

IN THE MATTER OF
JEAN JORDEAU, INCORPORATED, AND BERTHA
E. LEFRIE

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

Docket 2012. Complaint, July 13, 1932¹—Decision, July 23, 1934

Where a corporation, and the vice president thereof, engaged in the manufacture and/or sale of two preparations for the removal of hair, including (1) a waxlike preparation which it designated as "Zip Epilator" and which was composed partly of rosin and partly of wax, together with a little coloring matter and a small amount of calcium carbonate, and (2) a creamlike product, which it named "Zip Depilatory Cream", and which contained, among other things, a large amount of barium sulphate and a small amount of calcium hydro-sulphide,

- (a) Represented in advertisements in newspapers and magazines of large circulation, among the general public, that through use of "Zip Epilator" superfluous or unwanted hair growth would be permanently removed and the cause of such growth, and that hair would not regrow where applied, and preparation was pleasant to use, acted immediately, and brought lasting results, facts being that use thereof would not destroy cause of hair growth, nor bring lasting results in prevention of growth, and use caused pain to some; and
- (b) Represented in newspapers and magazines of large circulation among the general public that through use of said cream, superfluous or unwanted hair would be removed and would not regrow, and that use thereof was safe and harmless and left no irritation, facts being said cream would not remove hair so there would be no regrowth and was not safe or harmless in all cases, but resulted in irritation of the skin, and in dermatitis in some;

With effect of deceiving and misleading public, and purchasers of depilatories and similar waxlike products, designed for removal of unwanted hair, into believing said statements and representations to be true, and into purchasing their said products in reliance upon such erroneous beliefs, and of diverting trade in articles and preparations for removal of hair, to said corporation and individual, from competitors, many of whom sell depilatories and similar products without representing that through the use thereof hair will not regrow where applied, or that application thereof destroys cause of growth of hair or brings lasting results through preventing its growth where applied, or that use of such a waxlike product is pleasant, or the depilatory is safe or harmless or leaves no irritation and with capacity and tendency so to do:

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

¹ Amended.

Mr. Edward E. Reardon for the Commission.

Hulbert & Heermance and *Mr. Francis X. Gallagher*, of New York City, for respondents.

SYNOPSIS OF COMPLAINT¹

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Jean Jordeau, Inc., a New Jersey corporation, engaged in the manufacture of certain depilatory products, including a wax-like preparation, and a cream, and in the sale and distribution thereof under the trade mark or designation "Zip" to the consuming public, and to users and dealers, such as beauty parlors, drug stores, department stores and other business establishments for application or resale, and with places of business in South Orange, N. J., and New York City, and respondent Lefrie, its vice president, jointly engaged with it under the name "Madame Berthé", in the sale of the aforesaid preparations, with advertising falsely or misleadingly as to qualities, results, and endorsements thereof, and misrepresenting the same in said respects, in violation of the provisions of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, since 1925 have falsely and misleadingly represented in their advertisements of said products in periodicals, circulars and placards and through salesmen, that the waxlike preparation which is designed for removing unwanted hair through application to the body, after heating, and subsequent mechanical removal of the hair, following its hardening, will quickly and permanently destroy the hair, remove the hair roots, and thereby permanently prevent regrowth, has been used by hundreds of thousands of women for permanently destroying hair growth on the face and other parts of the body, has been tested for twenty years, met every requirement, and never failed to remove superfluous hair permanently, is pleasant to use, safe and absolutely harmless, causes no pain, inflammation, or deleterious effects or skin irritation and removes every vestige of hair and fear of later stubble or stimulated growth; facts being the roots of the hair are not destroyed by the removal of the hair through use of said waxlike product or by any effect thereof, regrowth is not prevented, but continues after successive applications and removals, preparation has not been used by hundreds of thousands of women as claimed, or met every requirement, but, on the contrary, has failed

¹ Amended.

permanently to remove unwanted hair or prevent regrowth, and is neither pleasant to use, safe or harmless, but is painful and apt to produce inflammation and other deleterious effects.

Respondents have further falsely and misleadingly represented, as aforesaid, that their said creamlike depilatory preparation, intended for removal of hair by chemical action thereof upon the hair protruding from the surface of the skin, removes every vestige of hair and eliminates all fear of later stubble or stimulated growth and will and does permanently destroy superfluous and unwanted hair and permanently prevents regrowth thereof, facts being it will not and cannot remove every vestige of hair, but in the use thereof that portion which lies within or beneath the skin is not removed or affected by its application, but remains and continues to grow and forms outgrowths of hair, and the cream does not destroy or prevent its regrowth, or eliminate later stubble or stimulated growth of hair.

