along with officers and stockholders, not to engage again in the business concerned for a ten-year period, and thereafter chose the officers and directors of said company, made use of the equipment and other assets thereof, and dominated and controlled it; with the result that the effect of such acquisition might be and was to substantially lessen competition between

it and said company, to restrain the commerce involved throughout the United States, and to tend to create in it a monopoly in the business concerned:

Held, That said acquisitions and continued ownership by such corporation of the capital stock of said concerns or companies, under the circumstances set forth, constituted violations of section 7.

Mr. Edward L. Smith for the Commission.

Olvany, Eisner & Donnelly, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

The Commission charged respondent V. Vivaudou, Inc., a Delaware corporation, engaged in the manufacture and sale of perfumes, toilet water, face powder, cosmetics and other toilet articles, sold under well known trade names, and also engaged as exclusive distributor in America, under long-term contracts, for cosmetics and toilet articles made by others, and sold under well-known trade names, and with principal office and place of business in New York City, with acquiring stock in competitors, namely, on or about December 31, 1925, all the stock of the Alfred H. Smith Co., and on or about December 17, 1926, all of the stock of Parfumerie Melba, Inc.; in violation of the provisions of section 7 of the Clayton Act.

Said Alfred H. Smith Co., a New York corporation with principal office and place of business in New York City, organized in 1904, and until about December 31, 1925, a competitor of respondent corporation, was similarly engaged in the manufacture and sale of perfumes, toilet water, face powder, cosmetics, and other toilet articles, sold under well-known trade names, and in the exclusive distribution, under long-term contracts, of cosmetics and toilet articles made by others, and also sold under well-known trade names. Effect of the aforesaid acquisition of said company's stock, by respondent, on or about December 31, 1925, as alleged, has been and is (1) to substantially lessen competition between said V. Vivaudou, Inc., and said Alfred H. Smith Co.; (2) to restrain commerce in the sale of perfumes, toilet waters, face powders, cosmetics, and other toilet articles in certain sections and communities; (3) to tend to create a monopoly in said V. Vivaudou, Inc., of perfumes, toilet waters, face powders, cosmetics and other toilet articles.

Said Parfumerie Melba, Inc., a New York corporation with principal office and place of business in New York City, organized by respondent, owner of all its capital stock since its organization (on or about Nov. 17, 1926), on or about December 1, of said year

Findings

13 F. T. C.

purchased as a going concern from the Melba Manufacturing Co., its business, and, among other things, trade-marks, good will, merchandise, machinery, trade names and formulas, land and buildings, and automobiles and trucks, and carried on said business. Said Melba Manufacturing Co., an Illinois corporation, with principal office and place of business in Chicago, organized in 1912, prior to said purchase was also similarly engaged in the manufacture and sale of perfumes and other articles above set forth, sold under well-known trade names, and in acting as exclusive distributor, under long-term contracts, for cosmetics and toilet articles made by others, likewise sold under well-known trade names, and was, until on or about December 1, 1926, in competition with respondent. Effect of the acquisition by respondent of the stock of Parfumerie Melba, Inc., which respondent put into commerce in a way forever preventing Parfumerie Melba, Inc., from competing with it, as alleged, has been and is (1) to substantially lessen competition between said V. Vivaudou, Inc., and Parfumerie Melba, Inc.; (2) to restrain commerce in the sale of perfumes, toilet waters, face powders, cosmetics, and other toilet articles in certain sections and communities; (3) to tend to create a monopoly in said V. Vivaudou, Inc., of perfumes, toilet waters, face powders, cosmetics and other toilet articles.

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 October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", the Federal Trade Commission issued and served its complaint upon V. Vivaudou, Inc., respondent herein, charging it with violating section 7 of said act.

Thereupon the said respondent entered its appearance and filed its answer to the said complaint, and hearings were had before an examiner of the 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 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, V. Vivaudou, Inc., is a corporation organized in 1919 under the laws of the State of Delaware, with its principal office and place of business in the city of New York, State of New York, and with two branch offices, one in the city of Los Angeles, State of California, where such branch office has been maintained since prior to 1925, and the other in the city of Chicago, State of Illinois, where said last-mentioned branch office has been maintained since January, 1927. Its authorized capital consists of 500,000 shares of common stock of no par value, of which 382,000 shares are issued and outstanding, and 30,000 shares of 7 per cent preferred stock of a par value of \$100 each, of which 28,200 shares are issued and outstanding.

