

IN THE MATTER OF
**JEAN VIVADOU AND HENRY G. LUBIN, DOING BUSINESS
AS JEAN VIVADOU COMPANY**

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

Docket 2820. Complaint, May 26, 1936—Decision, Dec. 8, 1936.

Where two partners engaged in the manufacture and sale of toilet sundries, and with principal and only office or place of business in New York City—

- (a) Represented, through use of the word "Paris" in their letterheads, circulars, containers, and advertising matter, that they maintained offices in said city, notwithstanding fact they had no office, factory, or branch in said city, or in any other city or town so named, with result that a substantial portion of purchasing public was led to believe that their said products were made in or imported from France, for the toilet articles of which there is a well-known and marked preference on the part of many members of said public;
- (b) Described a certain toilet article, in invoices, literature, advertising and correspondence, as "Lagoona" and "Sea Sponge," and in circulars accompanying the same and in its advertising describing the same as therapeutic, ultra-violet ray treated, and a great health discovery, etc., referred thereto as a "sponge," "Sea Sponge," "Wonder Sponge," "natural sea growth," "spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men," and subjected to the "alchemy of the waters of the Pacific Ocean," facts being said article was a vegetable which resembled an elongated gourd, grown on bushes or shrubs on land and known and described as a "loofa," and aforesaid various statements were false; and
- (c) Described a certain toilet article, in its invoices, correspondence, circulars and advertising, as a "Swansdown Puff," facts being said article was not made from that especially grown and treated goose down or swansdown, as known to trade and consuming public and as long thus designated and known, but was made from loose feathers or Marabou and was a decidedly cheap and inferior imitation of the article known and designated by trade as "Swansdown;"

With effect of misleading and deceiving a substantial portion of purchasing and consuming public into erroneous belief that all said representations were true, and into purchase of their said products in reliance thereon, and of unfairly diverting trade to them from competitors engaged in the sale in commerce of similar toilet sundries, who truthfully represent the nature and facts of their respective businesses, and character and quality of their respective products, to the substantial injury of the purchasing public and of other dealers and manufacturers of such sundries in competition with them, and with effect of placing in the hands of wholesalers, jobbers, and retailers the means of making such false and misleading representations to the purchasing public, and of thereby increasing their own sales of such dishonestly advertised or represented articles, and lessening market

for similar goods sold by other merchants, true nature of which is honestly stated:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John W. Norwood*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Stephen M. Bell, of New York City, for respondents.

COMPLAINT

Pursuant to a provision 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 Jean Vivadou and Henry G. Lubin, copartners doing business under the firm name and style of Jean Vivadou Company, hereinafter referred to as respondents, have been and are 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 in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondents, Jean Vivadou and Henry G. Lubin, are copartners, doing business under the firm name and style of Jean Vivadou Company, with their office and principal place of business located at 135 West 20th Street, New York City, in the State of New York. They are now, and have been, for a long time last past, engaged in the business of manufacturing toilet sundries in the State of New York, and shipping said products, when sold, to the purchasers thereof, some located in the State of New York, and others located in various States of the United States, and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by respondents in the aforesaid toilet sundries. In the course and conduct of their business the respondents are now, and for more than one year last past have been, in substantial competition with other individuals, and with corporations, firms, and partnerships engaged in the sale of toilet sundries between and among the various States of the United States and the District of Columbia.

PAR. 2. Respondents market their products under the trade name "De Marsay," which name is printed on the containers in which their products are sold, in circulars accompanying the same, and on its letterheads and other advertising matter.

PAR. 3. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, and for a long time last past, respondents

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herein, in soliciting the sale of and selling their merchandise in commerce, as defined in said act, make use on their letterheads, circulars, trade literature, and advertising matter, in making and promoting the sales of their products as defined in paragraphs 1 and 2 hereof, of the word "Paris" in a manner calculated, or tending to show, and to represent, either directly or by implication, that they maintain offices at Paris, France, it being well known to respondents that many members of the purchasing public have a marked preference for toilet articles made in and imported from France. By means of which statements or representations a substantial portion of the purchasing public are led to believe that respondents' products are made in or imported from France.

In truth and in fact respondents have or maintain no office, factory, or plant, in Paris, France, or any other city or town by the name of Paris, and their principal and only office or place of business is located in New York City, State of New York.

