

IN THE MATTER OF
C. W. BEGGS SONS & COMPANY

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

Docket 2687. Complaint, Jan. 18, 1936—Decision, Dec. 13, 1937

Where a corporation engaged in sale of its "Marcelle" line of cosmetics, and in distribution thereof in commerce among the various States, through stores, department stores, and other media, in substantial competition with those engaged in similar sale of preparations recommended or used for treatment or relief of allergy, hypersensitiveness, and kindred diseases or conditions, and also with those engaged in sale of cosmetics in commerce among the various States and in the District of Columbia; in extensively advertising its aforesaid assertedly nonallergic line of cosmetics in various periodicals in interstate circulation and through radio broadcast of interstate transmission and reception, and through booklets and circulars—

Represented that its said "Non-Allergic" cosmetics and formulas therefor had been accepted or approved by the American Medical Association, or had passed rigorous requirements of that organization with regard to ingredients, claims and purity, and that said association, after finding, on investigation, said line "100% pure," "passed an approval note on to every physician in the United States advising them" that said cosmetics were "pure in every sense of the word," facts being that, while its said cosmetic advertisements were accepted for publication by the Journal American Medical Association, said association had no councils for accepting or approving cosmetics and had never accepted or approved any cosmetics from it or anyone else, nor had it declared its products 100% pure or sent approval notices to such effect, as above claimed;

With capacity and tendency to mislead and deceive public into the erroneous and mistaken belief that its said products had in truth and in fact been accepted or approved by said association, and to induce purchasing public to buy its said products in preference to other cosmetics and other preparations compounded and used for avoidance or relief of allergy and kindred diseases or conditions, and with effect of unfairly diverting trade to it, by reason of such deceptive and misleading representations, from competitors above named and cosmetic manufacturers, dealers, and distributors who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof:

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. Addison*, *Mr. Robert S. Hall* and *Mr. John J. Keenan*, trial examiners.

Mr. T. H. Kennedy for the Commission.

Matthews, Harmon, Karr & Springer, of Chicago, Ill., for respondent.

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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 C. W. Beggs Sons & Company, a corporation, has been or is 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, the Commission hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, C. W. Beggs Sons & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at Chicago in said State. It is now and for more two years last past, has been engaged in the preparation and manufacture of cosmetics which it sells under the trade name "Marcella" and in the selling thereof between and among the various States of the United States and in the District of Columbia; and has caused and still causes such products when sold by it to be transported from its place of business in Illinois, or other place within the United States, to purchasers (chiefly retailers) thereof, some located in the State of Illinois and others located in various other States of the United States and in the District of Columbia; and there has been for more two years last past and still is, a constant current of trade and commerce in cosmetics manufactured by respondent between respondent and respondent's customers, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is now and for more two years last past has been in constant competition with other corporations and with persons, firms, and partnerships engaged in the sale of cosmetics among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent for more than two years last past has, by means of catalogs, advertising matter, and by other means, represented and still represents that the products manufactured and sold by it were and are submitted to and accepted by the American Medical Association before they were or are distributed to the purchasers thereof, and that before each preparation manufactured by said respondent is distributed to the purchasers thereof it must pass the rigorous requirements of the American Medical Association with regard to the ingredients of said product and the claims of respondent-

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ent for said product, and as to the purity of said product; and that the formulas for the compounding of said products were and are accepted by the American Medical Association and that the formulas for the compounding and the claims of respondent with regard to said products are approved by the American Medical Association when in truth and in fact, such representations by respondents with reference to the submission to, the acceptance by, and the approval of said products by the American Medical Association have been and are untrue. There is a preference on the part of a substantial number of retailer dealers in cosmetics and on the part of a substantial part of the purchasing public for cosmetics represented to have been submitted to, accepted or approved by the American Medical Association. The aforesaid representations by respondent that the products sold by it are submitted to, accepted or approved by the American Medical Association, have had and still have a capacity and tendency to mislead and deceive, and has misled and deceived and still misleads and deceives retailers and the purchasing public into the erroneous belief that the products of respondent have been and are submitted to, approved and accepted by the American Medical Association and causes them to purchase respondent's products in such erroneous belief. The aforesaid representations by respondent have placed and still place in the hands of retailers of cosmetics, the means of misleading and deceiving the purchasing public.