Said statements, representations, and assertions, as alleged, "are false, misleading, and deceptive, and they have and have had the capacity and tendency to, and did, mislead and deceive members of the purchasing and consuming public into the erroneous belief that said representations, statements, and assertions are and were true in fact, and thereby cause and have caused purchase of said products under such erroneous beliefs", and use of such statements, etc., and numerous other false, misleading, and deceptive statements, etc., made by respondents during the aforesaid period concerning their said products and the efficacy and effect thereof "constitute and have constituted practices or methods of competition which tend to and do (a) prejudice and injure the public; (b) unfairly divert trade from and otherwise prejudice and injure respondents' aforesaid competitors in their business; and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of marketing depilatory products and other products and appliances adapted to and used for the removal of superfluous hair and other hair from the human body", and "said false, misleading, and deceptive acts, practices, and methods of respondents, under the circumstances and conditions hereinabove alleged, are unlawful and constitute unfair methods of competition in commerce."

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 (38 Stat. 717), the Federal Trade Commission issued

and served an amended complaint upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer herein to the amended complaint, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs filed on behalf of the Commission and the respondents, and upon oral argument by counsel for the Commission and for the respondents, and the Commission having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS ²

PARAGRAPH 1. The respondent Jean Jordeau, Inc., is a corporation organized on or about December 31, 1919, under the laws of New Jersey. It has a place of business at South Orange, N. J., where, under the management of its president, its products are manufactured and another place of business, or a salon, at No. 562 Fifth Avenue, New York City, conducted under the name "Madame Berthé."

PAR. 2. During all the times since the year 1925 the respondents have sold, among other products of the respondent corporation, a waxlike product under the name "Zip Epilator" and since on or about March 20, 1931, they have also sold a creamlike product under the name "Zip Depilatory Cream", both products being for the removal of superfluous or other hair from the human body, to purchasers of the products residing in various States of the United States, other than New York and New Jersey, individuals, firms, and corporations, wholesale and retail dealers therein, who bought the same for resale to the public, and members of the public who bought the products for use or consumption, and the respondents during said times have caused the products when so sold by them, respectively, to be transported from New York or New Jersey or from the State of origin of the shipment thereof to, into, and through States other than New York or New Jersey or the State of origin of the shipment to the purchasers.

PAR. 3. During all the times since the year 1925 other individuals, firms, and corporations, manufacturers of, and wholesale and re-

² As amended, as to paragraphs 10 and 19, by order of September 6, 1934.

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tail dealers in depilatories and other preparations or articles employed in the removal of superfluous or other hair from the human body, have been engaged in the business of the sale of such products to members of the public located throughout the various States of the United States and they have caused the depilatories and other articles or preparations when so sold by them, respectively, to be transported to, into and through States other than the State of the seller, or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondents during all the times since the year 1925 were and now are in substantial competition in interstate commerce in the sale of the product known as "Zip Epilator" and since March 20, 1931, in the sale of the product Zip Depilatory Cream with other individuals, firms, and corporations referred to in paragraph 3 hereof.

PAR. 5. The respondent Bertha E. Lefrie is the vice president of the respondent Jean Jordeau, Inc., and is and has been in charge of the place of business or salon of the respondent, Jean Jordeau, Inc., in New York City. She is known as Madame Berthé to patrons of the salon and to purchasers of the products of respondent corporation.

PAR. 6. The respondents during all the times since the year 1925 have caused advertisements of the product Zip Epilator, and since March 1931 of the product, Zip Depilatory Cream, which were subscribed, "Madame Berthé, specialist, 562 Fifth Avenue, New York City", to be made to the public throughout the United States in publications read by the general public. The name of the respondent Jean Jordeau, Inc., did not appear in such advertisements.

The respondents since 1925 and 1931, respectively, have caused advertisements of the above products of the respondent corporation to be published to the wholesale and retail trade in trade publications which were subscribed as follows:

Please address all communications to us as follows: Madame Berthé, specialist, New York—Jordeau, South Orange, New Jersey.

PAR. 7. The respondents during all the times above mentioned in connection with the advertising and sale of the said products sent to members of the public who replied to the advertisements referred to in paragraph 6 hereof, order blank forms and business reply envelopes, self-addressed to Madame Berthé at 562 Fifth Avenue, New York City, and correspondence with such members of the public concerning the use of the products by them was carried on by the respondents from the New York City address under the name "Madame Berthé", as the seller of the said products, and not under the name of the respondent Jean Jordeau, Inc.

PAR. 8. The product sold by the respondents called Zip Epilator is composed partly of rosin and partly of wax, such as beeswax, together with a small amount of calcium carbonate and a little coloring matter. The calcium carbonate in the composition of the Zip Epilator may affect the consistency of the waxlike substance but it does not have any effect in the removal of superfluous or other hair from the human body.

