

IN THE MATTER OF
MILLS SALES COMPANY OF NEW YORK, INC., ET AL.

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

Docket 3070. Complaint, Mar. 8, 1937—Decision, June 10, 1937

Where a corporation and five individuals, officers thereof, engaged in sale at wholesale and retail of a variety of peddlers' and retail dealers' supplies, including toothbrushes, dental creams, razor blades, perfumes, and other drug sundries and notions, in substantial competition with others engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia, and including manufacturers and distributors of such products who do not fictitiously price-mark their merchandise, and also those who do not advertise or falsely represent, through their catalogs, that they are manufacturers or importers or that they have been established in business for a greater period than is the case—

- (a) Listed and described many articles and items of merchandise, in their catalogs and price lists, as possessing retail values or prices many times in excess of their actual selling price to the retailer or to the purchaser, and of the actual retail price thereof, and included among items and articles thus described a number which had stamped or printed thereon, or on the labels thereof, or on the containers in which offered and sold to the public, fictitious retail prices many times in excess of the actual selling price of said items or articles of merchandise, as sold by peddler or retailer to consuming public, and in excess of their true and actual value, and which were not intended, by either themselves or their purchasers buying for resale, to be true retail price or retail value of merchandise thus marked, but to be far in excess of price intended to be and actually charged for sale thereof to ultimate consumer purchaser in usual course of trade, and far in excess of true value of various items thus marked;

With result of placing in the hands of its peddler and retailer customers buying for resale, an instrument and means enabling them to commit a fraud upon a substantial part of consuming public through representing, offering, and selling shaving and dental creams, cosmetics, and other drug sundries involved, as genuinely superior products produced by the manufacturer with intent of sale thereof in usual course of trade to public at and for retail price stamped thereon or on containers thereof;

- (b) Designated, in catalogs and other advertising matter, certain domestic perfumes made or compounded in the United States, as "L'Odeur d'Amour" and "Perfumes of France," and set forth on the containers of one of said perfumes certain printed matter in the French language to the effect that products in question had been made by the French firm there named in their factories near Paris, etc.; and
- (c) Represented, in solicitation and sale of their said commodities, that business in question was an old established one, and that corporation had been wholesaler for some twenty years, and that they were importers and manufacturers of toilettries, drug sundries, razor blades, etc., and made such

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statements as "now located in New York only * * * We have discontinued all other branches * * * Chicago branch discontinued," notwithstanding fact corporation in question was organized, etc., in 1936 and not 1916, and had been, accordingly, wholesaler for only extremely limited period thus indicated, they were not manufacturers and did not own, control, operate, or have any interest whatsoever in manufacturing establishments making such products, and had never operated place of business in Chicago, or in any other place than in New York City;

With results that a substantial portion of the consuming public of the several States was misled into the belief that various items of merchandise, described as hereinbefore set forth, were a superior value and were to be sold and distributed with the intent and purpose that they should be sold at retail prices closely approximating those stamped thereon, and that said products, by reason of the marks affixed or stamped thereon, were composed of superior ingredients and ordinarily retailed, in usual course of trade, for prices closely approximating those stamped on merchandise, and that they were manufacturers of said products, in business for a great many years, and were importers of perfumes, etc., and that aforesaid perfumes had been made in and imported from France or some other foreign country, and with tendency and capacity to mislead and deceive distributors and purchasing public into erroneous belief that said statements and representations were true, and with effect of inducing members of public to buy their products on account of such belief, and of unfairly diverting trade to them from competitors; to the injury of the general and to the damage and injury of manufacturers and distributors, and to the substantial injury of competition in commerce:

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

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Mills Sales Company of New York, Inc., a corporation, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby, individuals, officers of the aforesaid corporation, all 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 said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mills Sales Company of New York, Inc., is a corporation having its principal office and place of business located at 901 Broadway, in the city of New York, State of New

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York, and operating a branch store located at 87 Orchard Street, city of New York, State of New York. It has been, for more than one year last past engaged in the sale and distribution of cosmetics, perfumes and notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of its business it offers said products for sale and sells the same in commerce between the State of New York and the several States of the United States and the District of Columbia.

Respondents David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby, are respectively, president, vice-president, treasurer, secretary, and assistant secretary of the aforementioned respondent corporation. They have their principal places of business at the above-mentioned addresses of the Mills Sales Company of New York, Inc. They all participate in the management and direction of the Mills Sales Company of New York, Inc., and its sales policies and general business operations.

