

Syllabus

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IN THE MATTER OF

LEADING PERFUMERS & CHEMISTS, INC.

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

Docket 2361. Complaint, Apr. 11, 1935—Order, Nov. 5, 1935

Where a domestic corporation engaged in compounding perfumes and other toilet preparations and in the sale and distribution thereof to retail dealers and jobbers, doing no business of any kind in France and having no connection with any business organization therein—

- (a) Labeled the bottles in which it sold a perfume compounded by it of essential oils and alcohol bought in the United States, with its trade name "Fleur de Matin-Cartel", and displayed the same upon the large shipping cartons in which it customarily delivered its said products in dozen unit quantities, and set forth upon the individual containers thereof a French legend followed by the words "Fleur de Matin by Cartel", together with the notice on one side in small and inconspicuous letters, "1/4 oz. Net, Bottled in the U. S. A.", and statement thereon that "the intention behind the packing of this product is to deliver a fine perfume in a sensible container at the minimum cost"; and
- (b) Set forth on the front of the circulars enclosing said bottles within their said individual containers the words "Parfum de Cartel", and on the center panel thereof, "Les Parfums Fleur De Matin-Cartel", "* * * An empress could have no lovelier perfume than this creation of one of the leading perfumers of Paris. * * * To import this perfume from Paris would make the cost prohibitive. Our chemists have succeeded in making it so perfect that it will please the discriminating person as well as the expert";

With capacity and tendency to mislead and deceive many vendees and the consuming public into the belief that said perfume was an imported product made or compounded in France by a perfumer or leading perfumer of Paris or France, and with effect of causing purchase thereof in such belief by said public, many of whom consider the French product superior to the domestic and purchase it in preference thereto, and of placing in the hands of retailers and jobbers a means of representing, offering and selling to the consuming public said domestic perfume as and for one made or compounded in France, with the high reputation attached thereto, and with tendency to divert to itself business from competitors to their substantial injury and prejudice:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Emanuel L. Turberg and *Newman & Bisco*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Leading Perfumers and Chemists, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city and State of New York. It is engaged in the business of manufacturing and compounding perfumes and other toilet preparations, and the sale and distribution of said products to retail dealers located at points in the various States of the United States. Respondent causes said products, when sold, to be transported from its place of business in the city and State of New York into and through other States of the United States and the District of Columbia to said vendees at their respective points of location, and in so carrying on its business respondent maintains a constant current of trade and commerce in said products between the State of New York and other States of the United States and the District of Columbia. In the course and conduct of its said business respondent is in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of perfumes and other toilet preparations in commerce between and among the various States of the United States and the District of Columbia.

Par. 2. In the course and conduct of its business, respondent, in soliciting the sale of and selling its products in interstate commerce, used and uses the following methods and practices:

(a) Caused and causes the trade name or brand of "Fleur de Matin-Cartel" to appear on the label attached to its perfume, and also on the cartons in which said perfume was and is packed. On the back of said cartons the following appeared and appears:

L'embellage de ce produit est fait de telle sorte qu'on est a meme d'offrir un parfum de premiere qualite, contenu dans un flacon pratique, avec l'avantage d'un prix des plus moderes.

Fleur de Matin by Cartel

The intention behind the packing of this product is to deliver a fine perfume in a sensible container at the minimum cost.

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On the side of said cartons, and in small inconspicuous letters appeared and appears the following:

$\frac{1}{4}$ oz. net

Bottled in U. S. A.

Respondent caused and causes to be wrapped around each bottle of said product, and enclosed in the carton, a circular containing printed matter in both the French and English language. On the front of such circular appeared and appears the words:

Parfume de Cartel

and on the center panel thereof appeared and appears the following:

Les Parfume Fleur de Matin, Cartel

Fine Enough for

an Empress

An empress could have no lovelier perfume than this creation of one of the leading perfumers of Paris. He has succeeded in imprisoning the rare, exotic fragrance of the flowers of the morning, blending them into a variety of single, delicate, alluring odors. To import this perfume from Paris would make the cost prohibitive. Our chemists have succeeded in making it so perfect that it will please the discriminating person as well as the expert.