Respondent is now and ever since its organization has been engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics and other toilet articles. Respondent's factory is located in the city of New York and has been located there since 1919. Since prior to 1925, respondent, through a subsidiary, Parfumerie Du Monde Elegant, has operated a factory at Paris, France, and through another subsidiary, V. Vivaudou, Canada, Ltd., has operated a factory in Canada. Both of its said subsidiaries are engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles under well-known trade names. In addition to selling the products manufactured by it, respondent since prior to 1925 has acted and still acts as distributor in the United States for a line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles manufactured by another company in Spain and sold in America under the trade name "Myrurgia," and respondent since prior to 1925 has acted and still acts as distributor in the United States of the products of its said subsidiary, Parfumerie Du Monde Elegant.

The products of the respondent and the products which it distributes for said Parfumerie Du Monde Elegant and for the said Spanish company are now, and have been since prior to 1925, extensively advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines, in addition to "Myrurgia," hereinabove

Findings

13 F. T. C.

mentioned are and have been since prior to 1925 the following: "Mavis," "Narcisse de Chine," "La Boheme," "Jasmine Arly," "Lilas Arly," and "Mai D'or."

Respondent's products and the products of those companies for which it acts and has acted as distributor, as hereinabove stated, are now sold and have been sold by said respondent, since prior to 1925, throughout the entire United States to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products eventually reach the purchasing public. The respondent causes its products and those which it distributes, when sold, to be transported from its factory in New York City or from its warehouses located in New York City, Los Angeles, Calif., and Chicago, Ill., to purchasers in those States, and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been, since prior to 1925, a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia. Since its organization respondent has been and still is one of the important factors in the industry in which it is engaged. In the years 1925 and 1926 the volume of business done by the respondent in the United States was as follows:

	1925	1926
Extracts.....	\$311,398.53	\$235,284.84
Talcums.....	2,682,194.15	2,562,890.38
Rouges.....	136,688.06	155,580.12
Creams.....	126,118.54	101,031.68
Nail preparations.....	11,166.73	8,257.13
Miscellaneous.....	214,819.54	207,900.16
Total.....	3,482,365.55	3,270,993.49
Less discounts, allowances, returns, etc.....	847,580.27	873,646.58
Net sales.....	3,134,785.28	2,897,346.91

The business of the respondent, ever since its organization has been conducted among the several States of the United States, the Territories thereof, and the District of Columbia in competition with other corporations and with persons firms and partnerships. Among such competitors until December 31, 1925, or thereabouts, as herein-after set forth, was Alfred H. Smith Co., between which company and respondent there was substantial competition.

PAR. 2. Said Alfred H. Smith Co. is a corporation organized in 1904, 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. Its authorized capital consists of 1,250 shares of common stock of a par value of \$100 each, all of which is issued

and outstanding and all of which was issued and outstanding when, on December 9, 1925, David A. Schulte, an officer of the respondent, entered into a contract to purchase said capital stock from the then owners thereof.

Said Alfred H. Smith Co. is now, and at the time of the acquisition of all of its capital stock by the respondent, as hereinafter set forth, was engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles. Said Alfred H. Smith Co. has manufactured its products in the city of New York since 1904. In addition to selling products manufactured by it, said Alfred H. Smith Co. for a number of years prior to 1925 has acted and still acts as distributor in the United States for a line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles manufactured in France by Jean M. G. Darthiailh, trading as Darthiailh Fils, which said line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles have been sold throughout the entire United States under a well-known trade name.

The products of said Alfred H. Smith Co. and the products which it distributes and has distributed since prior to 1925 for Darthiailh Fils are now, and have been since prior to 1925, extensively advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines are, and since prior to 1925 have been, "Djer-Kiss" and "Kadorys."