PAR. 2. When said products are sold, respondents transport or cause the same to be transported from their places of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so sold by respondents, between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than one year last past have been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents in soliciting the sale and in the selling of their commodities, and for the purpose of creating a demand on the part of the consuming public for said commodities, have advertised their commodities through the media of catalogues, price lists, and other printed matter published, issued and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means, respondents make and have made to the general public false and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogues and price lists are described as possessing retail values greatly in excess of the actual selling price of respondents to the retailers or other

purchasers, and greatly in excess of the actual value thereof. A number of the said items and articles of merchandise described in the aforesaid catalogues have retail prices stamped or printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public.

Representative of such statements and representations made by the respondents on the containers regarding the selling price and value of the commodities thus offered by them for sale are the following: Economy First Aid Kit. Price 25¢; Safeguard Brand DeLuxe Liquid Latex. Price \$4; Dupree Pills. Price \$2 per box; You love to season with pure spices. Allspice Price 35¢; Champion Cup Shaving Soap. Price 15¢; Spirits of Camphor, U. S. P. Value 35¢; Lather Shave Cream. Palm and Olive Oil. A product of Palm and Olive Oils. Price 35¢; Dr. Ross' Tooth Paste. Contains Milk of Magnesia. Price 60¢; Royal Blue Dental Cream. Contains Milk of Magnesia. Price 60¢; and Campbell's Lather Shave Cream. Price 35¢.

In truth and in fact the Economy First Aid Kit is sold to the retail trade for 5¢ per unit; Safeguard Brand DeLuxe Liquid Latex is sold to the retail trade for \$1 per unit; Dupree pills are sold to the retail trade for 25¢ per box; You love to season with pure spices. Allspice is sold to the retail trade for 6¢ per unit; Champion Cup Shaving Soap is sold to the retail trade for 2¢ per unit; Spirits of Camphor, U. S. P., is sold to the retail trade for 7¢; Lather Shave Cream. Palm and Olive Oil. A product of Palm and Olive Oils, is sold to the retail trade for 4¢; Dr. Ross' Tooth Paste. Contains Milk of Magnesia, is sold to the retail trade for 6¢; Royal Blue Dental Cream. Contains Milk of Magnesia, is sold to the retail trade for 10¢; and Campbell's Lather Shave Cream is sold to the retail trade for 6¢ per unit.

The respective items above referred to are usually and customarily sold to retail dealers or peddlers for the retail prices indicated in the unnumbered paragraph immediately preceding this one. The said retail prices at which the products are actually sold to retail consumers do not appear on the containers.

The said catalogues of respondents contain many other instances where fictitious retail prices are imprinted upon the label or carton.

Over a period of many years, manufacturers in many trades have adopted and followed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which the said manufacturers suggest that the retailer should sell the item or article to the ultimate consumer purchaser.

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This suggested retail price so stamped or marked is intended to represent the cost to the manufacturer of the article plus a reasonable profit for the manufacturer and the retailer, and, consequently, to represent the approximate retail sale value of the item. The public generally understands this custom and has been led to and does place its confidence in the price-marking so stamped and the representations so made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has had and has expressed a marked preference for dental creams, shaving creams, toilet articles and similar household notions which are composed of superior ingredients and which are produced by the manufacturers thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products or for products made of inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the product and its higher value.

Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is led to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail prices thereof over ordinary products sold for their regular price which is lower than the normal retail value of the superior products in the customary course of trade.

The retail prices so stamped or printed as aforesaid upon respondents' products are greatly in excess of the actual selling price of the said items or articles of merchandise by the retailer to the consuming public and are in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price-marked.

PAR. 4. The said catalogues published and distributed by the respondents also contain other instances of misleading descriptions and representations of their commodities; among them are the following:

1. Perfumes represented and designated as "L' Odeur d' Amour." On this container appears certain printed matter in the French language which, when translated, reads as follows:

This specialty and these accessories have been created by Oralee Brothers in their factories in the City of Perfumes at Suresnes, near Paris (France). They are the exclusive property of Oralee Brothers for the United States of America where they are manufactured.

Counterfeits will be rigorously prosecuted.

All our specialties are sold under the own name of "Oralee Brothers" without any forenames.