PAR. 3. In the course and conduct of its business described herein above, respondent for more than two years last past, has, by means of catalogs, advertising matter, display cards, and otherwise, represented and still represents as follows:

M A R C E L L E
NON-ALLERGIC
COSMETICS
Advertising
ACCEPTED BY
AMERICAN
MEDICAL ASSOCIATION

In said representation, the word "advertising" has been and is printed in comparatively small and inconspicuous type and the other words in large and conspicuous type, and said representation has the tendency and capacity to cause the readers thereof to believe that the products of the respondent have been and are accepted by the American Medical Association, when in truth and in fact the products of the respondent have not been and are not now accepted by the American Medical Association. There is a preference on the part of a substantial number of retail dealers in cosmetics and on the part of a substantial part of the purchasing public for cosmetics represented to

have been accepted by the American Medical Association. The aforesaid representation by respondent that the products sold by it are accepted by the American Medical Association has had, and still has a capacity and tendency to mislead and deceive, and has misled and deceived, and still misleads and deceives retailers and the purchasing public into the erroneous belief that the products of respondent have been accepted by the American Medical Association, and to purchase respondent's products in such erroneous belief. The aforesaid representations by respondent has placed and still places in the hands of retailers of cosmetics, the means of misleading and deceiving the purchasing public.

PAR. 4. There are among the competitors of respondent hereinabove mentioned, manufacturers of cosmetics who truthfully represent the acceptance and approval of their said products. There are also among such competitors, manufacturers who do not submit or request the acceptance or approval of their products by the American Medical Association, who do not represent that such products have been submitted to, accepted or approved by the American Medical Association.

By the representations made by the respondent as set out hereinabove, trade has been and still is diverted to the respondent from such competitors. Thereby substantial injury has been done and still is being done by respondent to substantial competition in interstate commerce.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate 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 the 18th day of January 1936, issued and on January 22, 1936, served its complaint in this proceeding upon the respondent, C. W. Beggs Sons & Company, charging said respondent 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 the respondent's answer thereto, testimony and other evidence in support of the allegations of said

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complaint were introduced by Thomas H. Kennedy, attorney for the Commission, before John W. Addison, Robert S. Hall, and John J. Keenan, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Clement F. Springer and Joseph R. Harmon, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested) 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 respondent, C. W. Beggs Sons & Company, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1741 N. Western Avenue, in the city of Chicago, within the State of Illinois. Said respondent is now, and has been since 1923, engaged in the sale of cosmetics, including face powders, creams, lotions, lipsticks and rouges of various kinds, under the trade names or designations "Marcelle Laboratories" or "Marcelle," and in the distribution thereof in commerce between and among the various States of the United States. It causes said cosmetic products, when sold by it, to be transported from its aforesaid place of business in Illinois to purchasers thereof located in various States of the United States other than the State of Illinois. There is now, and has been for more than three years last past, a course of trade and commerce by respondent in said cosmetic products between and among the various States of the United States. In the course and conduct of its said business, respondent is now, and since 1923 has been, in substantial competition with sundry other corporations, and with partnerships, firms, and individuals engaged in the sale and distribution of other preparations recommended or used for the treatment or relief of allergy, hypersensitiveness and kindred diseases or conditions, in commerce between and among the various States of the United States, and in substantial competition with persons, firms and partnerships engaged in the sale of cosmetics in commerce among the various States of the United States and in the District of Columbia.

PAR. 2. The cosmetic preparations sold and distributed under the trade name "Marcelle" are sold and distributed by said respondent through drug stores, department stores, and other media of distribution located in the various States of the United States.

PAR. 3. The respondent, in the course and conduct of its said business, has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of said "Marcelle" cosmetic preparations, and as media of such advertising it has been and now is using various magazines of interstate circulation and broadcasts over radio stations having interstate transmission and reception. Said respondent also issues and distributes booklets and circulars describing the said "Marcelle" cosmetic preparations.

