

Syllabus

IN THE MATTER OF
THAYER PHARMACAL COMPANY

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

Docket 1980. Complaint, Oct. 19, 1931—Decision, Feb. 6, 1934

Where a corporation engaged in the manufacture and sale of perfumes, creams, face powders and other toiletries,

- (a) Represented that certain preparations dealt in by it were of French origin, and made in and imported from France and the products of French houses and famous French cosmeticians, through such statements in their advertisements as "Mons. Henri's Birthday Offer For 'Les Madames et Mademoiselles Americaines'", "*Two Bottles* of imported French perfumes," "French Perfume and Face Powder Maison Andre, French Perfumer Introduces His Newest *Narcissus*", "And now from France, comes the most startling beauty discovery of the century by the famous Felix Laroche, world-known Parisian Cosmetician"; the facts being that the aforesaid preparation and others similarly referred to were neither imported nor of French origin, but were domestic products compounded, prepared and packaged at its place of business in the United States, and the supposed French perfumers and establishments referred to were entirely fictitious;
- (b) Represented its products as sold at reduced prices for the purpose of introducing the same through such statements as, "A Very Rare Bargain By Mail Only. 10 Everyday Beauty Needs 99¢. \$7.75 Total Value. Your One Chance to Get All This for 99¢." "Bring this coupon and only 98¢—which merely helps to pay our local advertising campaign, special sales-ladies, expenses, etc. and we will give you Free, without further cost, *Two Bottles* of imported French perfumes * * * each regular \$2 full ounce bottle, and also a \$1 box of Youthful Glow—the world's most exquisite face powder," "Manufacturers' Introductory Sale * * * Formerly Two to Three Times This Price. Both for 98¢," \$4.50 value only 98¢. Cleansing Cream—Regularly 75¢. Face Powder—Regularly \$1.00. Tissue and Astr. Cream—Regularly 75¢, *Narcissus* Perfume—Regularly \$2.00"; the facts being that the aforesaid purported reduced and bargain prices constituted its regular and usual prices for its products sold by it in combination lots, as aforesaid;

With capacity and tendency to confuse, mislead and deceive the members of the public into believing that the said preparations had been imported from France and were products of French perfumers or cosmeticians, the persons named as originators thereof were real persons, and the prices named were special prices and lower than those at which said preparations were ordinarily sold by it, and to induce members of the public to buy and use such products because of the erroneous beliefs thus engendered, and to divert trade to it from competitors engaged in sale in interstate commerce of perfumes, cold creams, face powders and other cosmetics, including those who in no wise misrepresented the origin, make, kind and prices of their competing products, and with effect of diverting business to it from such competitors, to their substantial injury and prejudice:

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

Mr. Everett F. Haycraft for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., 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, an Illinois corporation engaged, for more than one year last past, in the manufacture and sale of perfumes, powders, lotions, and other toiletries to purchasers in the various States, and with principal place of business in Chicago, with advertising falsely or misleadingly as to source or origin, price, and qualities 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, engaged in the manufacture, in this country, of its aforesaid products, and in the sale thereof in competition with those engaged in importation and sale of genuine French perfumes, powders, etc., falsely represents in periodicals of wide interstate circulation, and in advertising matter issued and published to the trade and public that its said domestic products are of French origin, made in and imported from France, and a creation of famous French cosmeticians known as Mons. Henri, Mons. Carl, Maison Andre, and others, and had been and were being sold at certain prices, which had been reduced to introduce the same, facts being said products, as aforesaid, were made at its place of business in this country, and had never been sold at the prices stated, and the persons referred to as the creators or sponsors of said preparation were fictitious.¹

Respondent further, as charged, "has caused its said products to be widely advertised in periodicals having interstate circulation by its customers, local druggists", in which, in addition to the aforesaid false and misleading representations, it has represented that "its 'Cream of Creams' was developed through five years of research by the famous Felix Laroche of Paris and when it is used no other

¹ As alleged in the complaint "For a number of years last past, and at all times herein mentioned and referred to, there has existed and now exists a keen demand in the trade and purchasing public of the United States for perfumes, powders, lotions, creams, and other toiletries manufactured in France and imported into the United States, because of the high quality of said products and of the fame of French cosmeticians; said products being usually sold in the United States at extremely high prices."

beauty aid is needed ", the facts being that said " Cream of Creams " is an ordinary cream and will not meet all beauty requirements.