The products of said Alfred H. Smith Co. and the products of Darthiailh Fils, for which it acts and has acted as distributor as hereinabove stated, are now sold and have been sold by said Alfred H. Smith Co. since prior to 1925, throughout the entire United States, to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products eventually reach the purchasing public. Said Alfred H. Smith Co. now causes, and since its organization has caused, its own products and those which it distributes in this country for Darthiailh Fils, when sold, to be transported from its factory or warehouse in New York City to purchasers in said State, and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been since prior to 1925, a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the

Findings

13 F. T. C.

District of Columbia. Since its organization said Alfred H. Smith Co. has been and still is one of the important factors in the industry in which it is engaged. In the years 1925 and 1926 the volume of business done by said Alfred H. Smith Co. in the United States was as follows:

	1925	1926
Extracts.....	\$852,280.75	\$743,529.27
Talcums.....	662,684.60	919,082.19
Rouges.....	932,299.80	727,493.66
Creams.....	49,240.60	50,113.76
Nail preparations, miscellaneous.....	333,060.00	426,205.45
Total.....	2,829,571.55	2,867,024.32
Less discounts, allowances, returns, etc.....	337,442.55	365,644.80
Net sales.....	2,492,129.00	2,501,379.52

The business of said Alfred H. Smith Co., ever since its organization, has been conducted among the several States of the United States, the Territories thereof and the District of Columbia in competition with other corporations and with persons, firms, and partnerships. Among such competitors until December 31, 1925, or thereabouts, was respondent, V. Vivaudou, Inc. At the time and long prior thereto that respondent acquired all of the capital stock of said Alfred H. Smith Co., as hereinafter set forth, respondent and said Alfred H. Smith Co. manufactured and sold in interstate commerce competitive corresponding products in the same price class to the same class of trade in the same general territory, to wit, throughout the entire United States. Between respondent and said Alfred H. Smith Co. at the time of the said capital stock acquisition there was substantial competition in interstate commerce.

PAR. 3. On December 9, 1925, David A Schulte, an officer of respondent, entered into a contract with the then owners of all of the capital stock of said Alfred H. Smith Co., to purchase said capital stock for—

(a) The sum of \$1,500,000.

(b) The value of the merchandise of said Alfred H. Smith Co. as of the 31st day of December, 1925.

(c) The book value of the same date, to wit, December 31, 1925, of all of the furniture, fixtures, equipment, auto trucks, and other personal property of said Alfred H. Smith Co. used in connection with its business, less depreciation to and including December 31, 1925.

(d) \$75,000 representing a loan made by said Alfred H. Smith Co. to Dartmouth Films.

(e) An amount equal to all prepayments made by said Alfred H. Smith Co. for taxes, insurance, rent, and advertising for any period subsequent to December 31, 1925.

On December 15, 1925, said David A. Schulte, for certain considerations, specified by him, offered in writing to assign to respondent his rights under the said contract, entered into between him and the stockholders of said Alfred H. Smith Co. on December 9, 1925. Said offer of said David A. Schulte was accepted by the board of directors of the respondent on December 19, 1925, and thereafter, to wit, on February 14, 1926, by virtue of the said contract and the assignment to respondent by said David A. Schulte of his rights under his said contract with the stockholders of said Alfred H. Smith Co., respondent, for the considerations specified in the said contract, acquired all of the outstanding capital stock of said Alfred H. Smith Co., all of which said capital stock is still owned by respondent. Said stock acquisition, although consummated on February 14, 1926, was effective as of December 31, 1925.

At the time all of its issued and outstanding capital stock was acquired by respondent, said Alfred H. Smith Co. was a prosperous company in strong financial condition and free from any mortgage or funded debt and its business was highly profitable. Upon the acquisition by respondent of all of the capital stock of said Alfred H. Smith Co., the furniture, equipment, stock of raw materials, and stock of finished materials owned by said Alfred H. Smith Co., were moved from its factory at 304 Hudson Street, New York City, to the factory of respondent then located at 418 West 25th Street, New York City, where said furniture, equipment, and stock of raw materials were used indiscriminately by said respondent and by said Alfred H. Smith Co.; in June, 1927, respondent and said Alfred H. Smith Co., each moved its equipment, machinery, and stock of raw materials to a factory located at 233 Spring Street, New York City, since which time the said equipment, machinery, and stock of raw materials have been used indiscriminately by said Alfred H. Smith Co., by respondent and by Parfumerie Melba, Inc., as hereinafter set forth. The assets owned by said Alfred H. Smith Co. at the time its capital stock was acquired by respondent as hereinabove described, which said assets consisted, among other things, of leases, patents, copyrights, trade-marks, finished merchandise and merchandise in process of being manufactured, raw materials, furniture, fixtures, equipment, cash, accounts receivable, formulas, and contracts with foreign companies, are still owned by said Alfred H. Smith Co., except that the cash on hand possessed by said Alfred H. Smith Co., its accounts receivable, and the merchandise which it owned at the time its capital stock was acquired, have been diminished in the ordinary course of business.