PAR. 4. The respondent, in its said advertisements of "Marcelle" cosmetic preparations sold and distributed by it, has made various statements regarding the merits and qualities of said preparations in the treatment or relief of hypersensitiveness, allergy and kindred diseases or conditions. Among the statements which said respondent has used in its sales devices, advertisements in magazines and over the radio, and in its booklets and circulars, are the following:

MARCELLE COSMETICS

NON-ALLERGIC

Accepted by

The American Medical
Association

Medical Women's National
Association

Good Housekeeping Bureau
U. S. P. Pure Ingredients

MARCELLE COSMETICS

NON-ALLERGIC

Formulas Accepted By

The American Medical
Association

Endorsed by

Medical Women's National
Association

Good Housekeeping Bureau
U. S. P. Pure Ingredients

MARCELLE NON-ALLERGIC COSMETICS comply with the ethical demands of the American Medical Association with regard to formulas, claims and purity.

WE SUBMIT MARCELLE NON-ALLERGIC formulas to the *American Medical Association*. Before each preparation is distributed it must pass the rigorous requirements of that organization with regard to ingredients, claims and purity. We do this in order to meet conscientiously the standards of the

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medical profession. Materials worth many thousands of dollars have been discarded because they did not in the strictest sense meet every non-allergic requirement.

This is the Face Powder recommended by physicians because of its purity and high quality. It has been tested and approved by the Good Housekeeping Bureau; formulas and claims are approved by the American Medical Association and endorsed by the Medical Women's National Association.

Marcelle Cosmetics, approved by the American Medical Association as being 100% pure, endorsed by the Medical Women's National Association on the same score and because they are beneficial.

Marcelle Cosmetics will pass the test of your own physician. They have been approved by the American Medical Association and endorsed by the Medical Women's National Association.

When the American Medical Association investigated the field of cosmetics they found Marcelle Cosmetics were 100% pure, and they passed an approval note on to every physician in the United States advising them that Marcelle Cosmetics are pure in every sense of the word.

PAR. 5. The respondent, in the course and conduct of its business, has, by the means aforesaid, and in catalogs and other advertising matter, represented that:

1. The cosmetic preparations sold and distributed by it under the name "Marcelle" were and are submitted to and accepted and approved by the American Medical Association before they are distributed and sold to the purchasers thereof;

2. Before each of respondent's preparations sold under the name "Marcelle" is distributed and sold to the purchasers thereof they must pass the rigorous requirements of the American Medical Association with regard to the ingredients and purity of said product and with regard to respondent's claims for said product;

3. The formulas for the compounding of said products were and are accepted by the American Medical Association, and that the formulas for the compounding and the claims of respondent with regard to said products are approved by the American Medical Association.

PAR. 6. So-called non-allergic cosmetics are only relatively non-allergic, depending upon the reaction of each individual user. Orris root, rice starch, and other ingredients generally used in the compounding of cosmetics frequently react against certain individual users, and the omission of such ingredients from so-called non-allergic cosmetics frequently averts allergic reactions in hypersensitive individual users. Usually it is necessary for each individual to submit to so-called medical "patch tests" to determine the identity of the allergic agent involved in his own case and the allergic agent can be other than the above-named products. Respondent's products do not contain orris root, rice starch or other ingredients, which frequently

react against individual users, but the exclusion of such ingredients does not insure respondent's products against being allergic to other individual users.

PAR. 7. Respondent's cosmetics have never been "accepted" or "approved" by the American Medical Association, nor has that Association declared respondent's products 100% pure or sent approval notices to like effect to all physicians throughout the country. Respondent's cosmetic advertisements are accepted only for publication by the Journal American Medical Association. "Acceptance" by the American Medical Association is different from acceptance for advertising by the Journal American Medical Association. The American Medical Association has no councils for "accepting" or "approving" cosmetics and, therefore, has never "accepted" nor "approved" any cosmetics from respondent or anyone else. Proper officials of the American Medical Association have denied that such Association has prescribed or promulgated requirements with regard to ingredients, claims, and purity of cosmetics, whether for the treatment or relief of allergy, or for general use.