Said labels, descriptions, and representations made by respondent, as in this paragraph set out, are for the purpose and effect of creating and they do create the impression with the purchasing public that said product is of French origin and manufacture. In truth and in fact the perfume so labeled, described, represented, and referred to was not and is not the creation of a perfumer of Paris, and was not and is not manufactured in Paris or imported from any foreign country, but was and is a domestic product of the United States of America.

(b) The respondent, further, in soliciting the sale of and selling its products as set out in paragraph 2 hereof, caused and causes the container of a talcum powder which it sells and distributes, and has sold and distributed as aforesaid under the trade name or brand of

L'Enchanteur, Poudre de Talc Sweet Pea

to be branded with the words "HENRIET PARIS", followed by the words in small and inconspicuous type, "Made in U. S. A.", which brand is used by respondent for the purpose and effect of creating the impression with the purchasing public that said talcum powder

is of French origin and manufacture, when, in truth and in fact, this talcum, so branded, labeled, described and represented was not and is not manufactured in Paris or imported from any foreign country, but was and is a domestic product of the United States of America. Respondent has delivered and delivers said perfume and talcum powder, so labeled, designated, and packed, as aforesaid, to its aforesaid vendees, and said products, still so labeled, designated, and packed, are by said vendees displayed, offered for sale, and sold to the consuming public.

PAR. 3. Perfumes and talcum powders manufactured in France have for many years enjoyed widespread popularity, good will, and demand among the trade and consuming public throughout the United States, many of whom believe and consider that perfumes and talcum powders manufactured in France are superior in quality and other desirous characteristics to perfumes and powders manufactured in the United States, and many of the consuming public throughout the United States purchase perfumes and talcums manufactured in France and imported into the United States in preference to perfumes and talcums manufactured in the United States.

PAR. 4. Respondent's aforesaid labeling, advertising, and designating of its perfumes and talcums, as set out herein, have the capacity and tendency to and do mislead, confuse, and deceive its vendees and many of the consuming public into the belief that its said perfumes and talcums are manufactured and produced in France and imported into the United States, and they purchase said perfume and talcum in that belief. As a matter of fact respondent's said products are manufactured in the United States.

PAR. 5. Further, respondent's said labeling, advertising, and designating of its said products, as set out herein, places in the hands of the aforesaid dealers the instrument and means whereby said dealers may and they do commit fraud upon a substantial portion of the consuming public by enabling said dealers to represent, pass off, offer for sale, and sell respondent's said products as products manufactured in France.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 herein, many who deal in and sell perfumes and talcums manufactured in France and import same into the United States, and who rightfully and lawfully represent said perfumes and talcums to be such. There are others of said competitors who deal in and sell perfumes manufactured in the United States, and who in no manner represent their said perfumes and talcums to be manufactured in Paris. Respondent's acts and practices, as in this

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complaint before set out, all tend to and do unfairly divert business from and otherwise injure and prejudice said competitors, and do substantially injure such competitors so engaged in the sale and distribution of like products in interstate commerce.

PAR. 7. 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.

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 April 11, 1935, issued and served its complaint in this proceeding upon respondent, Leading Perfumers & Chemists, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint and in opposition thereto, were introduced before William C. Reeves, an examiner of said Commission theretofore duly designated by the Commission, by Astor Hogg, attorney for the Commission, and by Nathan Waxman, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto; and the Commission having duly considered the same, 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 its conclusion drawn therefrom;

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York in said State. Since the year 1920 respondent has been engaged in the business of compounding perfume and other toilet preparations and in the sale and distribution of said products

to retail dealers and jobbers located in various States of the United States. Respondent causes said products, when so sold, to be transported from its place of business in the State of New York into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business, respondent is in substantial competition with other corporations and with partnerships and individuals engaged in the sale of perfume and other toilet preparations in commerce between and among the various States of the United States.