PAR. 4. In the course and conduct of their business, and for a long time last past, respondents herein are and have been soliciting the sale of and selling in commerce, as defined in paragraph 1 hereof, a toilet article described in their invoices, literature, advertising and correspondence, as:

LAGOONA

SEA SPONGE

In the circulars accompanying said article and in its advertising, statements are made in reference to the same, such as:

THERAPEUTIC

Ultra-Violet Ray Treated.

Sea Sponge for Young and Old.

A great health discovery—LAGOONA, Spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men—LAGOONA is then taken to the laboratories of a nationally known chemist. The alchemy of the waters of the Pacific Ocean is within this Natural sea growth. LAGOONA by itself is a Wonder Sponge, but, with its further treatment and additional life-giving forces of Ultra-Violet Rays, it becomes an aid to good health.

In truth and in fact, the article described above is not a "Sea Sponge," is not "Therapeutic," is not "Ultra-Violet Ray Treated," is not "Spawned in the far away depths of the South Pacific waters," is not "plucked by adventurous men," has never been subjected to the "alchemy of the waters of the Pacific Ocean," and is not "taken to the laboratories of a nationally known chemist," is not a "Natural

sea growth," is not a "Wonder sponge," or a "sponge," but is a vegetable, resembling an elongated gourd, which grows on bushes or shrubs on land, and is a vegetable known and described as a loofah.

PAR. 5. In the course and conduct of their business, and for a long time last past, respondents have been and are now soliciting the sale of and selling in commerce, as defined in paragraph 1 hereof, a toilet article described in its invoices, correspondence, circulars, and advertising as a "Swansdown Puff."

In truth and in fact, the toilet article designated by respondent as a "Swansdown Puff" is not Swansdown as that article is known to the trade and to the consuming public, but consists of a puff made and manufactured from the feathers of the Marabou, a species of stork.

PAR. 6. The acts and practices of respondent in falsely representing, advertising, marking and branding their products, or containers thereof, in such a manner as to indicate, or to import or imply, that they have an office or branch in the city of Paris, and the practice of falsely marking, branding or representing in their circulars, advertising, or invoices, a toilet article known as a "loofah" as being a "sponge," "Sea Sponge," a "Wonder sponge" which is "Therapeutic," "Ultra-Violet Ray Treated," "A great health discovery," "Spawned in South Pacific waters," and in the other ways described in paragraph 4 hereof, and the further practice of the respondents in falsely marking, branding, advertising, and selling puffs manufactured from stock feathers as "Swansdown," are all, or any of such representations are, calculated to mislead and deceive, and have and have had the capacity, tendency and effect of misleading and deceiving, and have misled and deceived a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and to purchase respondents' products in reliance on said representations. Because of such erroneous beliefs, trade is diverted to respondents from competitors engaged in the sale in interstate commerce of similar toilet sundries. As a result thereof, substantial injury has been and is now being done by respondents to the purchasing public, and other dealers and manufacturers of toilet sundries who truthfully represent their respective products, in competition with respondents, in commerce among and between the various States of the United States and the District of Columbia.

Respondents have also placed in the hands of wholesalers, jobbers, and retailers, the means of making such false and misleading representations as above described, to the purchasing public, by which means, or any of them, they have increased their own sales of said toilet articles so dishonestly advertised or represented, thereby

lessening the market for similar goods sold by other merchants, the true nature of which is honestly stated.

PAR. 7. There are among the competitors of respondents, engaged in the sale of toilet sundries, as set forth in paragraph 1 hereof, individuals, corporations, firms, and partnerships, who do have offices or branches in Paris, and who do sell "sponges" or "sea sponges," and who do sell "swansdown" puffs in interstate commerce and so represent their products; and there are likewise other firms, corporations, partnerships, and individuals likewise engaged in interstate commerce, who do not have offices or branches in Paris, who do sell the article known and described as a loofah, and who do sell puffs made from marabou or stork feathers, which competitors do not in any manner misrepresent the location, nature, or extent of their business, or the nature, source or composition of their products.

PAR. 8. The above and foregoing acts, practices and representations of the respondents have been and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition 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."