PAR. 8. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are misleading. Such representations have had the capacity and tendency to mislead and deceive the public into the erroneous and mistaken belief that respondent's products have, in truth and in fact, been "accepted" or "approved" by the American Medical Association, and to induce such purchasing public to purchase respondent's products in preference to other cosmetics and other preparations compounded and used for the avoidance or relief of allergy and kindred diseases or conditions. The result of such deceptive and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such competitors above named and cosmetic manufacturers, dealers and distributors who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, C. W. Beggs Sons & Company, are to the prejudice of the public and of competitors of the respondent 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, the answer of respondent, testimony and other evidence taken before John W. Addison, Robert S. Hall and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto and briefs filed herein, no oral arguments having been heard, and the Commission having made its findings as to the facts and its conclusion that said respondent, C. W. Beggs Sons & Company, has 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 respondent, C. W. Beggs Sons & Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the cosmetic preparations now known as and sold under the name of "Marcelle," or any preparations, under whatever name sold, composed of the same or similar ingredients and possessing similar properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing in any manner that—

Said preparations, including the formulas therefor, have been "accepted" or "approved" by, or have passed rigorous requirements as to purity of ingredients and therapeutic claims established by, the American Medical Association.

It is further ordered, That the respondent, C. W. Beggs Sons & Company, shall within 60 days after 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.

Syllabus

IN THE MATTER OF
WORTHALL, LTD.

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

Docket 2690. Complaint, Jan. 24, 1936—Decision, Dec. 13, 1937

Where a corporation engaged as distributor of its "Drury Lane English Lavender" line of cosmetics and toilet preparations, including soaps, perfumes, toilet water, face powder, rouge, lipstick, and other similar products, ordinarily compounded or manufactured and packed and labeled for it by the manufacturers thereof and sold and distributed by it to drug stores and other retail outlets, principally, at points in the various States and in the District of Columbia, in competition with those engaged in manufacture, distribution, and sale, or in distribution and sale, of similar toilet preparations and cosmetics in commerce among the various States and in the District of Columbia—

Caused products thus dealt in and sold by it to be packed, wrapped, assembled, and labeled by the respective manufacturers with packages and labels conceived, designed, printed, and prepared and furnished by it to said compounders or manufacturers, and bearing legend, as attached by them, "Drury Lane English Lavender," along with name of individual preparation, and "Distributed by Worthall, Ltd., London, Montreal and New York," and also, at bottom of the various containers and entirely detached from aforesaid labels, small and inconspicuous and readily removable paper stickers containing words "Made in U. S. A.," facts being products in question were made for it at domestic plants of aforesaid domestic manufacturers and were not compounded or made in England, and contained no English materials or ingredients, and were not in any sense products of English manufacture or English in origin, and it had no branch or office in London, England, or Montreal, Canada;

With effect of misleading and deceiving members of the purchasing public into the mistaken and erroneous belief that said toilet preparations, distributed as aforesaid under name "Drury Lane English Lavender," were genuine English products prepared and compounded in England of English ingredients by an English concern, and subsequently imported from England into the United States, as preferred by substantial portion of purchasing public to similar domestic toilet preparations, and as implied from such terms as "English," "Made in England," etc., and of inducing members of purchasing public, acting in such mistaken and erroneous beliefs thus engendered, to buy its said toilet preparations, and thereby unfairly divert trade to it from its competitors who do not misrepresent the materials and place of origin of their respective products, or the ingredients thereof, and from competitors who actually sell and distribute toilet preparations of English origin and manufacture and truthfully represent the same:

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

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

Mr. Allen C. Phelps for the Commission.

Boyd & Holbrook, of New York City, for respondent.

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 Worthall, Ltd., 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 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. Worthall, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 160 Fifth Avenue, in the city of New York, N. Y.: The officers of said respondent, Worthall, Ltd., are: H. A. Woods, president; Philip F. Cohen, executive vice president; C. C. Payne, first vice president; E. R. Albright, second vice president; Max Rosenwald, secretary and treasurer, and Joseph Rosenwald, assistant secretary and treasurer. The directors of said respondent corporation are: H. A. Woods, Philip F. Cohen, C. C. Payne, E. R. Albright, and Max Rosenwald.

PAR. 2. Respondent, Worthall, Ltd., since prior to September 1934, has been and now is engaged in the business of causing to be compounded and manufactured, of offering for sale, selling and distributing a line of toilet preparations and cosmetics, including soaps, perfumes, toilet water, face powder, rouge, lipstick, and other similar products, to purchasers in the various States of the United States. Said respondent ordinarily causes said products to be compounded or manufactured, packed and labeled in the State of New York, and sells and distributes the same to various retail outlets, principally drug stores, located in the different States of the United States, including the District of Columbia, said products being in turn sold by said retail outlets to the public. In the course and conduct of its said business, said respondent causes its said products to be transported from the State of New York through and into other States of the United States, including the District of Columbia, and in the conduct of said business said respondent was and is in competition with

other individuals, firms, partnerships, and corporations likewise engaged in the manufacture and compounding, sale and distribution in interstate commerce of similar products.