PAR. 2. The perfume sold by respondent, as set out in paragraph 1 hereof, and labeled, marked, branded, and designated as set out in paragraph 3 hereof, is manufactured and compounded in the United States of America. The body of this perfume is alcohol, to which is added essential oils. The essential oils and the alcohol are purchased by the respondent in the United States.

PAR. 3. Perfume sold by the respondent in interstate commerce, as set out in paragraph 1 hereof, is put up and sold in quarter-ounce bottles. The bottles containing such perfume are labeled—

Fleur de Matin-Cartel

The phrase "Fleur de Matin-Cartel" is a trade name of respondent. Wrapped around each bottle of said perfume is a circular containing printed matter in both the French and English languages. On the front of such circular appeared and appears the words "Parfum de Cartel" and on the center panel of said circular appeared and appears the following:

Les Parfums Fleur de Matin-Cartel

Fine Enough for an Empress

An empress could have no lovelier perfume than this creation of one of the leading perfumers of Paris. He has succeeded in imprisoning the rare, exotic fragrance of the flowers of the morning, blending them into a variety of single, delicate, alluring odors. To import this perfume from Paris would make the cost prohibitive. Our chemists have succeeded in making it so perfect that it will please the discriminating person as well as the expert.

Respondent packs and places the said bottles of perfume, wrapped with the circular as aforesaid, in individual cartons. The aforesaid trade name also appears and appeared on the individual cartons in which said perfume is packed. On the back of said cartons the following French and English phraseology has appeared and appears:

L'embellage de ce produit est fait de telle sorte qu'on est a meme d'offrir un parfum de premiere qualite, contenu dans un flacon pratique, avec l'avantage d'un prix des plus moderes.

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Fleur de Marin by Cartel

The intention behind the packing of this product is to deliver a fine perfume in a sensible container at a minimum cost.

On the side of said individual cartons containing the bottles of perfume and in small and inconspicuous letters appeared and appears the following:

¼ oz. net, bottled in the U. S. A.

It is the respondent's usual practice to place a dozen bottles of its perfume, encased in the individual cartons as aforesaid, into a large carton for shipping purposes, on the back of which large carton appeared and appears the trade name "Fleur de Marin-Cartel". Respondent delivers said perfume so bottled, wrapped, designated, branded, and packed as aforesaid, to its aforesaid vendees, and said perfume, so bottled, wrapped, designated, branded, and packed in the individual cartons is by said vendees displayed, offered for sale, and sold to the consuming public. The individual cartons are not sealed, but purchasers and prospective purchasers of the individual cartons of perfume do not see the circular wrapped around each bottle unless and until the individual cartons are opened and the circulars are removed from around the bottles encased in the individual cartons.

PAR. 4. Perfumes manufactured in France have for many years enjoyed widespread popularity, good will, and demand among the trade and consuming public throughout the United States, many of whom believe and consider that perfumes manufactured in France are superior in quality to perfumes manufactured in the United States and that such perfumes manufactured in France have other characteristics more desirable than have perfumes manufactured in the United States, and many of the consuming public throughout the United States purchase perfumes manufactured in France and imported into the United States in preference to purchasing perfumes manufactured in the United States.

French perfumes have always had a high reputation. To label a domestic perfume as one of French origin causes such perfume to have added sales value and enables dealers in perfume so labeled to sell same more readily than would otherwise be the case.

Respondent does no business of any kind whatsoever in France and has no connection with any business organization in France.

PAR. 5. Respondent also sells and distributes in interstate commerce a talcum powder put up in a tin container on which appears the words:

L'Enchanteur Poudre Talc-Sweet Pea,
Henrilet Paris

This talcum powder is not manufactured in the United States but on the contrary is imported.

PAR. 6. Respondent's aforesaid labeling, designating, and branding of its perfume, as hereinabove set out, with the French word or words indicating that the said perfume was manufactured in or imported from France without clearly stating in equally conspicuous and legible type that the perfume was manufactured in the United States, has the capacity and tendency to mislead and deceive many of its vendees and the consuming public into the belief that said perfume is manufactured or compounded in France and imported into the United States and causes the purchasing public to purchase said perfume in that belief, when in truth and in fact respondent's perfume is manufactured and compounded in the United States.