Since the acquisition by respondent of the capital stock of said Alfred H. Smith Co., the said company has been dominated by

respondent, V. Vivaudou, Inc., which has chosen the officers and directors of said Alfred H. Smith Co. and which has controlled the business of said Alfred H. Smith Co.

PAR. 4. The effect of the acquisition by respondent, a corporation engaged in interstate commerce, of all of the issued and outstanding capital stock of the said Alfred H. Smith Co., a corporation also engaged in interstate commerce, may be and is:

- (1) To substantially lessen competition between Alfred H. Smith Co. and respondent.
- (2) To restrain such commerce throughout the United States.
- (3) To tend to create a monopoly in said V. Vivaudou, Inc., of perfumes, toilet waters, face powders, cosmetics, and other toilet articles.

II

PARAGRAPH 1. Respondent, V. Vivaudou, Inc., is a corporation organized in 1919, under the laws of the State of Delaware, with its principal office and place of business in the city of New York, State of New York, and with two branch offices, one in the city of Los Angeles, State of California, where such branch office has been maintained prior to 1925, and the other in the city of Chicago, State of Illinois, where said last mentioned branch office has been maintained since January, 1927. Its authorized capital consists of 500,000 shares of common stock of no par value, of which 382,000 shares are issued and outstanding, and 30,000 shares of 7 per cent preferred stock of a par value of \$100 each, of which 28,200 shares are issued and outstanding.

Respondent is now and ever since its organization has been engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles. Respondent's factory is located in the city of New York and has been located there since 1919. Since prior to 1925, respondent, through a subsidiary, Parfumerie Du Monde Elegant, has operated a factory at Paris, France, and through another subsidiary, V. Vivaudou, Canada, Ltd., has operated a factory in Canada. Both of its subsidiaries are engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles under well-known trade names. In addition to selling the products manufactured by it, respondent since prior to 1925 has acted and still acts as distributor in the United States for a line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles manufactured by another company in Spain and sold in America under the trade name "Myrurgia", and respondent since prior to 1925 has acted and still acts as distrib-

utor in the United States of the products of its said subsidiary, Parfumerie Du Monde Elegant.

The products of the respondent and the products which its distributes for said Parfumerie Du Monde Elegant and for the said Spanish company are now, and have been since prior to 1925, extensively advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and a complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines, in addition to "Myrurgia", hereinbefore mentioned, are and have been since prior to 1925, the following: "Mavis", "Narcisse de Chine", "La Boheme", "Jasmine Arly", "Lilas Arly", and "Mai D'or".

Respondent's products and the products of those companies for which it acts and has acted as distributor, as hereinabove stated, are now sold and have been sold by said respondent, since prior to 1925, throughout the entire United States to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products eventually reach the purchasing public. The respondent causes its products and those which it distributes, when sold, to be transported from its factory in New York City or from its warehouses located in New York City, Los Angeles, Calif., and Chicago, Ill., to purchasers in those States, and to purchasers in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been, since prior to 1925, a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia. Since its organization respondent has been and still is one of the important factors in the industry in which it is engaged. In the years 1925 and 1926 the volume of business done by the respondent in the United States was as follows:

	1925	1926
Extracts.....	\$311,398.53	\$235,284.84
Talcums.....	2,682,104.15	2,662,890.38
Rouges.....	135,668.06	155,560.12
Creams.....	126,118.54	101,031.88
Nail preparations.....	11,163.73	8,257.13
Miscellaneous.....	214,819.54	207,960.16
Total.....	3,482,365.55	3,270,993.49
Less discounts, allowances, returns, etc.....	347,580.27	373,646.58
Net sales.....	3,134,785.28	2,897,346.91

The business of the respondent, ever since its organization has been conducted among the several States of the United States, the

Findings

13 F. T. C.

Territories thereof, and the District of Columbia in competition with other corporations and with persons, firms and partnerships. Among such competitors until December 1, 1926, or thereabouts, as hereinafter set forth, was Melba Manufacturing Co., between which company and respondent there was substantial competition.