Oralee Brothers, Paris, France.

2. Package of perfumes bearing (in French) the legend, "Perfumes of France".

For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes and toilettries which are manufactured or compounded in foreign countries, and especially in France, and then imported into the United States.

The aforementioned representations and description appearing on the aforesaid articles by labels printed in the French language serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so described and referred to are manufactured in France.

In truth and in fact, the aforesaid articles are not manufactured in France or any other foreign country, but are domestic products made or compounded in the United States.

PAR. 5. The respondents, in soliciting the sale of and selling their said commodities, and for the purpose of creating the impression that the respondent Mills Sales Company of New York, Inc., is an old established business, represent that respondent has been a wholesaler since 1916.

PAR. 6. The respondents, in soliciting the sale of and selling their commodities, and for the purpose of creating a demand on the part of the consuming public for such commodities, now cause and for more than one year last past have caused themselves to be represented, through their letterheads and circulars, order blanks and general business stationery, as importers and manufacturers of toilettries, drug sundries, razor blades, novelties and notions.

PAR. 7. The respondents further represent, through such statements as, "Now located in New York only * * * we have discontinued all other branches * * * Chicago branch discontinued," and other statements of like import, represent that the corporate respondent at one time operated a place of business in the city of Chicago, in the State of Illinois.

In truth and in fact the above set out representations of the respondents are false in that the respondents' business is not an old

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established business. The corporate respondents' business was incorporated in 1936. The respondents are not in any sense whatsoever importers of any of the aforementioned products, and they are not in any sense whatsoever manufacturers of the said articles. The said corporate respondents have never operated a branch in the city of Chicago, State of Illinois, or at any other place than in the city of New York, State of New York.

PAR. 8. The aforesaid false and misleading advertising and representations, together with the aforesaid false and fictitious price markings, on the part of the respondents, place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public, by enabling such dealers to represent and offer for sale and sell respondents' said shaving cream, dental cream, and other toilet notions as being genuinely superior, or imported, products produced and sold by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for approximately the retail price stamped on said products or on their containers.

PAR. 9. There are, among the competitors of the respondents in commerce, as described in paragraph 1 above, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products and the nature and size of their business. There are also among the competitors of respondents manufacturers and distributors of like and similar products who refrain from advertising or representing through their catalogues and other advertising media and through fictitious price markings, that the merchandise offered for sale by them has a merit, origin or value that it does not have.

PAR. 10. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States, by inducing them to mistakenly believe:

1. That the various items of merchandise described in respondents' catalogues and other advertising media were and are of superior value and were and are sold and distributed by respondents with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks fixed or stamped thereon, are composed of superior ingredients and are

products which ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on the merchandise.

3. That the respondents are manufacturers of said products, and large scale operators and distributors, and have been in business a great many years and conduct their business on such a scale as to assure purchasers of a superior quality and lower price by trading with such operators.

4. That the respondents are importers of perfumes, notions and other toiletries.

5. That the perfumes described in paragraph 4 are manufactured in and imported from France or some other foreign country.

The foregoing false and misleading statements and representations on the part of respondents have induced and still induce a substantial number of retail merchants as well as the consumer purchasers of said commodities, to buy the products offered for sale, sold and distributed by respondents, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been diverted from those competitors of respondents engaged in similar businesses, referred to in paragraph 9 above. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 11. The aforementioned methods, acts and practices of respondents are all to the prejudice of the public and respondents' competitors, as hereinabove alleged. Said methods, acts and practices 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 March 9, 1937, issued and served its complaint in this proceeding upon respondents Mills Sales Company of New York, Inc., a corporation, David Jacoby, individually, and as president of Mills Sales Company of New York, Inc., Evelyn Jacoby, individually, and as vice president of Mills Sales Company of New York, Inc., Joseph Jacoby, individually, and as treasurer of Mills Sales Company of New York, Inc., Estelle J. Krueger, individually, and as secretary of Mills Sales Company of New York, Inc., and Walter Jacoby, individually, and as assistant secretary of Mills Sales Company of New York, Inc., charging them with the use of unfair methods

of competition in commerce in violation of the provisions of said act. On May 14, 1937 the respondents filed their answer, in which answer they admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and answer thereto, and the Commission having duly considered the same, 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

PARAGRAPH 1. The respondents are the Mills Sales Company of New York, Inc., a New York corporation organized and doing business by virtue of and under the laws of the State of New York, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Krueger, and Walter Jacoby, respectively president, vice president, treasurer, secretary, and assistant secretary of the Mills Sales Company of New York, Inc.

