

Complaint

IN THE MATTER OF

LES PARFUMS D'ISABEY, INC.

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

Docket 3149. Complaint, June 11, 1937—Decision, Feb. 19, 1938

Where a corporation engaged in sale and distribution of toilet water and perfumes, compounded in the United States through blending with alcohol vehicle, perfume concentrate, imported as such, or made, by company from which it purchased, from the essential oil or flower essence, aromatic chemicals, and animal products imported by such company—

Represented, through use of such words as "Isabey Parfums d'Isabey, Parfums d'Isabey 'Isabey—Paris'," on labels attached to containers and cartons of its said products, that same were made or compounded in France, notwithstanding fact its said perfumes, purchased by it as above set forth, were, as aforesaid, actually compounded in the United States and were not products made or compounded in France or in any other foreign country, or imported;

With effect of misleading and deceiving a substantial part of purchasing public into erroneous and mistaken belief that said representations were true, and that perfumes in question were imported into United States from Paris, France, and with result that public, acting under mistaken and erroneous beliefs induced by such false, deceptive, and misleading statements and representations, purchased substantial volume of its said products as and for the preferred imported, and particularly preferred French, perfumes, and trade was unfairly diverted to it from competitors engaged in manufacture and distribution, or in sale and distribution, of perfumes who truthfully describe their products and represent country or source or origin thereof; 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.

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

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

Mr. John H. Glaccum of Munn, Anderson & Liddy, 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 Les Parfums d'Isabey, Inc., a corporation, organized and doing business by virtue of and under the laws of the State of New York, hereinafter referred to as respondent, has been, and is now, using unfair methods

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of competition in commerce, as "commerce" is defined in the said Act of Congress, 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:

PAR. 1. Respondent Les Parfums d'Isabey, Inc., is a New York corporation, having its principal office and place of business located at 312 East Thirty-second Street, city of New York, State of New York. The respondent has been for more than 1 year last past engaged in the sale and distribution of perfumes to retail dealers purchasing for resale. In the course and conduct of its business respondent 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 in the District of Columbia. When the said products are sold, respondent transports or causes the same to be transported from its place of business in the State of New York to purchasers thereof located in the 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 respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of, or in the sale and distribution of, like and similar products in commerce among and between the various States of the United States and in the District of Columbia.

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

In the aforesaid ways and by the aforesaid means the respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it.

PAR. 4. The said price lists and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning its products. For example, certain of the perfumes have printed on the carton thereof or on the labels thereof the following words and phrases:

Isabey parfums d'Isabey, parfums d'Isabey
Isabey-Paris

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while on the bottle or container of the perfume appear these words—"le muguet isabey."

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

PAR. 5. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes which are manufactured or compounded in foreign countries, especially in France, and then imported into the United States.

PAR. 6. 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. 7. There are among the competitors of the respondent manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective products. There are also among the competitors of respondent manufacturers and distributors of like and similar products who refrain from advertising or representing through their price lists and other printed matter that the merchandise offered for sale by them has a value, merit, or origin that it does not have.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that the various articles of perfumes hereinabove set out and described in paragraph 4 are manufactured in France and imported from that country into the United States.

PAR. 9. The aforesaid false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken belief. As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses referred to in paragraph 7. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Such methods, acts, and prac-

tices 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 June 11, 1937, issued, and on June 12, 1937, served its complaint in this proceeding upon respondent Les Parfums d'Isabey, Inc., 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 S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by John H. Glaccum, attorney for the respondent, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral argument not 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, Les Parfums d'Isabey, Inc., is a corporation organized and doing business under the laws of the State of New York. Its principal office and place of business are at 245 Fifth Avenue, New York, N. Y. Its shipping point is at 318 East Thirty-second Street, New York, N. Y. It is engaged in the sale and distribution of perfume and toilet water.

PAR. 2. Respondent's products are distributed from its aforesaid place of business to retailers located throughout the United States. When orders are received for respondent's products it causes such products to be shipped from its place of business in New York, N. Y., to the purchasers thereof located at various points in the various

States of the United States other than the State of New York. Since the date of its incorporation, 3 or 4 years ago, the respondent, Les Parfums d'Isabey, Inc., has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. At all times since respondent entered into said business it has been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution, or in the manufacture, sale, and distribution of perfumes in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. The respondent has advertised and now advertises its products by means of labels attached to the containers and cartons in which respondent's products are packed and sold and by use of other means. On the labels appear certain words and phrases purported to be descriptive of the product and its source or country of origin. The following is representative of the statements and representations made on the labels attached to the containers and cartons of respondent's products:

Isabey Parfums d'Isabey, Parfums d'Isabey "Isabey—Paris."