PAR. 2. Said Melba Manufacturing Co., a corporation organized and doing business since 1912 under and by virtue of the laws of the State of Illinois, with its principal office and place of business in Chicago in said State was, until December 1, 1926, or thereabouts, engaged in the business of manufacturing and selling perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles. Its factory was located in Chicago, Ill. Prior to December 1, 1926, or thereabouts, said Melba Manufacturing Co. through foreign subsidiaries manufactured and sold similar products in foreign countries.

The products of said Melba Manufacturing Co. were, prior to December 1, 1926, or thereabouts, extensively advertised, known and sold throughout the entire United States under trade names, and since the acquisition by Parfumerie Melba, Inc., of the assets of Melba Manufacturing Co., as hereinafter described, have continued to be advertised, known and sold throughout the entire United States under trade names, each of which said trade names signifies a separate and complete line of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, each differing from the other lines chiefly in odor or scent. The names of the more important of the said lines were prior to the said acquisition, and still are, the following: *Lov'me*, *Boquet*, *Fleurs*, *Adore'e* formerly *Ador' Me*, and *Melba*.

The products of said Melba Manufacturing Co. were, prior to the said acquisition, sold by said Melba Manufacturing Co. and since the said acquisition by Parfumerie Melba, Inc., have been sold throughout the entire United States to the retail and jobbing trade, department stores, and syndicate stores. Through such outlets said products reach the purchasing public. Said Melba Manufacturing Co., until the acquisition hereinafter described, caused its products, when sold, to be transported from its factory in Chicago to purchasers in that State and to purchasers in other States of the United States, the Territories thereof and the District of Columbia, and there was from the time of the organization of said Melba Manufacturing Co. until such acquisition a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia. From the time of its organization said Melba Manufac-

306

Findings

turing Co. was one of the important factors in the industry in which it was engaged. In the year 1926 the volume of business done by said Melba Manufacturing Co. in the United States was as follows:

	1926
Extracts.....	\$169,692.60
Talcums.....	654,031.00
Rouges.....	501,684.40
Creams.....	448,421.33
Nail preparations.....	83,240.00
Miscellaneous.....	15,072.00
Total.....	1,872,141.33
Less discounts, allowances, returns, etc.....	
Net sales.....	1,872,141.33

The business of said Melba Manufacturing Co. ever since its organization was conducted among the several States of the United States, the Territories thereof and the District of Columbia in competition with other corporations, and with persons, firms and partnerships. Among such competitors until December 1, 1926, or thereabouts was respondent, V. Vivaudou, Inc. At the time and long prior thereto when Parfumerie Melba, Inc., acquired all of the assets of the said Melba Manufacturing Co. devoted to the cosmetic and perfumery business, and at the time respondent acquired all of the capital stock of Parfumerie Melba, Inc., as hereinafter set forth, respondent and said Melba Manufacturing Co. manufactured and sold in interstate commerce competitive correspondent products in the same price class to the same class of trade in the same general territory, to wit, throughout the entire United States. Between respondent and said Melba Manufacturing Co. at the time of the said asset acquisition and capital stock acquisition there was substantial competition in interstate commerce.

PAR. 3. On November 10, 1926, said Melba Manufacturing Co. and respondent entered into a contract by which said Melba Manufacturing Co. agreed to sell to respondent for a price not to exceed \$1,500,000, subject to certain readjustments specifically mentioned in said contract, certain of its real property used in the perfumery and cosmetic business and located in Chicago, Ill., its accounts receivable, its notes receivable, its stock of materials on hand in America and abroad, its machinery, equipment, and its intangibles, consisting of trade-marks, trade-names, copyrights, formulas, good will and the like. The said contract provided that respondent might assign its rights thereunder to a subsidiary company or companies then existing or to be organized by it, in which event said Melba Manufacturing Co. agreed to make to such company or companies all conveyances

Findings

13 F. T. C.

required under said contract to be made by it; and the said contract provided that all obligations of respondent thereunder should be assumed and performed by said subsidiary or subsidiaries. By the said contract said Melba Manufacturing Co., its officers and stockholders, agreed that none of the officers or stockholders of said company, as then constituted, should thereafter and for a period of ten years next ensuing, after the consummation of the contract, engage in the United States or elsewhere in a business similar to that of Melba Manufacturing Co., sold under the said contract.

