

IN THE MATTER OF
DERMAY PERFUMERS, INC.

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

Docket 3257. Complaint, Nov. 1, 1937—Decision, Apr. 13, 1938

Where a corporation engaged in sale and distribution of perfumery and toilet articles to purchasing and consuming public—

- (a) Represented through word "Factory" on letterheads and invoices, and otherwise, that it was manufacturer of products offered and sold by it, facts being it neither made nor compounded same, nor owned, operated nor controlled a factory or mill so doing; with capacity and tendency to mislead and deceive purchasers into erroneous belief that in buying such products from it they were dealing with manufacturer thereof and thereby saving middleman's profit and obtaining other advantages;
- (b) Displayed word "Paris" on its merchandise and on labels of packaged products, and represented through matter appearing on letterheads and labels of products and in other ways, that they originated in, or were imported from, France, facts being it had no Paris place of business and its said products were made and compounded in United States; with tendency and capacity to mislead and deceive purchasers into erroneous belief that in buying same they were purchasing perfumes or toilet articles made or compounded in France and imported therefrom, such as long in great demand among trade and consuming public and considered superior by many to the domestic product, and purchased in preference thereto;
- (c) Represented that its said products had values greatly in excess of their actual retail selling prices and values, through price-marks placed thereon which were greatly in excess of such actual prices and values and in no sense represented either, with result that members of purchasing public were led into erroneous and mistaken belief that said products' actual values and selling prices were stamped or marked thereon, in accordance with custom of marking or stamping such actual retail price or value on commodities, as understood and relied on by public as indication of quality to extent of purchasing merchandise in substantial volume in dependence thereon;

With effect of misleading substantial portion of purchasing public into erroneous belief that such representations were true and into purchase of substantial quantities of said products as result thereof, and of unfairly diverting trade to it from competitor manufacturers and distributors who do not misrepresent status or nature of their respective businesses, the origin of their products, or prices at which same are sold, or otherwise publish untrue claims therefor, in their advertisement, sale and distribution of competitive products in commerce among the various States and in the District of Columbia:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Elliot B. Paley, of New York City, for respondent.

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Complaint

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 Dermay Perfumers, Inc., 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 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, Dermay Perfumers, Inc., is a corporation, organized in 1924 and doing business under the laws of the State of New York. Its principal office and place of business is at 347 Fifth Avenue, New York, N. Y.

Respondent is now, and since the date of incorporation has been, engaged in the sale and distribution of perfumery and toilet articles to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and since the date of its incorporation has caused, its products, when sold, to be shipped from its place of business in New York, N. Y., to the purchasers thereof located in the various other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade in perfumery and toilet articles, by the respondent, between and among the various States of the United States and in the District of Columbia.

Respondent is, and since 1924 has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumery and toilet articles in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. During the time respondent has been in business as described in paragraph 1 hereof, it has represented, and still represents, by means of certain printed matter appearing on its letterheads and invoices, and in various other ways, that it is the manufacturer of the products which it offers for sale and sells.

On its letterheads and invoices the following appears:

Dermay, Inc.,
PERFUMERS
General Offices and Factory
625 West 43rd Street
New York, N. Y.

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In truth and in fact, the respondent does not manufacture or compound the products which it offers for sale and sells, nor does it own and operate, or directly and absolutely control a factory or mill wherein its said products are manufactured or compounded.

It is a common belief among the purchasing public that such merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be secured by so purchasing. The representations made by respondent, as alleged herein, have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the erroneous belief that when they purchase said products from respondent they are dealing with the manufacturer of said products and thereby are saving the middleman's profit and obtaining other advantages.

PAR. 3. In the course and conduct of its business, as aforesaid, the respondent has represented and still represents, by means of printed matter appearing on its letterheads, the labels attached to its products, and in other ways, that certain of its products originate in or are imported from France, and that it has a place of business in Paris, France. The word "Paris" appears on its letterheads and on the labels affixed to its packaged products.

In truth and in fact the respondent's products do not originate in and are not imported from France nor does it have a place of business in Paris, France. Its products are manufactured and compounded in the United States of America.