PAR. 2. Respondents have been for more than one year last past engaged in the wholesale and retail business of dealing in, and selling at retail, a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, razor blades, perfumes, and other drug sundries and notions.

PAR. 3. In the sale of said products respondents have transported or caused the same to be transported from their principal place of business in the State of New York to the purchasers thereof, located in States of the United States other than the State from which the shipment originated, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so distributed and sold by respondents between and among the various States of the United States and in the District of Columbia.

For more than one year last past the respondents have been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture and distribution of like and similar products, and in the sale thereof in commerce between and among the various States in the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as aforesaid the respondents, in soliciting the sale of and in selling their products, and for the purpose of creating a demand upon the part of the consuming public for said products, have for more than one year last past caused their products to be advertised through the media of catalogs, price lists, and other printed matter published, issued, and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia. In the said ways and by said means respondents have made to the general public many unfair, false, and misleading statements with reference to the commodities offered by them for sale.

PAR. 5. Many articles and items of merchandise listed in said catalogs and price lists have been described as possessing retail values or prices many times in excess of the actual selling price by the respondents to the retailer or other purchaser and many times in excess of the actual retail price thereof.

A number of the said items and articles of merchandise described in said catalogs have retail prices stamped or printed thereon, on the labels attached thereto or on the containers in which they have been offered for sale and sold to the public. The retail prices so stamped or printed as aforesaid are many times in excess of the actual selling price of the said items or articles of merchandise sold by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 6. Among the misleading and fictitious price markings appearing on cartons and containers and advertised by respondents in catalogs, price lists, and in other advertising matter are the following:

(a) "Economy First Aid Kit"—"Price 25¢", whereas this item is regularly sold by said respondents at retail for 5¢ per unit.

(b) "Safeguard Brand DeLuxe Liquid Latex"—"Price \$4", whereas this item is regularly sold by said respondents at retail for \$1 per unit.

(c) "Dupree Pills"—"Price \$2 per box", whereas this item is regularly sold by said respondents at retail for 25¢ per box.

(d) "You love to season with pure spices"—"Allspice"—"Price 35¢", whereas this item is regularly sold by said respondents at retail for 6¢ per unit.

(e) "Champion Cup Shaving Soap"—"Price 15¢", whereas this item is regularly sold by said respondents at retail for 2¢ per unit.

(f) "Spirits of Camphor, U. S. P."—"Value 35¢", whereas this item is regularly sold by said respondents at retail for 7¢ per unit.

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(g) "Lather Shave Cream"—"Palm and Olive Oil"—"A product of Palm and Olive Oils"—"Price 35¢", whereas this item is regularly sold by said respondents at retail for 4¢ per unit.

(h) "Dr. Ross' Tooth Paste"—"Contains Milk of Magnesia"—"Price 60¢", whereas this item is regularly sold by said respondents at retail for 6¢ per unit.

(i) "Royal Blue Dental Cream"—"Contains Milk of Magnesia"—"Price 60¢", whereas this item is regularly sold by said respondents at retail for 10¢ per unit.

(j) "Campbell's Lather Shave Cream"—"Price 35¢", whereas this item is regularly sold by said respondents at retail for 6¢ per unit.

PAR. 7. The retail prices which, as indicated above, appear on the items of merchandise or on the containers thereof are not and were not intended by either the respondents or the purchaser purchasing for resale to be the true retail price or the true retail value of the merchandise so price marked. The retail prices thus appearing on the items of merchandise or on the containers thereof were intended by the respondents and by the purchasers purchasing for resale to be far in excess of the price intended to be charged and actually charged for the sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 8. Over a period of many years manufacturers have in many trades formed the custom of price marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or article to the ultimate consumer purchaser. This suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein detailed, and has been led to and does place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 9. For many years a substantial part of the consuming public has expressed and has had a marked preference for dental creams, shaving creams, toilet articles, and like and similar drug sundries that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary

ingredients or with inferior ingredients. Said manufacturers following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product so stamped or marked with the retail price thereof is offered for sale at a substantially reduced price, the general purchasing public has been led to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade.