Between November 10, 1926, and November 23, 1926, respondent caused to be organized, under the laws of the State of New York, Parfumerie Melba, Inc., a corporation with its principal office and place of business in the city of New York in said State, with an authorized capitalization of 1,000 shares of no par common stock, all of which was issued upon the organization of the company to respondent, which still owns all of the said stock. By virtue of a resolution of its board of directors adopted November 23, 1926, respondent, on that date, assigned its said contract of November 10, 1926, with Melba Manufacturing Co., to said Parfumerie Melba, Inc., which thereupon with the sum of \$1,135,000 furnished to it by respondent, carried out on December 1, 1926, with said Melba Manufacturing Co. the said contract of November 10, 1926, between respondent and Melba Manufacturing Co., and immediately continued the operation of the aforesaid business previously thereto conducted by Melba Manufacturing Co., without any interruption in the conduct of the said business and said Parfumerie Melba, Inc., has since continued the business theretofore conducted by said Melba Manufacturing Co. In connection with the acquisition by Parfumerie Melba, Inc., of the business of Melba Manufacturing Co. said Parfumerie Melba, Inc., took over the selling organization of said Melba Manufacturing Co. Having purchased trade upon which to start and having started upon the trade it had purchased, the new corporation, Parfumerie Melba, Inc., was engaged in commerce at the time its capital stock was acquired by respondent. Said respondent put the new corporation, Parfumerie Melba, Inc., into commerce in a way which forever prevented said Parfumerie Melba, Inc., from competing with respondent.

In connection with and as a part of the said transaction between said Melba Manufacturing Co. and Parfumerie Melba, Inc., said Parfumerie Melba, Inc., acquired the business theretofore done in foreign countries by said Melba Manufacturing Co. directly and through subsidiaries, and said Parfumerie Melba, Inc., directly and through subsidiaries which it organized, has continued to operate

such business theretofore conducted in foreign countries by Melba Manufacturing Co. directly and through subsidiaries. Upon the acquisition by said Parfumerie Melba, Inc., of said business of the said Melba Manufacturing Co. the corporate name of Melba Manufacturing Co. was changed to the corporate name, Jones, O'Neill & Coons. The said corporation, Jones, O'Neill & Coons, is still in existence, but it has not since the aforesaid acquisition by Parfumerie Melba, Inc., engaged in the business in which, as Melba Manufacturing Co., it was engaged prior to December 1, 1926.

Said Parfumerie Melba, Inc., since its organization, has caused its products, when sold, to be transported from its factory in New York or its warehouse in Chicago to purchasers in those States and to purchasers in other States of the United States, the Territories thereof and the District of Columbia, and there is now and has been since the organization of said Parfumerie Melba, Inc., a constant current of trade and commerce in such products between and among the various States and Territories of the United States and the District of Columbia.

Upon the acquisition by Parfumerie Melba, Inc., of the said assets of Melba Manufacturing Co., its stock of machinery, equipment, and raw merchandise in this country acquired from Melba Manufacturing Co. was moved from the property in Chicago, acquired by Parfumerie Melba, Inc., from Melba Manufacturing Co., to the factory of respondent, V. Vivaudou, Inc., located at 418 West Twenty-Fifth Street, New York City, together with said equipment and machinery, and there was indiscriminately used by respondent, V. Vivaudou, Inc., by the said Alfred H. Smith Co. and by said Parfumerie Melba, Inc. In June, 1927, respondent and said Parfumerie Melba, Inc., and said Alfred H. Smith Co. each moved its equipment, machinery, and stock of raw materials to a factory located at 233 Spring Street, New York City, since which time the said equipment, machinery, and stock of raw materials have been used indiscriminately by said Parfumerie Melba, Inc., said Alfred H. Smith Co. and by respondent, V. Vivaudou, Inc.

Said Parfumerie Melba, Inc., still owns the assets which it acquired from Melba Manufacturing Co., consisting chiefly of real estate, accounts receivable, notes receivable, stock of merchandise finished and in process of being finished, raw materials, equipment, machinery, trade-names, copyrights, formulas, leases, and good will; excepting that of the real estate acquired, a portion thereof was sold by Parfumerie Melba, Inc., prior to June, 1927, to interest with which neither V. Vivaudou, Inc., or Alfred H. Smith Co. had any relation, and excepting further that the said accounts receivable,

notes receivable, stock of finished merchandise and raw merchandise have been diminished in the ordinary course of business. A part of the real estate acquired by Parfumerie Melba, Inc., from Melba Manufacturing Co. was used and occupied by the former as a warehouse and sales office until December 31, 1928, at which time said Parfumerie Melba, Inc., abandoned the use of said property, retaining title thereto.