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 May 26, 1936, issued and served its complaint in this proceeding upon the respondents Jean Vivadou and Henry G. Lubin, copartners doing business under the firm name and style of Jean Vivadou Company, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James M. Hammond, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Stephen M. Bell, attorney for the respondents; and said testimony and other evidence were 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 hereto, testimony and other evidence and brief in support of the complaint; and

the Commission having duly considered the record, and being now 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

PARAGRAPHS 1. Respondents, Jean Vivadou and Henry G. Lubin, are copartners doing business under the firm name and style of Jean Vivadou Company, with their office and principal place of business located at 135 West 20th Street, New York, in the State of New York. They are now, and have been, for a long time last past, engaged in the business of manufacturing toilet sundries in the State of New York and shipping said products, when sold, to the purchasers thereof, some located in the State of New York, and others located in various States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondents in the aforesaid toilet sundries. In the course and conduct of their business the respondents are now, and for more than one year last past have been in substantial competition with other individuals, and with corporations, firms, and partnerships, likewise engaged in the sale of toilet sundries, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, respondents herein, in soliciting the sale of and selling their merchandise in commerce, as herein set out, make use in their letterheads, circulars, containers, and advertising matter of the word "Paris" in a manner calculated to, and having the effect of serving as a representation that they maintain offices at Paris, France. It is well known to respondents and to the trade generally, that many members of the purchasing public have a marked preference for toilet articles made in and imported from France. By means of said statements or representations, a substantial portion of the purchasing public is led to believe that respondents' products are made in, or imported from, France.

In truth and in fact, respondents have or maintain no office, factory, or branch, in Paris, France, or any other city or town by the name of Paris. Their principal and only office or place of business is located in New York, State of New York.

PAR. 3. In the course and conduct of their business, respondents herein are now, and have been, soliciting the sale of and selling in commerce as defined in paragraph 1 hereof, a toilet article described in their invoices, literature, advertising and correspondence, as:

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LAGOONA

SEA SPONGE

In the circulars accompanying said article and in its advertising, statements are made in reference to the same, such as:

THERAPEUTIC

Ultra-Violet Ray Treated

Sea Sponge for Young and Old

A great health discovery—LAGOONA, Spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men—LAGOONA is then taken to the laboratories of a nationally known chemist. The alchemy of the waters of the Pacific Ocean is within this Natural sea growth. LAGOONA by itself is a Wonder Sponge, but, with its further treatment and additional life-giving forces of Ultra-Violet Rays, it becomes an aid to good health.

The article described above is not a "Sponge," a "Sea Sponge," or "Wonder Sponge," or a "Natural sea growth," was not "Spawned in the romantic far away depths of the South Pacific waters," was not "plucked by adventurous men," and has never been subjected to the "Alchemy of the waters of the Pacific Ocean," but is a vegetable resembling an elongated gourd which grows on bushes or shrubs on land, and is known and described as a "loofah."

PAR. 4. In the course and conduct of their business, respondents have been, and are now, soliciting the sale of and selling in commerce as defined in paragraph 1 hereof, a toilet article described in its invoices, correspondence, circulars and advertising as a "Swansdown Puff."

This toilet sundry designated by respondents as a "Swansdown Puff" is not made from Swansdown as that article is known to the trade and to the consuming public but consists of a puff made and manufactured from Marabou, a trade name for loose feathers of various types, usually used for trimming women's clothing.

Swansdown is now, and for many years past has been, a trade name used to designate especially grown and treated goose down, and by such name it is known to the trade and the purchasing public. It is procured principally from France and is obtained by plucking the large feathers from geese while growing so that when mature the birds' skin is covered only with down. The geese are then killed and skinned, the skin being tanned with the down attached in the same manner as a fur. It is from this skin, with the down attached, that Swansdown Puffs are manufactured, by cutting out circular disks of the size desired and sewing them together with the down on the outside. The respondents' alleged Swansdown puffs were not made from

this material, but from loose feathers stitched together, and are a decidedly cheap and inferior imitation of the article known and designated by the trade name "Swansdown".

