

Syllabus

IN THE MATTER OF
ARTHUR GUERLIN, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2015. Complaint, Mar. 3, 1932—Decision, Oct. 10, 1932

Where a corporation dealing in perfumes, talcum powders, face powders, other cosmetics, and toilet articles, made in the United States from the cheaper grade of domestic essential oils and other ingredients, in Japanese pearls purchased by it from domestic sources, and in other domestic jewelry, etc., and in sale of said various articles to retailers and peddlers, featured the words "Arthur Guerlin", its corporate name, and "Paris, New York" upon the containers of its aforesaid articles;

Notwithstanding fact (1) it had no connection with Guerlain, Inc., Paris manufacturer and importer of perfumes, toilet articles, jewelry, etc., nor with Guerlain Perfumery Corporation of Delaware, United States distributor of said concern, selling, under name "Guerlain", said concern's products, long known in United States under such name as products of superior quality made by it, and (2) said corporation's products, excepting aforesaid pearls, were both of domestic origin and ingredients, and not French toilet articles and jewelry, long highly esteemed among the trade and purchasing public, and considered by many as superior to the domestic products, in preference to which many of the public bought the French articles;

With capacity and tendency to mislead vendees and many of the purchasing public as to source or origin of products in question and induce their purchases in such mistaken belief, and with result of placing in hands of dealer and peddler vendees means of committing a fraud upon a substantial part of the purchasing public by enabling them to represent and sell said perfumes, etc., as made in or imported from Paris and/or as well-known products of French concern above referred to, and with tendency to divert business from and otherwise injure and prejudice competitors dealing in imported perfumes, etc., made in Paris, competitors dealing in purely domestic articles, competitors dealing in perfumes made of essential ingredients manufactured in Paris and imported therefrom, and variously selling their perfumes, jewelry, etc., without misrepresenting same, and competitors who do not through corporate name or label mislead or deceive vendees or purchasing public as to their products being those of another, and thereby substantially injure a competition of substance:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

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 Delaware corporation engaged in the sale of perfumes, talcum powders, other cosmetics and toilet articles, and pearls, jewelry, and other articles to retail dealers and peddlers in various States, and with principal office and place of business in New York City, with simulating corporate name of competitor, and with misbranding or mislabeling as to source or origin of product, 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, prominently brands and labels the containers of its perfumes, cosmetics, and toilet articles (made of the cheaper grades of essential oils and other ingredients, and inferior in quality to those made of the better grades of such oils and ingredients), and jewelry and other articles dealt in by it, as aforesaid, with the words "Arthur Guerlin, Paris, New York", notwithstanding fact that (a) pearls in question do not come from Paris, but are the artificial product, made in Japan and purchased by him from dealers in the United States, and the perfumes, other cosmetics and other toilet articles, made in the United States from ingredients there purchased, are like the other products dealt in by him as aforesaid, by him bought in the United States, and (b) said individual has no connection with the well-known French house of Guerlain, Inc., or its American subsidiary, Guerlain Perfumery Corporation of Delaware, perfumes, toilet articles and other products of which house have long been favorably known and identified and extensively advertised throughout the United States under the name Guerlain as of superior quality.

Said labeling and designation of its products by respondent, as alleged, and use of the words, "Arthur Guerlin", have capacity and tendency to mislead and deceive vendees and many of the purchasing public into believing said perfumes and other articles (a) to have been made in and/or imported from France, i.e., to be genuine French perfumes, talcum powders, etc., long esteemed and highly regarded among the trade and purchasing public in the United States, and bought by many in preference to the domestic products, or (b) to be the imported products of the well-known French house above referred to.