Respondent's said labeling, designating, and branding of its perfume as set out herein places in the hands of retailers and jobbers the means whereby they may represent, offer for sale, and sell to the consuming public said perfume as perfume manufactured or compounded in France.

The acts and practices, all as hereinbefore set forth, tend to divert business to respondent from its competitors, to the substantial injury and prejudice of said competitors.

CONCLUSION

The practices of said respondent, Leading Perfumers & Chemists, Inc., under the conditions and circumstances hereinbefore set forth, are all to the injury and prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and 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 heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence submitted, briefs of counsel, and the Commission having made its findings as to the facts and entered its conclusion that respondent has violated Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

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It is now ordered, That respondent, Leading Perfumers & Chemists, Inc., its representatives, agents, servants, and employees, in connection with the sale, offer for sale, or distribution of perfume in interstate commerce, do cease and desist:

(1) From directly or indirectly advertising, branding, labeling, designating, or otherwise representing perfume compounded or manufactured in the United States, with the term, "Fleur de Matin-Cartel", or with any other French word or words indicating or importing that said perfume has been compounded or manufactured in France and imported into the United States.

(2) From directly or indirectly advertising, branding, labeling, designating, or otherwise representing perfume with any word or words or foreign phraseology or illustration which imports or implies that perfume had been manufactured or produced in France and imported into the United States, when such is not the fact.

(3) From representing in any manner, directly or indirectly, that perfume is the creation of one of the leading perfumers of Paris, or that any perfumer or other person of Paris or France has any direct or indirect connection with perfume when such is not the fact.

It is further ordered, That the respondent shall, within 60 days after the date of the service upon it 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 hereinabove set forth.

And it is hereby further ordered, That subparagraph (b) of paragraph 2 of the complaint, wherein it is charged that respondent misbranded certain of its talcum powder so as to represent that same was of French origin and manufacture, be and the same hereby is dismissed.

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IN THE MATTER OF

MORRIS R. SHAPIRO, CHARLES SHAPIRO, MARY SHAPIRO, AND MRS. ROBERT SHAPIRO, TRADING AS THE ROBERT MORE COMPANY

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

Docket 2493. Complaint, July 6, 1935—Order, Nov. 5, 1935

Where a firm engaged in the sale of Christmas seals and merchandise through agents on the "return or remit" plan—

- (a) Misleadingly represented in their advertisements for agents in various newspapers and other periodicals that they would furnish certain premiums for the sale of a given number of articles, and "dozens of other wonderful premiums", and that they were also giving away various other specified articles for the sale of their Christmas seals, the facts being that only a few of such articles could be earned through the sale of the number of packages of seals and tags specified in said advertisement, and remittance of additional money was necessary to secure other so-called "gifts" or premiums, and it did not offer "dozens of other wonderful premiums" as therein represented;
- (b) Included among the premiums offered in the circular matter sent those replying, a "big six-tube radio receiver", without giving advice of fact that such article was not a complete set ready for immediate use, but required a battery which it did not supply, and that tubes, speaker or parts necessary for use were not included, or notice, until receipt of money from agent, that it would also be necessary to pay \$2.00, more or less, for express charges; and
- (c) Set forth in their advertisements directed to securing agents as aforesaid, "We pay postage on goods", facts being such postage was paid on only a comparatively few of the premiums offered to agents, and, in the case of the majority of such articles, prepayment of postage and money to cover cost of packing was demanded in addition;

With effect of causing many of the public to become agents for the sale of said products and to purchase its premiums and rewards in reliance upon the truth of such false, misleading, and deceptive representations, and with capacity and tendency so to do and to prejudice and injure public and competitors, divert trade unfairly from and otherwise prejudice and injure competitors' business, and operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business concerned:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. George Foulkes for the Commission.