The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail values thereof over ordinary products sold for the regular price, which is lower than the normal retail price of the superior product in the customary course of trade.

PAR. 10. The said catalogs, price lists, and other advertising literature of respondents contain many other instances where fictitious retail prices are imprinted upon the label or carton.

PAR. 11. The catalogs, price lists, and other advertising literature of respondents contain many other instances of false and misleading representations. Among them are the following:

(1) Perfumes represented and designated as "L'Odeur d' Amour." On this container appears certain printed matter in the French language which, when translated, reads as follows:

This specialty and these accessories have been created by Oralee Brothers in their factories in the City of Perfumes at Suresnes, near Paris (France). They are for the exclusive property of Oralee Brothers for the United States of America where they are manufactured.

Counterfeits will be rigorously prosecuted.

All our specialties are sold under the own name of "Oralee Brothers" without any forenames.

Oralee Brothers, Paris, France.

(2) Package of perfumes bearing (in French) the legend, "Perfumes of France".

PAR. 12. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes and toilettries which are manufactured or compounded in foreign countries, and especially in France, and then imported into the United States.

PAR. 13. The aforesaid articles of perfumes are not manufactured in France or in any other country, but are domestic products made or compounded in the United States.

PAR. 14. The respondents in soliciting the sale and selling their said commodities have represented that the respondent, Mills Sales

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Company of New York, Inc., is an old established business, and further represents that respondent, Mills Sales Company of New York, Inc., has been a wholesaler since 1916.

Mills Sales Company of New York, Inc. was organized and incorporated in 1936 and has only been a wholesaler since 1936.

PAR. 15. The respondents in soliciting the sale and selling their commodities have represented themselves through letterheads and circulars, order blanks, and general business stationery to be importers and manufacturers of toiletries, drug sundries, razor blades, novelties, and general drug sundries and notions.

PAR. 16. The respondents are not manufacturers of toiletries, drug sundries, razor blades, novelties, and general drug sundries, and notions, nor do they own, control, operate, or have any interest whatsoever in manufacturing establishments making toiletries, drug sundries, razor blades, novelties, and notions.

PAR. 17. The respondent further represents through such statements as "now located in New York only * * * We have discontinued all other branches * * * Chicago branch discontinued" and other statements of like import, that the corporate respondent at one time operated a place of business in the city of Chicago, in the State of Illinois.

The respondent, Mills Sales Company of New York, Inc., has never operated a place of business in the city of Chicago, in the State of Illinois or at any other place than in the city of New York, State of New York.

PAR. 18. The false and misleading advertising and representations hereinabove set out together with the false and fictitious price markings herein set out on the part of respondents place in the hands of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may, and do, commit a fraud upon a substantial part of the consuming public by enabling such dealers to represent and offer for sale and sell the said shaving cream, dental cream, cosmetics, and other general line of drug sundries as genuinely superior products produced by the manufacturer thereof, with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for the retail price stamped on the products or on their containers.

PAR. 19. There are among the competitors of the respondents in interstate commerce manufacturers and distributors of like and similar products who do not fictitiously price mark the merchandise offered for sale by them. There are also among the competitors of the respondents in interstate commerce manufacturers and distrib-

utors of like and similar products who do not advertise or represent through their catalogs that they are manufacturers, importers, or have been established in business for a great period of time unless such are the facts.

PAR. 20. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale items of merchandise herein described is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

1. That the various items of merchandise described in respondents' catalogs and other advertising media were and are of superior value, and were and are sold and distributed by respondents with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks affixed or stamped thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. That the respondents are manufacturers of said products and have been in business a great many years.

4. That the respondents are importers of perfumes, notions, and other general line of drug sundries.

5. That the perfumes described in paragraph 11 are manufactured in and imported from France, or some other foreign country, into the United States.