Said labeling and designation of its perfumes, powders, etc., and use of its said corporate name, as aforesaid, also have the effect, as alleged, of placing in the hands of its dealer and peddler vendees an instrument and means enabling them to commit a fraud upon a

substantial portion of the purchasing public through representing, offering, and selling said perfumes, etc., as made in or imported from Paris, or as the products of the aforesaid house, as the case may be, and said acts and practices, as charged, tend to divert business from, and otherwise injure dealer competitors, including those who (1) deal in imported perfumes, etc., made in Paris, and rightfully and truthfully so represented by them, (2) deal in domestic perfumes, etc., without any such misrepresentations as to their origin, (3) deal in perfumes, the essential ingredients of which are made in Paris and imported by them, and who truthfully represent their perfumes, etc., as thus made, (4) deal in pearls and jewelry imported from France, and rightfully and truthfully represented as such, (5) deal in domestic pearls and jewelry in no wise represented as made in, or imported from Paris, or, who (6) do not by their labels or corporate name, mislead or deceive their vendees, or the purchasing public into believing their articles to be those of another manufacturer or dealer; so that "substantial competition is injured to a substantial extent"; all to the prejudice of the public and 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 on March 3, 1932, issued its complaint against Arthur Guerlin, Inc., hereinafter referred to as respondent and on June 28, 1932, caused the said complaint to be served upon respondent as required by law, in which complaint it was charged that respondent was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint respondent was notified and required, within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer, said provision being set forth in *haec verba* in said notice and providing in part as follows (Rule III, sub. div. 3) :

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

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Respondent has not at any time caused its appearance to be entered in this proceeding nor has it during the said thirty-day period specified in said notice, or at any time, made or filed answer to said complaint. It has at no time requested that the time within which it might file answer be extended, nor has the Commission granted any such extension of time.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Arthur Guerlin, Inc., is a corporation organized in March, 1930, 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, State of New York. It is and ever since its organization has been engaged in the business of selling perfumes, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles, to retail dealers and to peddlers located in the State of New York and in various other States of the United States. Respondent causes and has caused said perfumery, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles, when sold to be transported from its place of business in the City of New York to its said vendees at their respective places of business. In the course and conduct of its said business respondent is in competition with other corporations and with partnerships and individuals engaged in the sale of perfumes, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles, in commerce between and among the various States of the United States.

PAR. 2. All of the articles in which respondent deals, with the exception of its pearls, are made in the United States of America and are purchased by respondent in the United States of America. The pearls in which it deals are artificial pearls made in Japan and purchased by the respondent in the United States of America from dealers in such pearls. The perfumes, talcum powders, face powders, other cosmetics and toilet articles sold by respondent are made from the cheaper grades of essential oils and other ingredients and are of a quality inferior to perfumes, talcum powders, face powders, other cosmetics and toilet articles made of better grades of essential oils and other ingredients.

PAR. 3. The perfumes, talcum powders, face powders, other cosmetics and toilet articles, and pearls, jewelry and other articles dealt in by respondent, as set out in paragraph 1 hereof, are sold in containers on which appear in prominent lettering the words "Arthur Guerlin, Paris, New York". Respondent delivers said perfumes, talcum powders, face powders, other cosmetics and toilet articles, and pearls, jewelry and other articles so labelled and designated and packed as aforesaid, to its aforesaid vendees and said perfumes, talcum powders, face powders, other cosmetics and toilet articles still so labelled and designated and packed are by said vendees displayed, offered for sale, and sold to the purchasing public.

PAR. 4. Perfumes, talcum powders, face powders, other cosmetics and toilet articles, manufactured in France have for many years enjoyed widespread popularity, goodwill, and demand among the trade and purchasing public throughout the United States, many of whom believe and consider that perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in France and superior in quality and other desirous characteristics to perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in the United States and many of the purchasing public throughout the United States purchase perfumes, talcum powders, face powders, other cosmetics and toilet articles, manufactured in France and imported into the United States in preference to purchasing perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in the United States. Jewelry manufactured in France and pearls imported into the United States from France have for many years enjoyed widespread popularity, goodwill and demand among the trade and purchasing public throughout the United States, many of whom believe and consider that jewelry manufactured in France and pearls imported from France into the United States are superior to jewelry manufactured in the United States and to pearls imported into the United States from countries other than France and many of the purchasing public throughout the United States purchase jewelry manufactured in France and imported into the United States and pearls imported from France into the United States in preference to purchasing jewelry manufactured in the United States and pearls imported from places other than France.