PAR. 5. The acts and practices of respondents in falsely representing, advertising, marking and branding their products, or containers thereof, in such a manner as to indicate, or to import or imply, that they have an office or branch in the city of Paris, and the practice of falsely marking, branding, or representing in their circulars, advertising, or invoices, a toilet article known as a "Loofah" as being a "Sponge," "Sea Sponge," or a "Wonder Sponge," or a "Natural Sea Growth," and the further practice of the respondents in falsely marking, branding, advertising, and selling puffs manufactured from Marabou feathers as "Swansdown," are calculated to mislead and deceive, and have the capacity, tendency, and effect of misleading and deceiving, and have misled and deceived a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true, and into the purchase of respondents' products in reliance on said representations. Because of such erroneous beliefs, trade is unfairly diverted to respondents from competitors engaged in the sale in interstate commerce of similar toilet sundries, who truthfully represent the nature and size of their respective businesses and the character and quality of their respective products. As a result thereof, substantial injury has been, and is now being, done by respondents to the purchasing public, and to other dealers and manufacturers of toilet sundries in competition with respondents, in commerce among and between the various States of the United States and the District of Columbia.

Respondents have also placed in the hands of wholesalers, jobbers and retailers, the means of making such false and misleading representations as above described, to the purchasing public, by which means, or any of them, they have increased their own sales of said toilet articles so dishonestly advertised or represented, thereby lessening the market for similar goods sold by other merchants, the true nature of which is honestly stated.

CONCLUSION

The aforesaid acts and practices of the respondents, Jean Vivadou and Henry G. Lubin, copartners doing business under the firm name and style of Jean Vivadou Company, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An

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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 respondents, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, and brief filed in support of the complaint, and the Commission having made its findings as to the facts, and its conclusion that the respondents 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 ordered, That the respondents Jean Vivadou and Henry G. Lubin and each of them, as individuals and as copartners doing business under the firm name and style of Jean Vivadou Company, or under any other trade name, their representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their products, including toilet sundries, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing through the use of the word "Paris", alone or in conjunction with any other word or words, or through any means whatsoever, that they own, operate, or maintain offices, branches or factories at Paris, France, or at any place other than in the city of New York, State of New York, or where such offices, branches, or factories are actually maintained;

(2) Designating or representing in any manner that the vegetable growth known as a "Loofah" is a Sponge, a Sea Sponge, a Wonder Sponge, or a Natural Sea Growth, or making any similar representations;

(3) Using the term "Swansdown" in connection with the word "Puff", or any other word to designate or describe an article unless said article is manufactured from the down of a swan or from the specially prepared skin of a goose with its original down attached;

(4) Representing an article made from Marabou feathers as being Swansdown.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
FALL RIVER WHOLESALE GROCERS' ASSOCIATION
ET AL.

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

Docket 2677. Complaint, Jan. 4, 1936—Decision, Dec. 9, 1936.

Where a wholesale grocers association, and the members thereof, serving a trade area in certain States contiguous to a Massachusetts city; in pursuance of a policy, agreed upon and adopted by such members, of refusing to deal with manufacturers of grocery products who had sold, or sold, their products to retailers in the region in question—

- (a) Informed manufacturers of policy of such association and its members, and threatened to refuse, and refused, to purchase from such manufacturers as failed or refused to comply with their wishes that they do not distribute their products to retailers thereof;
- (b) Placed on the unfair list of the association, for selling to large retailers in region in question, name of a large milk product manufacturer, and warned its members to cease handling products thereof under penalty of forfeiting their association deposits, and advised manufacturer of such action and that association members would no longer be allowed to do business with it;
- (c) Issued and distributed a letter announcing that its members had "decided definitely to cooperate only with those producers, packers, or manufacturers who will confine themselves to selling their merchandise to wholesale grocers," and requested that the recipients thereof advise as to whether or not they would cooperate in the matter;
- (d) Reached an agreement between their said wholesalers' association and that of the retail grocers in the region in question, working to the prevention and restraint of purchases by retailers direct from manufacturers, and threatened to suspend any wholesaler member who refused to sign and subscribe thereto; and
- (e) Took, at different times, course of action similar to that hereinabove indicated against large sugar and coffee manufacturers;

With result that manufacturers were coerced into refusing to sell their products direct to retailers, including large retailer competitors of association members, sales and distribution by manufacturers to retailers in region in question were restrained and prevented, and interstate commerce in groceries was unduly restrained and hindered, and there was an undue tendency to substantially lessen, restrict, and suppress competition in interstate sale of such products therein:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. Isador S. Levin, of Fall River, Mass., for respondents.