Perfumes and certain toilet articles of French origin have for many years enjoyed widespread popularity and goodwill and have been very much in demand among the trade and consuming public throughout the United States. Many persons believe that perfumes and certain toilet articles manufactured in France are superior in quality and in many other ways to perfumes and toilet articles manufactured and compounded in the United States and prefer to purchase perfumes and certain toilet articles of French origin in preference to perfumes and toilet articles manufactured or compounded in the United States. The aforesaid representations of the respondent have the tendency and capacity to mislead and deceive the purchasers into the erroneous belief that when they purchase respondent's products they are purchasing products which were, in fact, manufactured or compounded in France and imported into the United States.

PAR. 4. By price marks placed upon certain of its said products, respondent represents to customers and prospective customers that said products have values greatly in excess of the actual retail selling prices and in excess of the actual values thereof.

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The price marks placed upon said products, as aforesaid, are greatly in excess of the actual retail selling prices of said products and are in excess of the true and actual values thereof and in no sense represent either the true values or true selling prices of the products so marked but are greatly in excess of the prices at which the same are sold or intended to be sold in the usual course of trade.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities and has been led to, and does, place its confidence in the price markings so stamped on commodities 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. As a result of the respondent's representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondent's products are the prices stamped or marked thereon when, in fact, the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of perfumes and toilet articles who do not misrepresent the status or nature of their respective businesses, the origin of their products, or the price at which their products are sold, or otherwise publish claims for their products which are untrue. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors and as a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 1, 1937, issued, and on November 3, 1937, served its complaint in this proceeding upon respondent, Dermay Perfumers, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived and 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. Respondent, Dermay Perfumers, Inc., is a corporation, organized in 1924 and doing business under the laws of the State of New York. Its principal office and place of business are at 347 Fifth Avenue, New York, N. Y.

Respondent is now, and since the date of incorporation has been, engaged in the sale and distribution of perfumery and toilet articles to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and since the date of its incorporation has caused, its products, when sold, to be shipped from its place of business in New York, N. Y., to the purchasers thereof located in the various other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in perfumery and toilet articles, by the respondent, between and among the various States of the United States and in the District of Columbia.

Respondent is, and since 1924 has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumery and toilet articles in commerce between and among the various States of the United States and in the District of Columbia.

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Findings

PAR. 2. During the time respondent has been in business as described in paragraph 1 hereof, it has represented, and still represents, by means of certain printed matter appearing on its letterheads and invoices, and in various other ways, that it is the manufacturer of the products which it offers for sale and sells.

On its letterheads and invoices the following appears:

Dermay, Inc.,
PERFUMERS
General Offices and Factory
625 West 43rd Street
New York, N. Y.

The respondent does not manufacture or compound the products which it offers for sale and sells, nor does it own and operate, or directly and absolutely control a factory or mill wherein its said products are manufactured or compounded.

It is a common belief among the purchasing public that such merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be secured by so purchasing. The representations made by respondent, as alleged herein, have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the erroneous belief that when they purchase said products from respondent they are dealing with the manufacturer of said products and thereby are saving the middleman's profit and obtaining other advantages.

PAR. 3. In the course and conduct of its business, as aforesaid, the respondent has represented and still represents, by means of printed matter appearing on its letterheads, the labels attached to its products, and in other ways, that certain of its products originate in or are imported from France, and that it has a place of business in Paris, France. The word "Paris" appears on its letterheads and on the labels affixed to its packaged products.

The respondent's products do not originate in and are not imported from France nor does it have a place of business in Paris, France. Its products are manufactured and compounded in the United States of America.

Perfumes and certain toilet articles of French origin have for many years enjoyed widespread popularity and goodwill and have been very much in demand among the trade and consuming public throughout the United States. Many persons believe that perfumes and certain toilet articles manufactured in France are superior in quality and in many other ways to perfumes and toilet articles manufactured and compounded in the United States and prefer to purchase perfumes and certain toilet articles of French origin in preference to perfumes and toilet articles manufactured or compounded

in the United States. The aforesaid representations of the respondent have the tendency and capacity to mislead and deceive the purchasers into the erroneous belief that when they purchase respondent's products they are purchasing products which were, in fact, manufactured or compounded in France and imported into the United States.