PAR. 3. During the time above mentioned, respondent Worthall, Ltd., in the course and conduct of its said business, caused and now causes to be manufactured, compounded, wrapped, packed, offered for sale, and sold and distributed a line of toilet preparations which were and now are so sold and distributed in interstate commerce under the trade name or brand of "Drury Lane English Lavender." The labels attached to the containers and packages in which said toilet preparations were and are packed, sold, and distributed were and are conceived, designed, printed, and prepared by said respondent and furnished by respondent to the manufacturer or compounder of said products, who attaches said labels to the packages and containers of said products at the request of the respondent.

PAR. 4. For a long period of time the terms "English," "Made in England," "Imported from England," and similar terms, when used in connection with toilet preparations such as perfumes, soaps, toilet water, face powder, rouge, and similar articles have had and still do have a definite significance in the minds of wholesalers and retailers and the ultimate purchasing public, to wit: Such toilet preparations and products have for some years been compounded, blended, and manufactured in England, by English companies, of English materials, and imported into the United States, and which products so compounded and imported have been appropriately labeled and branded for sale and distribution in various States of the United States.

Such terms as the above, when applied to toilet preparations not made of English materials or manufactured by an English company, or imported from England, are false and misleading, and a substantial portion of the purchasing public prefers to buy genuine English toilet preparations produced as aforesaid, rather than imitations thereof which are not of English origin or manufacture.

PAR. 5. In the course and conduct of its said business as aforesaid, respondent has caused and does cause its products so manufactured, sold and distributed in interstate commerce to be labeled and branded with the words, "Drury Lane," "English Lavender," "Distributed by Worthall, Ltd., London, Montreal, New York," when, in truth and in fact, the said Worthall, Ltd., is not a limited corporation, nor is it an English company, nor does it have, nor has it had, any branch or office in London or Montreal which has any connection with

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the manufacture, compounding, labeling, or packaging of said products, nor are or have been any of said products so sold and distributed in interstate commerce manufactured or compounded in London, or in England, nor are or have been the same imported from England or made from English material or ingredients. On the contrary, Worthall, Ltd., is a New York corporation; all of said products have been and are manufactured and compounded in the United States, principally of materials produced in this country, and the same were not and are not in any sense products of English manufacture, or English in origin.

PAR. 6. The representations so made and being made by respondent, as above set forth, and the use of the word "Limited," or the abbreviation "Ltd.," instead of "Incorporated" or "Inc." by said corporation, in combination with the words "London Montreal New York" and the trade name "Drury Lane" together with the words "English Lavender" are calculated and intended to, and do, have the capacity and tendency to, and did and do mislead and deceive dealers and the purchasing public into the belief that the toilet preparations so caused to be manufactured and compounded, and so sold and distributed by respondent, are genuine English products, and that respondent is an English corporation with manufacturing branches or offices in London and Montreal, and that said products are prepared and compounded in England and are of English origin and imported from England into the United States, when such is not the fact. Said representations have the capacity and tendency to, and did and do induce dealers and the purchasing public, acting on such beliefs, to purchase the said imitation toilet preparations, thereby diverting trade to respondent from its competitors who do not, by their corporate trade names or by false and misleading labels and advertising, or in any other manner, misrepresent the nature and character of their products, and from competitors who actually do sell and distribute toilet preparations of English origin and manufacture, and thereby, respondent does substantial injury to competitors and to the purchasing public, in interstate commerce.

