

Complaint

IN THE MATTER OF

PRINCE MATCHABELLI PERFUMERY, INC.

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

Docket 2498. Complaint, July 18, 1935—Order, Dec. 10, 1935

Consent order requiring respondent corporation, its agents, etc., in connection with the sale or offer for sale in interstate commerce of perfumes, powders, cosmetics and other merchandise of similar nature, to cease and desist from—

- (a) Using any sign, symbol or legend upon the containers or cartons of said merchandise indicating a particular country as the country of origin thereof, unless, in fact, said merchandise originated in such country;
- (b) Using upon such containers, etc., words "Les Perfumes du Prince Matchabelli Company, Inc. Paris", or any other word or words indicating that the commodity so vended was made in or imported from a foreign country or any country other than the country in which such commodity actually originated; or
- (c) Advertising, in writing or by broadcasts, or in any other manner, in connection with the sale or offer for sale of its merchandise, words "26 Rue Cambon, Paris", or any other word or words indicating that such merchandise was made in or imported from a foreign country or any country other than that wherein it actually originated.

• Before *Mr. John W. Addison*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Tibbetts, Lewis, Lazo & Rand, 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 Prince Matchabelli Perfumery, Inc., a corporation hereinafter referred to as respondent, has been and now 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, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. It is and has been engaged in the manufacture, compounding and sale of perfumes and cosmetics. Its sales were and are made to customers and dealers

Complaint

21 F. T. C.

located in the various States of the United States and in the District of Columbia, and pursuant to such sales shipments were and are made by respondent from its place of business in New York to purchasers and dealers located in the various States of the United States and in the District of Columbia, and there is now and has been, since the year 1927, a constant current of trade and commerce by the respondent in perfumes and cosmetics between and among the various States of the United States and the District of Columbia. In the course and conduct of its business respondent now is and has been since the year 1927 in substantial competition with other corporations, firms, persons and co-partnerships engaged in the manufacturing, compounding and sale of perfumes and cosmetics between and among the various States of the United States and the District of Columbia.

PAR. 2. There are in the State of New York and in the various other States of the United States other corporations, persons, firms and co-partnerships engaged in the business of manufacturing, compounding and selling perfumes and cosmetics to dealers and customers located throughout the various States of the United States, and pursuant to such sales said persons, firms, corporations and co-partnerships make shipments from thier various respective places of business to such dealers and customers located in the various States of the United States other than the State of the location of such manufacturers, compounders and sellers.

PAR. 3. Since the organization of respondent, Prince Matchabelli Perfumery, Inc., in 1927, respondent has manufactured, compounded and sold and still manufactures, compounds and sells, as described in paragraph 1 hereof, certain perfumes variously designated by the legends, "Princess Norina", "Duchess of York", "Grace Moore", "Ave Maria" and other designations, and certain face powders variously designated as "Princess Marie" and other designations.

All, or virtually all, of the perfumes above listed and other perfumes manufactured by the respondent are placed in "Gold Crown" perfume bottles whereupon are stamped the various terms "Germany", "France" and "Made in France". Some of the above-enumerated and described perfumes of the respondent, which are manufactured, compounded and sold by it, are placed in a carton or box and sold under the trade name "Princess Norina" and on the inside cover of such carton or box appears the statement "Les Perfumes du Prince Matchabelli, Paris, New York", and upon the base of the perfume bottle placed in such carton or container is printed or stamped "Germany—Princess Norina—Prince Matchabelli". Other perfumes of the respondent are placed in a box or carton bearing

the legend "Les Perfumes du Prince Matchabelli, Paris, New York" printed on the inside box cover and the words "Made in France—Prince Matchabelli" stamped or imprinted on the base of the bottle containing the perfume and placed in such carton or box. Respondent also manufactures, compounds and sells, and offers for sale, certain face powder placed in a carton or box whereupon is labeled "Prince Matchabelli Face Powder, Princess Marie, Paris, New York". Various other bath essences, lotions, oils, cosmetics and similar merchandise are placed in packages, boxes, cartons and bottles bearing the terms "Paris—New York". Certain advertisements of the respondent appear in various newspapers, magazines, trade journals; and other publications, whereupon, as an integral part of such advertisements, appear the words "26 Rue Cambon, Paris" and "724 Fifth Avenue, New York".

PAR. 4. The perfumes and cosmetics and various merchandise of similar nature, as hereinabove described, manufactured, compounded and sold and offered for sale by the respondent are in truth and in fact manufactured and compounded wholly within the United States and generally within the State of New York. The use of the terms as related in paragraph 3 hereof, indicative of foreign manufacture and composition of the merchandise above described, when unaccompanied by any declaration asserting the fact of the domestic manufacture and composition of such merchandise, is false and misleading. Respondent corporation maintains no foreign businesses or offices.

PAR. 5. The merchandise so manufactured, compounded and sold, and offered for sale, advertised, bottled and packed is displayed and has been displayed for sale by dealers and is sold and has been sold to purchasers and users thereof throughout the various States of the United States and in the District of Columbia.