PAR. 4. By price marks placed upon certain of its said products, respondent represents to customers and prospective customers that said products have values greatly in excess of the actual retail selling prices and in excess of the actual values thereof.

The price marks placed upon said products, as aforesaid, are greatly in excess of the actual retail selling prices of said products and are in excess of the true and actual values thereof and in no sense represent either the true values or true selling prices of the products so marked but are greatly in excess of the prices at which the same are sold or intended to be sold in the usual course of trade.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities, and has been led to, and does, place its confidence in the price markings so stamped on commodities 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. As a result of the respondent's representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondent's products are the prices stamped or marked thereon when, in fact, the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of perfumes and toilet articles who do not misrepresent the status or nature of their respective businesses, the origin of their products, or the price at which their products are sold, or otherwise publish claims for their products which are untrue, who likewise advertise, sell and distribute perfumes and toilet articles in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being, unfairly diverted to respondent from such competitors.

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Order

CONCLUSION

The aforesaid acts and practices of respondent, Dermal Perfumers, Inc., a corporation, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it 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 respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Dermal Perfumers, Inc., a corporation, its agents, representatives and employees, in connection with the offering for sale, sale and distribution of perfumes and other toilet articles in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the word "Factory," or through the use of any word or term of similar import and meaning, or through any other means or device, or in any manner, that said respondent is the manufacturer of the products sold by it, unless and until it actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured by it;

2. Representing, through the use of the word "Paris," or through the use of any word or term, or through any other means or device, or in any manner, that it has a place of business in Paris, France, and that its perfumes and other toilet articles compounded, bottled and packaged in the United States are made or compounded in France, or in any other foreign country, or that they are imported products;

3. Representing, through the use of fictitious price marks, or through the use of any other means or device, or in any manner, that its perfumes and toilet articles have retail values or prices which are in excess of the prices at which said perfumes, and toilet

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articles are actually and customarily offered for sale and sold to the ultimate purchaser.

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.

Syllabus

IN THE MATTER OF

ALFRED BOEHM, DOING BUSINESS AS LYNX KNITTING COMPANY

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

Docket 3286. Complaint, Dec. 22, 1937—Decision, Apr. 13, 1938

Where an individual engaged in sale and distribution of hosiery through house-to-house canvassers, principally, in the various States and in the District of Columbia—

- (a) Represented himself to be the manufacturer thereof, through inclusion of word "Knitting" in his trade name and display thereof on his letterheads, order blanks, and in advertising matter in various magazines and otherwise, facts being he did not make same, nor own and operate nor directly and absolutely control any mill and factory in which same was made, but purchased said products from various hosiery manufacturers;

With tendency and capacity to mislead and deceive purchasers thereof into false and erroneous belief that in buying from him they were dealing with manufacturer and thereby gaining an advantage in price by saving middleman's profit and in other ways; and

- (b) Represented, in advertising for distributors in the "Agents Wanted" columns of various magazines of interstate circulation, and through form letters and otherwise, and to the purchasing public generally, that his said hosiery was proof against spots, splashes, and snagging, facts being it was neither spot, splash, nor snag proof;

- (c) Represented, as aforesaid, that said hosiery was composed wholly of silk, facts being it was not composed wholly of silk, as long definitely and specifically understood by substantial number of purchasing public, as meaning product of cocoon of silkworm, employed for many years in manufacture of various articles of wearing apparel, considered, when thus made, of superior quality, and in great public demand, and commonly thus described and thus understood, as and when made wholly therefrom; and

- (d) Represented, as aforesaid, that he furnished his distributors with free sample outfits, facts being he did not thus furnish such outfits to his canvassers, but such outfits were paid for by them in cash and by services rendered;

With effect of misleading retailers, distributors, and substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of substantial quantities of such hosiery because of said erroneous belief, and of unfairly diverting trade to him from competitor manufacturers and distributors of hosiery who do not misrepresent character or type of business in which engaged, quality, nature, and composition of their products, nor inducements offered to prospective distributors, in advertising, selling and distributing their said products among various States and in the District of Columbia:

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