PAR. 5. Guerlain, Inc., is a name of a corporation engaged in France in the manufacture of perfumes, talcum powders, face powders, other cosmetics and toilet articles, jewelry and other articles and in the importing of such products to and into the United States. Guerlain Perfumery Corporation of Delaware is a corporation

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engaged in the United States in the business of selling throughout the United States the products of the aforesaid Guerlain, Inc. The products of said Guerlain, Inc., are well known and are and have been extensively advertised throughout the United States under the name of "Guerlain." The name "Guerlain" as applied to perfumes, talcum powders, face powders, other cosmetics and toilet articles, now and for many years has signified to the purchasing public and to the trade that the products sold under such name or under a name of which "Guerlain" is a part are the products of Guerlain, Inc., and of superior quality. Respondent has no connection with said Guerlain, Inc., nor said Guerlain Perfumery Corporation of Delaware. Its products are inferior to the products of Guerlain, Inc.

PAR. 6. Respondent's aforesaid labelling and designating its perfumes, talcum powders, face powders, other cosmetics and toilet articles as herein set out has the capacity and tendency to mislead and deceive its vendees and many of the purchasing public into the belief that its said perfumes, talcum powders, face powders, other cosmetics and toilet articles are manufactured in Paris, France, and imported into the United States and to purchase said perfumes, talcum powders, face powders, other cosmetics and toilet articles in that belief, when in truth and in fact respondent's said perfumes, talcum powders, face powders, other cosmetics and toilet articles are made in the United States of America from ingredients purchased in the United States of America. Respondent's aforesaid labelling and use of the words "Arthur Guerlain," as set out herein has the capacity and tendency to mislead and deceive its vendees and many of the purchasing public into the belief that its perfumes, talcum powders, face powders, other cosmetics and toilet articles and jewelry and other articles are the products of aforesaid Guerlain, Inc., and imported into the United States. Respondent's said labelling has the capacity and tendency to mislead and deceive its vendees and many of the purchasing public into the belief that its said pearls and other jewelry are the products of said Guerlain, Inc., and are imported from France.

PAR. 7. Further, respondent's said labelling and designating of its perfumes, talcum powders, face powders, other cosmetics and toilet articles as set out herein, places in the hands of aforesaid dealer and peddler vendees the instrument and means whereby said peddlers and dealers may commit fraud upon a substantial portion of the purchasing public by enabling said dealers and peddlers to represent, offer for sale and sell said perfumes, talcum powders, face powders, other cosmetics and toilet articles as manufactured in Paris, France;

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further, respondent's said corporate name and labelling as set out herein place in the hands of its aforesaid dealer and peddler vendees the instrument and means whereby said dealers and peddlers may commit fraud upon a substantial portion of the purchasing public by enabling said dealers and peddlers to represent, offer for sale, and sell respondent's said perfumes, talcum powders, face powders, other cosmetics and toilet articles, jewelry and other articles as the products of Guerlain, Inc. Further, respondent's said labelling as set out herein places in the hands of its aforesaid dealer and peddler vendees the instrument and means whereby said dealers and peddlers may commit fraud upon a substantial portion of the purchasing public by enabling said dealers and peddlers to represent, offer for sale and sell respondent's pearls and jewelry as imported from Paris, France.