Use by respondent, as alleged, of such false and misleading statements and representations " has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent's said products are manufactured by famous French cosmeticians, imported into this country and sold at relatively high prices to the trade and purchasing public, and are now being offered to the public at special reductions to introduce them, and that in the case of ' Cream of Creams ' no other beauty aid is needed, and to induce the said purchasing public to purchase respondent's said products, relying upon that belief, in preference to perfumes, powders, creams, lotions and other toiletries being offered for sale by said respondent's competitors ", all to the injury 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 the 19th day of October, 1931, issued its complaint against the respondent herein, the Thayer Pharmacal Co., charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed. A brief was filed on behalf of the Commission. No brief was filed by respondent although opportunity for filing the same was duly given and the time for filing same expired June 3, 1933.

Thereupon this proceeding came on for final hearing upon the record and the brief of counsel for the Commission, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Thayer Pharmacal Co., is a corporation organized, existing, and doing business under and by virtue

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of the laws of the State of Illinois, with its principal place of business located in the city of Chicago in said State. Said respondent is now and for more than five years last past has been engaged in the manufacture of perfumes, cold creams, face powders, and other toiletries and in the sale and distribution thereof in commerce between and among the various States of the United States, causing said products when sold to be shipped from its said place of business in the State of Illinois to purchasers thereof located in States of the United States other than the State of Illinois and also in the District of Columbia. In the course and conduct of its said business the said respondent is and has been at all times herein mentioned in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of perfumes, cold creams, face powders, and other toiletries.

PAR. 2. Respondent in the course and conduct of its said business as described in paragraph 1 hereof caused advertisements to be inserted in newspapers circulated to the purchasing public in various States of the United States in which it was represented or implied that its said products were of French origin manufactured in and imported from France, that certain of its perfume and face powder were the product of Maison Andrae, or Maison Andre, represented as a French perfumer; that other of its products were the creation of Mons. Henri, Felix Le Roche, and others, represented as being famous French cosmeticians; and that its said products had been or were being sold at certain prices and that such prices had been reduced for the purpose of introducing said products. Examples of such representations as shown in excerpts from such advertisements used by respondent are the following:

Mons. Henri's Birthday Offer
For "Les Madames et Mademoiselles Americaines"
A Very Rare Bargain By Mail Only
10 Everyday Beauty Needs 99¢
\$7.75 Total Value
Your One Chance to Get
All This for 99¢

* * * * *

Bring this coupon and only 98¢—which merely helps to pay our local advertising campaign, special salesladies, express, etc.—and we will give you Free, without further cost, Two Bottles of imported French perfumes—one in Narcissus odor

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and one in Jasmine. Each regular \$2 full ounce bottles, and also a \$1 box of Youthful Glow—the world's most exquisite face powder * * *

“ Friday—Manufacturers' Introductory Sale

French Perfume

and Face Powder

Maison Andre, French Perfumer,

Introduces His Newest NARCISSUS

Formerly Two to Three Times

This Price Both for 98¢

* * * * *

And now from France, comes the most startling beauty discovery of the century. It was found by the famous Felix Laroche, world-known Parisian Cosmetician * * * It is called Cream of Creams * * * Thayer's Cream of Creams has been introduced to thousands of American women at \$1.50 a jar. Now it is available to you in a sensational three day sale, at \$1.00.