PAR. 21. The use of each and all the foregoing false and misleading statements and representations by the respondents as herein set out has had and now has the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has induced and now induces members of the public to purchase the products of the said respondents on account of such erroneous beliefs, to the resultant damage and injury of manufacturers and distributors, and to the injury of the general public. Said representations have thereby unfairly diverted trade to said respondents from competitors, and substantial injury has been done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Mills Sales Company of New York, Inc., a corporation, David Jacoby, individually, and as president of Mills Sales Company of New York, Inc.,

Evelyn Jacoby, individually, and as vice president of Mills Sales Company of New York, Inc., Joseph Jacoby, individually, and as treasurer of Mills Sales Company of New York, Inc., Estelle J. Krueger, individually, and as secretary of Mills Sales Company of New York, Inc., and Walter Jacoby, individually, and as assistant secretary of Mills Sales Company of New York, Inc., 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 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 and the answer of respondents, in which answer respondents admit all the material allegations of the complaint to be true and state that they waive hearing on the charges set forth in said complaint and consent that without further evidence or other intervening procedure the Commission may issue and serve upon them its findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said 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, Mills Sales Company of New York, Inc., and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Krueger, and Walter Jacoby, individually, and as officers of said Mills Sales Company of New York, Inc., and their respective agents, representatives, or employees, individual or corporate, in connection with the offering for sale, sale, and distribution of cosmetics, perfumes, tooth brushes, shaving creams, tooth paste, and other drug sundries and novelties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Causing cartons and containers in which said articles of merchandise are offered for sale to the public, to be printed, labeled, marked, or stamped with retail prices in excess of the actual and usual selling prices at which the said articles are sold by retailers to the consuming public; or

Representing, directly or indirectly, by newspaper, or magazine advertisement, articles, catalogs, labels, letterheads, or any other form of printed matter, or by radio broadcasting or in any other manner:

1. That the prices marked or affixed to or stamped on the products sold by them, or on the containers thereof, are the regular or customary retail prices for such products when said price marks are fictitious and greatly in excess of the regular and customary prices at which said products are sold or offered for sale at retail;

2. That their perfumes, cosmetics, and other notions are manufactured in France or any other foreign country;

3. That the respondents, or any one of them, are importers of said products sold by them;

4. That the respondents, or any one of them, are manufacturers of any of the said products sold by them;

5. That the respondent, Mills Sales Company of New York, Inc., is a large scale operator and distributor; that it has been in business since 1916 and is an old established business; and that it formerly operated branches in any city other than New York City;

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

IN THE MATTER OF
NATIONAL KREAM COMPANY, INC., AND NATIONAL
FOODS, INC.

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

Docket 2909. Complaint, Sept. 8, 1936¹—Decision, June 11, 1937

Where a corporation and its subsidiary distributing agency engaged, as case might be, in manufacture and sale of jams, preserves, and other food products, in substantial competition with those offering or selling similar products in like commerce, and including therein those engaged in manufacture of jams and preserves in accordance with conception thereof entertained by trade and consuming public, and who truthfully describe and represent their products, and including also preserve manufacturers making products similar to those made by said corporation, as hereinbelow set forth, and who label, describe, and sell the same as imitation preserves, in accordance with universal practice among other manufacturers—

Offered and sold, to retailers, chain stores, and others, certain imitation preserves and imitation jams which so simulated in appearance the genuine that the difference in fruit content could not be discerned by visual inspection, in jars or containers labeled as "Pure Preserves," together with name of particular fruit, notwithstanding fact products in question, thus labeled, were not made from the edible portion of the fruit or fruits indicated and in the proportion of forty-five pounds of actual fruit to each fifty-five pounds of sugar, but were adulterated by undisclosed substitution, in part, for fruits of mixture of water, sugar, and pectin, and were not jams, pure jams, preserves, or pure preserves, within meaning and popular acceptance of words "jams" or "preserves," as implying composition and proportion hereinbefore indicated;

With result that competitors selling standard unadulterated preserves were placed at a decided disadvantage in the marketing of their products in competition with the less costly imitation preserves made by said corporation and labeled, sold and described, as aforesaid, as "Pure Preserves," and at prices to dealers which producers of the genuine product could not meet by reason of fruit shortage in, and consequent lower production cost of, imitation product, and with capacity and tendency to mislead and deceive trade and consuming public into belief that products described as aforesaid by said corporation had been made from at least forty-five pounds of fruit or fruits involved to fifty-five pounds of sugar, and into purchase thereof in reliance on such erroneous belief, and with result of placing in hands of dealers at wholesale and retail, instrument of fraud enabling them to mislead and deceive public, and with capacity and tendency, further, unfairly to divert trade to them from their competitors, and otherwise injuriously affect the same; to the substantial injury of substantial competition in commerce:

¹ Amended.