PAR. 8. There are among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in Paris, France, and imported into the United States and who rightfully and truthfully represent said perfumes, talcum powders, face powders, other cosmetics and toilet articles to be such. There are others of said competitors who deal in and sell perfumes, talcum powders, other cosmetics and toilet articles manufactured in the United States from essential ingredients purchased in the United States and who in no manner represent their said perfumes to be manufactured in Paris, France. There are others of said competitors who deal in and sell perfumes, the essential ingredients of which are manufactured in Paris, France, and imported by such competitors into the United States and to rightfully and truthfully represent such perfumes, talcum powders, face powders, other cosmetics and toilet articles to be such. There are also among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell pearls and jewelry imported into the United States from France and who rightfully and truthfully represent said pearls and jewelry to be such. There are others of said competitors, who deal in and sell jewelry manufactured in the United States and pearls not imported from France and who in no manner represent their said jewelry to be manufactured in Paris, France, nor their pearls to be imported into the United States from Paris, France. There are also among such competitors manufacturers and dealers who do not by their labels or by their corporate name mislead or deceive their vendees or the purchasing public into believing that the articles in which they deal are the products of another manufacturer or dealer. Respondent's acts and practices, all as in this complaint hereinbefore

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set out, tend to divert business from and otherwise injure and prejudice said competitors; thereby substantial competition is injured to a substantial extent.

CONCLUSION

The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record and the Commission having made its report in which it stated its findings as to the facts and its conclusion that respondent, Arthur Guerlin, Inc., has 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",

It is now hereby ordered, That the respondent, Arthur Guerlin, Inc., its representatives, agents, servants, employees, and successors forthwith cease and desist from:

(a) Using directly or indirectly the word "Paris" or any other word, signifying French origin, on labels, tags or containers of or in advertising of perfumes, talcum powders, face powders, other cosmetics, toilet articles, pearls, jewelry, or any of the articles offered for sale, shipped or sold in interstate commerce, or in connection with the offering for sale thereof in interstate commerce, unless such perfumes, talcum powders, face powders, other cosmetics, toilet articles, and other articles be manufactured or compounded in Paris, France, or in France, and unless such jewelry be manufactured in France and unless such pearls be imported from Paris, France, or from France; and from in any other way labelling and designating its perfumes, talcum powders, face powders, other cosmetics, toilet articles, pearls, jewelry or other articles, sold, advertised, offered for sale or shipped by it in interstate commerce as being manufactured in, compounded in or imported from Paris, France, or from France, unless such perfumes, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles be manufactured in or compounded in Paris, France, or in France, or be imported from Paris, France, or from France;

(b) Using, in interstate commerce, as a part of its corporate name, or on the labels or containers of products advertised, offered for sale or shipped by it, in interstate commerce, or in any other way in interstate commerce, the word "Guerlin" or any other word similar to Guerlin, unless it plainly appears in immediate connection therewith that respondent Arthur Guerlin, Inc., is not connected in any way with the original Guerlain, Guerlain Perfumery Corporation of Delaware, nor with Guerlain, Inc.

It is now hereby further ordered, That the said respondent, Arthur Guerlin, Inc., shall within 30 days after the service upon it of a copy 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 the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
LOUIS FARBER, TRADING AS FARBER BROS.

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

Docket 2024. Complaint, Apr. 1, 1932—Decision, Oct. 10, 1932

Where an individual engaged in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware, and other hollow ware and clocks and other novelty jewelry, and in the sale and distribution thereof to wholesale and retail dealers, adopted and used the trade name "Silvercraft" for his said products and featured the same in his advertisements and in catalogs, circulars, etc., and stamped and branded dials and backs of clocks and other products which neither contained silver nor were silver plated, but resembled silver in appearance, "Silvercraft"; with capacity and tendency to mislead and deceive purchasing public into believing said articles to contain some silver or to be silver plated, and induce the purchase thereof in reliance on such erroneous belief and divert trade from and otherwise injure competitors:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware, and other hollow ware and clocks and novelty jewelry, and in the sale of said products to wholesale and retail dealers, and with factory and principal place of business in New York City, with using misleading trade name, advertising falsely or misleadingly, and misbranding or mislabeling, 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, employs and features as a trade name for his products, the word "Silvercraft", displaying said word prominently in advertising, advertising matter, catalogs, circulars, folders, letterheads, and business cards (many of which are used by retailers as an aid in selling the products to the consuming public), and causes said products to be stamped and branded with the afore-said word, notwithstanding fact that many of the products so