Since the acquisition by respondent of the capital stock of said Parfumerie Melba, Inc., the said company has been dominated by respondent, V. Vivaudou, Inc., which has chosen the officers and directors of said Parfumerie Melba, Inc., and which has controlled the business of said Parfumerie Melba, Inc.

PAR. 4. The effect of the acquisition by respondent, a corporation engaged in interstate commerce, of all of the issued and outstanding capital stock of the said Parfumerie Melba, Inc., a corporation also engaged in interstate commerce, may be and is:

(1) To substantially lessen competition between said Parfumerie Melba, Inc., and respondent.

(2) To restrain such commerce throughout the United States.

(3) To tend to create a monopoly in said Parfumerie Melba, Inc., of perfumes, toilet waters, face powders, cosmetics, and other toilet articles.

CONCLUSION

The acquisition and continued ownership by respondent, V. Vivaudou, Inc., of all of the outstanding capital stock of said Alfred H. Smith Co., under the conditions and circumstances described in the foregoing findings, constitute a violation of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes"; and the acquisition and continued ownership by the respondent, V. Vivaudou, Inc., of all of the outstanding capital stock of said Parfumerie Melba, Inc., under the conditions and circumstances described in the foregoing findings, constitute a violation of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence, briefs and arguments of counsel, and the Commission having made a report in writing in

which it stated its findings as to the facts, with its conclusion that the respondent has violated the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

Now, therefore, it is ordered, That the respondent, V. Vivaudou, Inc., forthwith cease and desist from violating the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," and within 90 days from the day of the date of service upon it of this order divest itself in good faith of all the capital stock of Alfred H. Smith Co. owned by it, such divestment of stock to carry with it all of the property and assets of all kinds whatsoever of said Alfred H. Smith Co.

And it is hereby further ordered, That such divestment of the capital stock of said Alfred H. Smith Co. shall not be made directly or indirectly to any stockholder, officer, director, employee or agent, or to anyone otherwise directly or indirectly connected with or under the control of respondent, V. Vivaudou, Inc.

And it is hereby further ordered, That the respondent V. Vivaudou, Inc., forthwith cease and desist from violating the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and within 90 days from the day of the date of service upon it of this order divest itself in good faith of all the capital stock of Parfumerie Melba, Inc., owned by it, such divestment of stock to carry with it all of the property and assets of all kinds whatsoever of said Parfumerie Melba, Inc.

And it is hereby further ordered, That such divestment of the capital stock of said Parfumerie Melba, Inc., shall not be made directly or indirectly to any stockholder, officer, director, employee or agent, or to anyone otherwise directly or indirectly connected with or under the control of respondent, V. Vivaudou, Inc.

And it is hereby further ordered, That respondent, V. Vivaudou, Inc., within 4 months from the day of the date of the service upon it of this order file with this Commission a report in writing setting forth in detail the manner and form in which this order has been conformed to.

Dissent by Commissioner Humphrey

I must dissent to the action of the majority in issuing an order to cease and desist in this case, for reasons already fully set out by me in my dissent to the action of the Commission in the International

Shoe Co. case¹ and more recently in the matter of the Temple Anthracite Coal Co.² Under the decision of the United States Supreme Court in the International Shoe Co. case,³ an order to cease and desist made by the Federal Trade Commission under section 7 of the Clayton Act can not be sustained unless it appear that by reason of the acts complained of, competition will probably be lessened to "such a degree as will injuriously affect the public."

The record in the instant case fails to disclose such a suppression of competition and the Commission's order is therefore improvidently issued.

There is another reason why the acquisition of the assets of the Melba Manufacturing Co. by the respondent in this case does not violate section 7 of the Clayton Act. Paragraph 3 of the section contains the following provision:

Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In this case the respondent company was already engaged in the manufacture and sale of cosmetics in interstate commerce at the time it determined to purchase the assets of the Melba company and it chose to create a subsidiary for the purpose of so doing and to carry forward the business purchased. In so doing, respondent company was plainly providing for a natural and legitimate branch or extension of its business and this acquisition falls directly within the saving clause just mentioned. For this reason also I dissent to the issuance of the order in this case.

¹ See 9 F. T. C. 441.

² See 13 F. T. C. 249.

³ 280 U. S. 291.