PAR. 7. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent 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 January 24, 1936, issued and served its complaint in this proceeding upon respondent Worthall, Ltd., a corporation, 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 other evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney of the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Boyd and Holbrook, attorneys for respondent, 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 answers thereto, testimony and other evidence, and brief in support of the complaint (no brief having been filed by respondent and no oral argument having been applied for), 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. Respondent, Worthall, Ltd., is a corporation, organized in 1932 and existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 160 Fifth Avenue, in the city of New York, State of New York. Since prior to September 1934, respondent, Worthall, Ltd., has been engaged in business as a distributor of cosmetics and toilet preparations, including soaps, perfumes, toilet water, face powder, rouge, lipstick, and other similar products, all of which are distributed under the name "Drury Lane English Lavender." Worthall, Ltd. ordinarily causes said toilet preparations and cosmetics to be compounded or manufactured, and packed and labeled by the manufacturer thereof. Respondent's soap sold under the name "Drury Lane English Lavender" is manufactured by Light-foot Schultz Company and the other preparations above named are manufactured by B. H. Krueger, Inc., both of which manufacturers have their plants located in the State of New York. Respondent

sells and distributes said toilet preparations and cosmetics to its customers, principally drug stores and other retail outlets, which are located at points in the various States of the United States and in the District of Columbia. Said products are in turn sold by said retail outlets to individual members of the purchasing public. In the course and conduct of its business, said respondent causes said toilet preparations and cosmetics, when sold, to be transported from the State of New York, where said products are compounded, manufactured, and labeled, to the purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia.

In the course and conduct of its business, respondent was, and is, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the manufacture, distribution, and sale, or in the distribution and sale, of similar toilet preparations and cosmetics, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Since September 1934, the respondent, Worthall, Ltd., in the course and conduct of its business, has caused Lightfoot Schultz Company and B. H. Krueger, Inc. to compound or manufacture, and to label, pack, wrap, and assemble said toilet preparations which are sold and distributed by respondent, in commerce as herein described, and which are designated and described with the name "Drury Lane English Lavender." The labels attached to the containers and packages in which said toilet preparations are packed for distribution and sale were conceived, designed, printed and prepared by said Worthall, Ltd. and by it furnished to the compounders or manufacturers of said products which attached said labels to the packages and containers thereof at the direction of the respondent.

PAR. 3. The labels and packages furnished to the manufacturers by the respondent and used by them in preparing said toilet preparations and cosmetics for distribution and sale by the respondent herein bear statements such as the following: "Drury Lane English Lavender," together with the name of the individual preparation such as toilet water, astringent lotion, and the words "Distributed by Worthall, Ltd., London, Montreal, and New York." On the bottom of the containers of the various toilet preparations, herein referred to, sometime appear small paper stickers containing the words "Made in U. S. A." These stickers are inconspicuously placed on the bottom of the container and are not in close conjunction to, or equal prominence with, the other phraseology hereinabove set out, and are not readily discernible. Said stickers bear no relation whatever to the principal labels appearing on said products and may be readily

removed from the containers of said products by retail dealers or others without in any way affecting the appearance of the labels, or the salability of the products.

For a long period of time, the terms "English," "Made in England," "Imported from England," and similar terms suggesting English origin, when used in connection with toilet preparations such as perfumes, soaps, toilet water, face powder, rouge and similar articles, have had, and still do have, a definite significance in the minds of retail dealers in, and ultimate purchasers of, said products; and the use of such terms signify to them that the toilet preparations and other products so branded and labeled have been actually compounded or manufactured in England and have been compounded, blended or manufactured from English materials by English companies and subsequently imported into the United States for sale and distribution. A substantial portion of the purchasing public prefers to buy such genuine English toilet preparations produced as aforesaid rather than similar toilet preparations which are of domestic origin and are not of English origin or manufacture.

PAR. 4. In truth and in fact, Worthall, Ltd. is a New York corporation and is not an English concern. It has never maintained any branch or offices in London, England or Montreal, Canada. None of said toilet preparations or similar products are compounded or manufactured in England and none of said products are made from English materials or ingredients. All of said toilet preparations are compounded and manufactured in the United States, principally from materials produced in this country. Said toilet preparations are not in any sense products of English manufacture and are not English in origin.

PAR. 5. The use of such terms as "English," and "Drury Lane English Lavender," particularly when accompanied with the representation that the distributor of said preparations maintains offices and places of business in Montreal and London, serves as representations to the purchasing public that said toilet preparations were made of English materials and ingredients and were manufactured by an English company in England and subsequently imported into the United States.