All of the above set out statements and representations appearing on the containers and cartons in which respondent's products are packaged and sold are in the French language.

PAR. 5. The respondent purchases the perfumes which it sells and distributes under the false and misleading labels above described from the George Silver Import Company (now Roure-Dupont, Inc.). The George Silver Import Company imports essential oil or flower essence, aromatic chemicals, and animal products which are blended in various proportions depending upon the formula of the specific odor desired. Sometimes these ingredients are imported separately in bulk. Sometimes these ingredients are blended before being imported. When they are blended, they are referred to in the trade as perfume concentrate. The George Silver Import Company imports either the perfume concentrate already blended in the proper proportion for the odors desired or it imports separately the necessary ingredients of the completed perfume concentrate. After the ingredients have been blended so as to form the perfume concentrate, it is still necessary to compound or blend this concentrate with an alcohol vehicle.

All of the perfumes purchased by the respondent from the George Silver Import Company are actually compounded in the United States. As stated above, in some instances ingredients are imported

separately, then blended, so as to form perfume concentrate, and subsequently compounded with the alcohol vehicle. In other instances, the perfume concentrate made up of the same ingredients which are sometimes imported separately is imported and subsequently compounded with the alcohol vehicle. Perfume concentrate as made up of the various ingredients before the addition of the alcohol vehicle is not ready for use as a perfume by members of the general purchasing public and cannot satisfactorily be used for such purpose. A perfume concentrate is not a perfume within the generally understood meaning of that term as used by the purchasing public. A perfume, as that term is understood by the public generally and by the trade, is a compound of a perfume concentrate and an alcohol vehicle. A perfume is not made or compounded until the alcohol or other agent of application has been united with the concentrate.

The Commission finds that there exists in the minds of the purchasing public a preference for imported perfumes and a particular preference for perfumes made in and imported from France.

PAR. 6. The use by respondent of the statements and representations, as set out hereinabove, in which its products are packaged and sold has had and now has the capacity and tendency to and does mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that said representations are true and that the said perfume is imported into the United States from Paris, France.

Acting under the mistaken and erroneous beliefs induced by the false, deceptive and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the manufacture and distribution, or in the sale and distribution of perfumes, who truthfully describe said perfume and truthfully represent the country or source of origin of their products. 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 and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Les Parfums d'Isabey, Inc., are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Con-

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gress, 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 William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein and oral argument having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondent 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 respondent, Les Parfums d'Isabey, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of perfumes in interstate commerce, or in the District of Columbia, do forthwith cease and desist from directly or through implication:

Representing, through the use of such words as "Les Parfums d'Isabey," or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes compounded, bottled, and packaged in the United States are made or compounded in France or in any other foreign country, or are imported.

It is further ordered, That the respondent 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

FIORET SALES COMPANY, INC., AND MURRAY W. MORIN
AND IRVING UNTERMAN, INDIVIDUALLY AND AS OFFICERS OF FIORET SALES 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 3164. Complaint, June 29, 1937—Decision, Feb. 19, 1938*

Where a corporation engaged in sale and distribution of toilet water and perfumes, compounded in the United States through blending with alcohol vehicle, perfume concentrate, imported as such, or made, by company from which it purchased, from the essential oil or flower essence, aromatic chemicals, and animal products imported by such company—

Represented that its said products were made or compounded in France or imported, through use, on labels attached to containers and cartons of its products, of such words, phrases, and legends as "Les Parfums des Jardine de Fioret, Paris, New York," "le Parfum. et l'ensemble de sa presentation ont ete crees en France par Les Parfums des Jardine de FIORET a Paris. Ils sont la propriete exclusive de FIORET, INC., pour les Etats Unis de l'Amerique ou ils sont completes COUTES CONTREFACONS seront rigoureusement poursuivies. FIORET, INC., New York. Paris BOTTLED IN U. S. A.," notwithstanding fact its said perfumes, purchased by it as above set forth, were, as aforesaid, actually compounded in the United States and were not products made or compounded in France, or in any other foreign country, or imported;

With effect of misleading and deceiving a substantial part of purchasing public into erroneous and mistaken belief that said representations were true, and that perfumes in question were imported into United States from Paris, France, and with result that public, acting under mistaken and erroneous beliefs induced by such false, deceptive, and misleading statements and representations, purchased substantial volume of its said products as and for the preferred imported, and particularly preferred French, perfumes, and trade was unfairly diverted to it from competitors engaged in manufacture and distribution, or in sale and distribution, of perfumes who truthfully describe their products and represent country or source or origin thereof; 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.

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

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

Mr. John H. Glaccum of Munn, Anderson & Liddy, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-