PAR. 9. The directions for the use of the Zip Epilator in the removal of superfluous or other hair from the human body are as follows:

Heat slowly a quantity sufficient for a treatment. When partly melted, remove from the heat and stir until it has the consistency of thick syrup. Using the back of the tip of a spoon apply Zip in a strip in the direction in which the hairs point, having the application as thick at the edges as in the center. As soon as Zip begins to set, while still warm—*Do not allow to harden*—with one hand hold the flesh at the point where you will take hold of the application and with the other hand, grasp the Zip at one corner firmly with thumb and forefinger, pull very quickly with a jerk in the direction opposite to which it was applied.

PAR. 10. The product called Zip Depilatory Cream is a preparation containing, among other things, a large amount of barium sulphate and a small amount of calcium hydrosulphide. Calcium hydrosulphide is the active principle that is mixed with other things in respondent's Zip Depilatory Cream for the removal of hair from the human body.

PAR. 11. The respondents since the year 1925 in advertisements in newspapers and magazines having a large circulation amongst the general public throughout the United States have represented to the members of the public, purchasers, and prospective purchasers and users of the product, Zip Epilator, that by its use for the removal of superfluous or other hair from the human body, such hair growths would be permanently removed; that the cause of such hair growths would be destroyed; and that the superfluous or other hair would not regrow on the part of the body to which the Zip Epilator was applied for the removal of the hair.

PAR. 12. The respondents since on or about March 20, 1931, in advertisements in newspapers and magazines having a large circulation amongst the general public of the United States have represented concerning the product, Zip Depilatory Cream, that by its use for the removal of superfluous or other hair from the human body, the superfluous or other hair would be removed and would not regrow on the part of the body to which the Zip Depilatory Cream was applied for the removal of the superfluous or other hair.

PAR. 13. The respondents since the year 1925 in advertisements in newspapers and magazines having a large circulation among the general public throughout the United States have represented that the product, Zip Epilator, is pleasant to use and that it acts immediately and brings lasting results, and since on or about March 20, 1931, in similar advertisements, have represented concerning the use of the product, Zip Depilatory Cream, that it is safe or harmless and leaves no irritation of the skin to which it has been applied.

PAR. 14. The use of the product, Zip Epilator, to remove superfluous or other hair of the human body to remove which it is applied does not destroy the cause of the growth of the hair. It does not bring lasting results in the prevention of the growth of hair to the part of the body to which it has been applied and it does not prevent hair from regrowing on that part of the body.

PAR. 15. The use of the product, Zip Depilatory Cream, does not remove superfluous or other hair of the human body to which it is applied so that there will be no regrowth of hair on that part of the body to which the Zip Depilatory Cream was applied.

PAR. 16. The use of the product, Zip Epilator, for the removal of superfluous or other hair causes pain to some members of the public in its use for the removal of superfluous hair.

The use of the product, Zip Depilatory Cream, is not safe or harmless in all cases of its use for the removal of superfluous or other hair from the human body. In the case of the use of Zip Depilatory Cream irritation to the skin of the user would be caused and the condition of dermatitis would result in some instances to some members of the public.

PAR. 17. The respondents, in connection with the business of the sale of the products of the respondent corporation, including the statements and representations above referred to made in advertisements, represented to the public that the respondent, Bertha E. Lefrie, conducted as her own and on her own account the business done under the name of "Madame Berthé" at the place of business, or salon, of the respondent corporation at 562 Fifth Avenue, New York City.

PAR. 18. The statements and representations caused by the respondents to be made in advertisements, as above set forth, or elsewhere, to the effect that the waxlike Zip Epilator and the product, Zip Depilatory Cream, by their application to the human body would, respectively, remove superfluous or other hair growing at the place of the application so that, after such removal of the hair, hair would not again grow or regrow at the place of the application; that the product, Zip Epilator, destroys the cause of the growth of superfluous or other hair on the human body at the place where application

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of it has been made, or that its application brings lasting results in the prevention of the growth of hair to the part of the human body to which it is applied; that the product, Zip Epilator, is pleasant to use in its application to the human body for the removal of superfluous or other hair; that the product, Zip Depilatory Cream, is safe or harmless in its use and leaves no irritation to the skin to which it is applied for the removal of superfluous or other hair from the human body, are each and all of them false representations of material facts in connection with the sale of the above-named products to members of the public, users or consumers thereof, and they have the capacity and tendency to deceive and mislead the public, and they have deceived and misled the public, purchasers of depilatories and other products, including waxlike products similar to Zip Epilator, designed for use in the removal of superfluous or other hair from the human body, into the belief that the said statements and representations were true, and in reliance upon such erroneous belief, into purchasing the above-mentioned products sold by respondents.