And as an additional offer, to make you acquainted now with the World's greatest aid to quick beauty, we will give you Free, during this sale, a full size box of genuine Jeromée Poudre Antique, regularly priced at \$1.00 * * * Also you will receive a full ounce bottle of Jeromée Parfum Narcissus. On sale regularly at \$2.00. All three during this introductory sale for \$1.00. Simply bring or send the coupon below with \$1.00 * * * Maison Andrae's Genuine French Narcissus Perfume and Face Powder—Buy a Regular \$3.00 Bottle of Perfume and \$2.00 Box Face Powder—Get Pearls Free! All Three for only 98¢ * * * \$4.50 value only 98¢. Cleansing Cream—Regularly 75¢. Face Powder—Regularly \$1.00. Tissue and Astr. Cream—Regularly 75¢. Narcissus Perfume—Regularly \$2.00 * * *

PAR. 3. In truth and in fact the products sold by respondent have not been and are not now of French origin or are they manufactured in and imported from France but all are and have been compounded, prepared and packaged at respondent's plant in Chicago, Ill. There are no French perfumers or cosmeticians by the name of Mons. Henri, Felix La Roche or of the other names used by respondent and there is no French perfume or cosmetic establishment by the name of Maison Andrae or Maison Andre. All of such names used by respondent are fictitious. The usual prices for which respondent's products are sold are the special or introductory prices set by respondent in its advertising for combination sets or “deals” wherein two or more of said products are sold together. Comparatively few sales of any of respondent's products are made for the amounts fixed and represented as the regular retail prices.

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PAR. 4. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's preparations are imported from France, that they are the product of famous French perfumers or cosmeticians; that the persons named by respondent as being the originators of its products or formulas are real persons; and that the prices at which respondent's products are offered for sale are special prices lower than the regular prices at which they are sold, when such are not the facts. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use respondent's products because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of perfumes, cold creams, face powders and other cosmetics.

PAR. 5. There are among the competitors of respondent in the sale of its said products those who in no wise misrepresent the origin, make, kind and prices of their competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are in violation 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 duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto, and brief filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent 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",

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Order

It is ordered, That respondent, Thayer Pharmacal Co., its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of perfumes, cold cream, face powder, or other cosmetics, cease and desist from representing by express statements or by implication that any of the same are imported from France or that the same or any of them were originated by or are the product of a famous perfumer or cosmetician, or that the same are offered for sale at reduced prices, when such are not the facts. Respondent is further ordered to cease and desist from using the names of fictitious persons as having originated or produced its products or any of them.

It is further ordered, That respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

A. B. CASPER COMPANY, INC.

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

Docket 2153. Complaint, Jan. 16, 1934—Order, Feb. 10, 1934

Consent order requiring respondent, its agents, etc., in connection with the offer or sale of potatoes in commerce among the several States and the District of Columbia, to cease and desist from representing by brands on containers, advertising, or otherwise that such potatoes were grown in and came from the Red River Valley in Minnesota or North Dakota, or from any recognized or described potato-growing section of said States, or elsewhere, when such is not the fact.

Mr. Marshall Morgan for the Commission.

COMPLAINT

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, having reason to believe that A. B. Casper Co., Inc., has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business located at Gorham Building, Minneapolis, Minn., and since 1917 has been engaged in the business of buying potatoes from various points in the State of Minnesota and selling and distributing the same to jobbers, wholesalers, brokers, and commission merchants throughout the United States. In addition to its main offices in the Gorham Building, as aforesaid, the company maintains and operates storage warehouses at the following points in Minnesota, also, Alvarado and Waubun in the Red River Valley in the northwestern part of the State; at Milaca, Bock, Braham, Stanchfield, and Zimmerman in the Princeton-Cambridge district lying east of the Mississippi River and to the north and west of Minneapolis; and at Finlayson and Groningen in the Duluth district, northeast of Minneapolis, on or near Lake Superior. Said respondent causes said potatoes when sold by it to be transported from its principal place of