PAR. 6. Perfumes manufactured and compounded in Germany, France, and particularly Paris, have for many years enjoyed widespread popularity and demand among the trade and consuming public throughout the United States, many of whom believe and consider that perfumes and cosmetics of such foreign manufacture and composition are superior in quality to perfumes and cosmetics manufactured and compounded within the United States, and the use of words, symbols or legends indicative of the manufacture or composition in Germany, France, and in Paris, of perfumes and cosmetics has a tendency and capacity to and does mislead and deceive dealers, purchasers and users of such perfumes and cosmetics into the belief that perfumes and cosmetics so labeled, stamped or designated are in fact and in truth of French manufacture and composition.

Order

21 F. T. C.

PAR. 7. There are among the competitors of the respondent various corporations, persons, firms and co-partnerships who manufacture and compound perfumes and cosmetics in Germany, France and in Paris. There are also among such competitor corporations, firms, persons and co-partnerships those who manufacture and compound perfumes and cosmetics wholly within the United States.

PAR. 8. The acts and practices of the respondent are prejudicial and injurious to respondent's competitors, both those who manufacture and compound perfumes and cosmetics in France or in Paris and those who manufacture and compound perfumes and cosmetics within the United States and who do not misrepresent the origin or place of manufacture of their products, and such acts and practices occasion substantial injury to substantial competition in interstate commerce.

The above acts and practices done and caused to be done by the respondent are and were, each and all, to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent 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 matter coming on to be heard by the Commission upon the complaint filed herein on July 18, 1935 and the answer to said complaint filed August 8, 1935, by Prince Matchabelli Perfumery, Inc., respondent herein, in which answer the said respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding and that it consents that the Commission without a trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

It is hereby ordered, That the respondent, Prince Matchabelli Perfumery, Inc., a corporation, its officers, agents, servants and employees, in connection with the sale or offering for sale in interstate commerce of perfumes, powders, cosmetics and other merchandise of like and similar nature, do forthwith cease and desist from:

(1) Using any sign, symbol or legend upon the containers or cartons of said merchandise indicating a particular country as the country of the origin of such merchandise, unless, in fact, the mer-

637

Order

chandise contained therein shall have originated in such country so indicated.

(2) Using upon the containers or cartons containing such merchandise, the words "Les Perfumes du Prince Matchabelli Company, Inc. Paris", or any other word or words indicating that the commodity so vended was made in or imported from a foreign country or any country other than the country wherein such commodity actually originated.

(3) Advertising, in writing, by broadcasts or in any other manner in connection with the selling or offering for sale of its merchandise, the words "26 Rue Cambon, Paris", or any other word or words indicating that the merchandise so offered for sale was made in or imported from a foreign country or any country other than the country wherein such commodity actually originated.

It is hereby further ordered, That the respondent shall, within 60 days from the date of the service upon it of a copy of this order, file with this Commission a report in writing stating the manner and form in which it shall have complied with this order.

Syllabus

21 F. T. C.

IN THE MATTER OF
CAPE COD SHIRT COMPANY, INC.

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

Docket 2296. Complaint, Feb. 11, 1935—Decision, Dec. 11, 1935

- Where a corporation engaged in the manufacture of men's shirts, pajamas, etc., and in the sale thereof under its brand or trade name throughout the several States and particularly in the New England and adjacent States, in competition with others similarly engaged, and customarily marketing its said products, the output of which was substantial and formed an important item of interstate commerce, through selected retail dealers in men's wear, including a substantial portion of such dealers in said New England States; in pursuance of a "resale price maintenance policy",
- (a) in which, dealing separately with each customer, it requested the cooperation of all in (1) maintaining its said resale prices and pushing its price-maintained products, and, (2) preventing and eliminating sales at cut prices; and, (b) incident to the carrying out of which policy it (1) issued circulars and price lists to the trade and cooperated with customers in newspaper advertising, showing suggested uniform resale prices for its said products, (2) requested and insisted that its said selected dealers resell only at suggested resale prices, and (3) made known to them through broadcast, whether sold direct or not, that it would absolutely refuse sale of further supplies of its products to price cutters—
 - (a) Required its said distributors to enter into understandings and agreements with it that the distributor would maintain resale prices of its said branded shirts as suggested and specified by it, and refused to sell its said product to practically all such retailers as would not agree not to resell the same except at its said suggested prices; and
 - (b) Requested and secured the cooperation of dealer-customers in reporting to it names of competitors and other dealer-customers selling its said shirts at resale prices below those fixed by it, and acted on such reports by expressing its appreciation thereof and investigating the same and refusing further supplies to dealers thereby established as price cutters; and
 - (c) Refused to sell its said shirts further to dealer-customers who had failed to resell the same at its said prices and sought to prevent such customers from securing its said product from any other source, and reinstated as distributors thereof those previously cut off from its list of selected dealers for underselling its resale prices, upon the basis of satisfactory assurances that they would thereafter resell its said shirts at its suggested prices;
- With the result of protecting the relatively higher cost and less efficient retailers against the competition of the relatively lower cost and more efficient retailers and of eliminating competition in price among dealers handling its said products, and of thereby preventing retail concerns, and especially the lower cost and more efficient establishment, from selling its products at prices which they might deem adequate and warranted by their costs and selling efficiency, and compelling such portions of the