

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-

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sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Fioret Sales Company, Inc., a New York corporation, and Murray W. Morin and Irving Unterman, individuals and officers of Fioret Sales Company, Inc., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and it appearing to said Commission that the 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, Fioret Sales Company, Inc., is a corporation organized and doing business under the laws of the State of New York, having its principal place of business at 312 East Thirty-second Street, city of New York, State of New York. Respondents, Murray W. Morin and Irving Unterman, are respectively president and secretary and treasurer of Fioret Sales Company, Inc. Respondents are now and have been for more than 1 year last past engaged in the manufacture and in the sale and distribution of perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents are now and have been in substantial competition with other individuals, partnerships, firms, and corporations likewise engaged in the business of manufacturing and selling perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. When said products are sold respondents transport or cause same to be transported from their place 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 1 year last past and still is a constant current of trade in commerce in said products so sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents, in soliciting the sale and in the selling of their products, and for the purpose of creating a demand on the part of the consuming public for said commodities, have advertised their products through the media of 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 the respondents make and have made to the general public false and misleading statements with reference to the commodities offered for sale by them.

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PAR. 5. The said price lists and other printed matter published and distributed by respondents as aforesaid contain misleading descriptions and representations concerning their products. For example, certain of the perfumes have printed on the carton thereof the following words and phrases:

Les Parfums des Jardins
de
Fioret
Paris New York

The above language appears on the display part of the carton in which respondents' perfumes are sold.

On the back of the display carton in which respondents' perfumes are sold appears the following in French:

le Parfum.
et l'ensemble de sa presentation
ont et crees en France par
Les Parfums des Jardins
de FIORET a Paris
Ils sont la propriete exclusive
de FIORET, INC.
pour les Etats Unis d'Amerique
ou ils sont completes
TOUTES CONTREFACONS seront
rigoureusement poursuivies
FIORET, INC.
New York
Paris
BOTTLED IN U. S. A.

PAR. 6. The aforementioned representations and descriptions appearing on the aforesaid articles and their containers by labels with the above set out words printed thereon 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.

PAR. 7. 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. 8. 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. 9. There are among the competitors of respondents 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 respondents 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. 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 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:

(1) The various articles of perfumes hereinabove set out and described in paragraph 5 are manufactured in France and imported from that country into the United States.

PAR. 11. The aforesaid false and misleading statements and representations on the part of respondents have induced and still induce a substantial number of consumer purchasers of said products to buy the products offered for sale, sold, and distributed by the respondents on account of the aforementioned mistaken and erroneous belief. As a result thereof trade has been diverted from those competitors of respondents engaged in similar businesses. 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.

PAR. 12. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Such 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 June 29, 1937, issued, and on June 30, 1937, served its complaint in this proceeding upon respondent Fioret Sales Company, Inc., a corporation and respondents Murray W. Morin and Irving Unterman, individually, and as officers of respondent Fioret Sales Company, Inc., charging them with the use of unfair methods of competition in commerce in violation of the

provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by John H. Glaccum, attorney for the respondents, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer 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, Fioret Sales Company, 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 312 East Thirty-second Street, New York, N. Y. It is engaged in the sale and distribution of perfumes and toilet waters.

Respondents Murray W. Morin and Irving Unterman are respectively, president and secretary and treasurer of respondent Fioret Sales Company, Inc.

PAR. 2. Respondent's products are distributed from its place of business to retailers located throughout the United States. When orders are received for respondents' said products they cause them to be shipped from their place of business at 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 incorporation, 2 or 3 years ago, the respondent, Fioret Sales Company, Inc., under, by, and through the direction of respondents Murray W. Morin and Irving Unterman, has maintained a course of trade in said products in commerce in and among the various States of the United States and in the District of Columbia.

PAR. 3. At all times since respondents entered into said business they have been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution, or 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 respondents have advertised and now advertise their products by means of labels attached to the containers and cartons in which respondents' products are packaged and sold. 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 respondents' products:

Les Parfums des Jardine
de
Fioret
Paris New York

On the back of the display carton in which respondents' perfumes are packaged and sold appears the following:

le Parfum
et l'ensemble de sa presentation ont
ete crees en France par Les Parfums
des Jardins
de FIORET a Paris
Ils sont la propriete exclusive
de FIORET, INC.
pour les Etats Unis de 'Amerique
ou ils sont completes

COUTES CONTREFACONS seront rigoureusement poursuivies

FIORET, INC.

New York

Paris

BOTTLED IN U. S. A.

Substantially all of the above set out statements and representations appearing on the containers and cartons in which respondents' products are packed and sold are in the French language.

PAR. 5. The respondents purchase the perfumes which they sell and distribute 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 concen-

trate. 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 respondents 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.

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 respondents of the statements and representations on the cartons and containers, as set out hereinabove, in which their 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 an imported perfume 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 respondents' products, with the result that trade has been unfairly diverted to the respondents from their competitors engaged in the manufacture, sale, and distribution, or in the sale and distribution of perfumes, who 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 respondents, Fioret Sales Company, Inc., Murray W. Morin and Irving Unterman, individually, and as officers of the respondent, Fioret Sales Company, Inc., are to the prejudice of the public and to the 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, the answer of respondents, 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 (oral argument not having been requested), and the Commission having made its findings as to the facts and its 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, Fioret Sales Company, Inc., a corporation, its officers, representatives, agents, and employees, and Murray W. Morin and Irving Unterman, individually, and as officers of respondent Fioret Sales Company, Inc., 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 des Jardine de Fioret," or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes manufactured or compounded 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
ALPHA LABORATORY, INC.

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

Docket 2968. Complaint, June 29, 1937¹—Decision, Feb. 25, 1938

Where a corporation engaged in sale and distribution of certain so-called hygienic products for women, including its so-called "Va-Jel" and similar products, and certain device for use of former, in substantial competition with others engaged in offer and sale, in commerce among the various States, of so-called hygienic and other products used and useful for purposes for which it recommended its said products, and including many who sell and distribute, or manufacture and distribute, so-called feminine hygiene products in commerce without in any way misrepresenting effectiveness or efficacy thereof for such purposes, and including those offering medicines or preparations for use by women for hygienic, antiseptic, germicidal, and similar purposes without stating expressly or implying that their said products are invariably or uniformly effective for the purposes for which recommended, and those engaged in offer and sale in interstate commerce of medicines or other preparations, for use by women, and truthfully represented to public; in advertising its said product through printed pamphlets, leaflets, booklets, and other printed matter distributed among purchasers and prospective purchasers and through such matter placed in carton or container in which product was marketed, and through large window displays made use of by its agents in calling upon druggists and others interested in purchase of said product—

- (a) Represented that said "Va-Jel," sold with said device, as aforesaid, was effective as a contraceptive, and that it constituted a scientific prophylactic for feminine hygiene purposes and a protection against venereal diseases and acted both mechanically and as a germicide in preventing feminine hygienic troubles, facts being it was not effective as aforesaid claimed, did not constitute a scientific preparation, had no beneficial therapeutic use in so-called feminine hygiene, and had no therapeutic value whatever in treatment of ailments, ills, and diseases peculiar to women, and would not act as a preventive of diseases specified in either sex;
- (b) Represented that said preparation was prescribed by thousands of physicians and that it had the approval of the American Medical Association, American Birth Control League, and physicians generally, and that it was connected with aforesaid League, facts being product in question had never been approved for use by said Association, was not used or recommended for use by large number of well-known clinics, nor recommended by medical profession generally, and it was not connected with and did not cooperate in any manner with such League;

¹ Amended.