PAR. 19. Among the competitors of the respondents, referred to in paragraph 3 hereof, are many who sell and cause depilatories and other products, including waxlike products similar to Zip Epilator, to be sold for use in the removal of superfluous or other hair from the human body and who, respectively, do not represent that the hair removed by the use of their products will not regrow at the place where application of their product was made to the human body; or that the application of their product destroys the cause of the growth of superfluous or other hair on the human body at the place where the application of it has been made; or that the application of their product brings lasting results in the prevention of the growth of hair to the part of the human body to which it is applied; or that the use of their waxlike products for the extraction of hair from the human body is pleasant in its application for such purpose; or that their depilatory product is safe or harmless in its use and leaves no irritation to the skin to which it is applied for the removal of superfluous or other hair from the human body.

PAR. 20. In consequence of the practices of the respondents above set forth, trade in articles or preparations for the removal of superfluous or other hair from the human body was diverted to the respondents from competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of the respondent, Jean Jordeau, Inc., and Bertha E. Lefrie, under the conditions and circumstances described in the

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foregoing findings were to the prejudice and injury of competitors of the respondents and were to the prejudice and injury of the public and were unfair methods of competition in commerce and constitute a violation of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondents to the amended complaint, testimony and evidence introduced, upon the briefs of the attorneys for the Commission and for the respondent, and upon oral argument on the part of counsel for the Commission and the respondents; and the Commission having made its findings as to the facts and its conclusion that the respondents, Jean Jordeau, Inc., and Bertha E. Lefrie, have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondents, Jean Jordeau, Inc., and Bertha E. Lefrie, their agents and representatives, in connection with the sale or the offering for sale in interstate commerce between and among the several States of the United States and in the District of Columbia, of the products of the respondent, Jean Jordeau, Inc., called Zip Epilator and Zip Depilatory Cream, do—

Cease and desist from representing, directly or indirectly, either verbally or by statements and representations in advertisements in newspapers, magazines, and periodicals, or otherwise; that either the product, Zip Epilator, or the product, Zip Depilatory Cream, or any other product, which the respondents or either of them may sell of substantially the same composition, by its application for the removal of superfluous or other hair from the human body, will cause such hair to be removed, so that, after its removal, hair will not again grow or regrow at the place where either of the said products was applied; that any of said products, by reason of its application for the removal of superfluous or other hair, destroys the cause of the growth of such hair at the place where the application of the product was made to the human body; or that the application of any of said products brings lasting results in the prevention of the growth of superfluous or other hair to the part of the human body to which the application of either of the said products is made; that the product, Zip Epilator, is pleasant to use for the removal of

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such superfluous or other hair; and from representing that the product, Zip Depilatory Cream, is safe or harmless in its use for the removal of superfluous or other hair from the human body and leaves no irritation of the skin to which it is applied.

It is further ordered, That the respondent, Jean Jordeau, Inc., and Bertha E. Lefrie, shall within 30 days after the service of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have, respectively, complied with this order to cease and desist.

Complaint

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IN THE MATTER OF
RAFFY PARFUMS, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2114. Complaint, Sept. 13, 1933—Decision, July 23, 1934

Where perfumes composed in France had had for many years a widespread popularity and there had been and was a substantial demand and preference among large numbers of the public for perfumes composed in and imported from said country, which usually displayed the words "Paris and France" in addition to the name of the French manufacturer on the labels of the bottles and display boxes in which sold; and thereafter a domestic distributor—

Labeled perfumes composed from concentrates produced in the United States from essential oils imported from France and other foreign countries, and not composed in France from concentrates made of essential oils in France, with such words and legends as "Adam—et—Eve—Marcel Raffy—Paris", and beneath, in smaller letters, "New York"; "Jasmin—Extra fin—Raffy—Paris"; "Chypre—Extra fin—Raffy—Paris"; "Encens—Oriental—Raffy—Paris"; and "Futuris—Raffy—Paris", and "Nuit Blue—Paris";

With effect of misleading and deceiving retail dealers and members of the public into believing said perfumes to have been composed in or near Paris and imported into the United States, and into purchasing same in reliance upon such belief in place of products of competitors in fact so composed and imported, and in place of those composed in the United States and so labeled and represented, and result of diverting trade in perfumes to said corporation from competitors, many of whom import and sell throughout the United States in the bottles and display boxes in which received, perfumes composed in or near Paris, and many of whom sell perfumes composed in the United States, and so labeled and represented; and with capacity and tendency so to mislead, deceive and divert:

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

Mr. Edward E. Reardon for the Commission.

Mr. Benjamin Siet, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action is the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in New York City in the manufacture of perfumes, toilet waters, and cosmetics, and in the sale thereof to wholesale and retail dealers throughout the United States from its factory and principal place of business in said city, with misbranding or mislabeling as to source or origin of product, in