PAR. 6. The aforesaid misrepresentations made by the respondent through the use of the term "Drury Lane English Lavender," as descriptive of, or as a designation for, its toilet preparations, and through the use of the words "London" and "Montreal," were calculated and intended to have, and do have, the capacity and tendency to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said toilet preparations

distributed by the respondent under the name "Drury Lane English Lavender" are genuine English products prepared and compounded in England of English ingredients by an English concern, and subsequently imported from England into the United States. The respondent's aforesaid representations also have the capacity and tendency to, and do, induce members of the purchasing public, acting in said mistaken and erroneous beliefs induced as aforesaid, to purchase respondent's said toilet preparations thereby unfairly diverting trade to the respondent from its competitors who do not misrepresent the materials and place of origin of their respective products, or the ingredients thereof, and also from competitors who actually sell and distribute toilet preparations of English origin and manufacture and who truthfully represent said preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, Worthall, Ltd., are to the prejudice of the public and the competitors of respondent 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, the answers of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief on behalf of the Commission filed herein, and the Commission having made its findings as to the facts and its conclusion that respondent Worthall, Ltd., a corporation, has 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 respondent Worthall, Ltd., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution, in interstate commerce or in the District of Columbia, of toilet preparations and cosmetics compounded and manufactured in the United States, including perfumes, soaps, toilet water, face powder, and similar articles, do forthwith cease and desist from:

1. Representing, through the use of the term "Drury Lane English Lavender," or any other term or words as a designation or brand name

for its various toilet preparations and cosmetics, or through any other means or device, or in any other manner, that said products are of English manufacture or origin, or are imported from England;

2. Representing that said products contain ingredients of English origin when such is not the fact;

3. Representing, through the use of the words "Montreal" and "London," or through the use of any other name of a foreign city or country, that it maintains branches and places of business in England, Canada, or any other foreign country.

It is further ordered, That the respondent, Worthall, Ltd., a corporation, shall within 60 days after 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 this order.

IN THE MATTER OF
ENGLANDER SPRING BED 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 2602. Complaint, Oct. 30, 1935—Decision, Dec. 14, 1937

Where a corporation engaged in manufacture, sale, and distribution of bed mattresses to purchasers in other States and in the District of Columbia, in substantial competition with those similarly engaged, including those who do not misrepresent the regular and customary retail price of their respective products and do not use the below set forth methods in sale and distribution thereof in commerce; in pursuance of so-called "sales stimulator plan" adopted by it—

- (a) Furnished retailers, for their use in running advertisements in local newspapers, mats bearing such statements as "Englander's Famous Regular \$39.50 PROPEREST Mattresses ½ off sale! \$19.75. We are able to buy these nationally advertised \$39.50 damask covered mattresses and bed springs at a drastic price concession," with, in some cases, figure \$29.75 as supposed regular price, and urged use of such advertisements upon retailers in connection with offer for sale of its said products;
- (b) Attached to mattresses, to which reference was made as aforesaid, label bearing such words as "Finest Quality Since 1895. PROPEREST reg. U. S. Pat. Off. \$39.50, manufactured by ENGLANDER SPRING BED CO., INC. New York, Brooklyn," or figure \$29.75 in those cases in which such figure had been made use of in aforesaid mats; and
- (c) Supplied to retailers, in further connection with its aforesaid "sales stimulator plan" and for use in their showrooms in connection with offer and sale of its aforesaid mattresses, variously labeled as above set forth, embossed advertising cards displaying illustrations of its said products, together with dealer's name, and statement in regard to regular price, as aforesaid, of such mattresses, and including, as typical, some such statement as "Never before sold for Less than \$39.50. \$22.50 All Sizes" and "Nationally advertised at \$29.75 NOW \$19.75";

Notwithstanding fact aforesaid supposed retail prices of \$39.50 or \$29.75, as above displayed in advertisements and on labels and in display advertising cards, were not the regular and customary retail prices of the mattresses thus advertised, labeled and mentioned, nor those at which it was contemplated by it that said merchandise would be sold, but were greatly in excess of retail price at which sale by retailers involved was contemplated and intended by it, such retail price was wholly fictitious, mattresses thus advertised and labeled were greatly inferior in quality and workmanship to those which regularly and customarily retail for \$39.50 and \$29.75, and regular and customary retail price at which products in question were offered and sold was \$22.50 or \$19.75, depending upon quality of particular mattress;

With result that prospective purchasers were led to believe that mattresses thus advertised and branded were products of kind and quality that regularly and customarily sell at retail for prices indicated, and that, when offered