

IN THE MATTER OF
BOURJOIS, INC., AND BARBARA GOULD SALES
CORPORATION

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

Docket 2838. Complaint, June 9, 1936—Decision, June 30, 1938

Where a domestic corporation engaged, at its Rochester factory, in manufacture of cosmetics and other toilet preparations, and in sale and distribution of its said products to and through its corporate and other subsidiaries, and in securing, through its Paris office, concentrates, bottles, labels, and other material; and said wholly owned corporate subsidiary engaged in purchasing powders sold by it exclusively from its said parent concern at its Rochester plant for delivery to said subsidiary in New York and Chicago, and in shipping therefrom, to purchasers in every State and in District of Columbia, its said products, and in selling, under corporate name including words "Barbara Gould," their so-called "Skin Food," "Skin Cream," and "Face Powder"—

- (a) Sold their "Evening in Paris Talcum" in glass containers with label displaying words "Evening in Paris, BOURJOIS, New York—Paris," and enclosed in cardboard containers similarly displaying aforesaid words, together with depiction of certain scenes peculiar to Paris, and including the Eiffel Tower, notwithstanding fact talcum powder in question was compounded and processed from separately imported ingredients and assembled and packaged for sale and distribution at factory, in this country, of said first-named corporation, and was not, as thus represented, made in and imported from France;
- (b) Represented, in various periodicals, including magazines of Nation-wide circulation, and in newspapers of wide interstate circulation, and in advertising matrices sent for reproduction to retailers throughout the United States, that preparation first sold by them under designation "Barbara Gould Irradiated Skin Food" and thereafter, substantially unchanged, as "Barbara Gould Irradiated Skin Cream," had been irradiated with ultra-violet rays, and that, applied to the skin, said "Food" released rays of light and sunlight of therapeutic and beneficial value, and that its said similarly designated "Irradiated Face Powder," and its said "Irradiated Skin Food," were beautifying, stimulating, and beneficial in treatment of skin, by reason of such ultraviolet irradiation, and that its aforesaid skin cream, by reason of such treatment and as a consequence thereof, released, when applied to skin, atomic oxygen, which was absorbed thereby, and thus conferred upon users thereof therapeutic and beneficial results, facts being processes used in compounding said products did not and do not have result of causing them to absorb and retain, and, upon use, emit sufficient ultraviolet rays to be beneficial in treatment of skin, and said "Face Powder," "Skin Food," and "Skin Cream" gave out no radiation whatever, nor ultraviolet rays or sunlight or light or reirradiation of any kind, and emitted no form of light rays;

- (c) Represented, through inclusion of words "Skin Food" in aforesaid designation of their above referred to product, that said "Irradiated Skin Food" possessed such properties as to constitute a food for the skin or tissues, and that said preparation awakened and restored the youth glands of the skin, facts being it did not possess such properties or characteristics as to constitute such a food, did not serve to furnish nourishment to skin, body has no "youth glands," and no glands thereof were restored or revived by use of its products or preparations externally applied; and
- (d) Displayed and made use of name "Barbara Gould," as above indicated, in connection with their aforesaid products, and represented that their said products were developed or discovered after research or experimentation by said Barbara Gould, or that said Barbara Gould collaborated with a scientist or scientists in developing or originating such products, through such statements as "After extensive research and experiment in her laboratories, Barbara Gould, internationally known Beauty Counsellor, has developed this fine face powder. * * *," "This new Barbara Gould Skin Food * * *," "Barbara Gould says: 'My Irradiated Skin Food gently, safely, supplies tiny rays of light to your skin,'" etc., and "If ultra-violet-rays should be introduced into a beauty cream how marvelous that would be for a woman's skin!" thought Barbara Gould. So, in collaboration with a scientist in a great Eastern University she developed her new Irradiated Skin Food," etc., facts being name was fictitious and was an alias for an otherwise named person who, at one time, was in their employ as beauty counsellor, and person referred to did not discover or develop products in question, had no scientific degree or degrees, was not skilled in scientific preparation of cosmetics, and had no special knowledge regarding therapeutic effect of ultra-violet rays;

With capacity and tendency to mislead purchasing public into mistakenly believing that said "Food" gave nourishment to, and acted as a food for, the skin, and to confuse and mislead members of such public into erroneous belief that there were glands in the body which would be restored and revived through use of such products, various developed, as above noted, by supposed Barbara Gould as a person of special skill and knowledge regarding the therapeutic effect of ultraviolet rays on the skin, etc., and who, by reason thereof, had incorporated, with beneficial results noted, sunlight and ultraviolet rays into aforesaid product, and that users thereof, through such emission of ultraviolet rays and release of atomic oxygen, would benefit and receive results similar to those obtained from exposure to natural sunshine and from ultraviolet rays, and that talcum powder above referred to was made in France and imported to the United States, and to induce members of purchasing public to buy and use aforesaid preparations because of erroneous beliefs thus brought about, and with effect, by reason of belief of substantial portion of purchasing public, and preference of many thereof, and supposed properties or source or origin, as case might be, of aforesaid preparations, of giving added sales value thereto, and with capacity and tendency further unfairly to divert trade to them from their competitors above referred to, of whom some do not in any manner misrepresent the therapeutic value or effect of their said preparations, nor place of origin thereof:

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. Norwood*, trial examiner.

Mr. Astor Hogg and *Mr. Edward L. Smith* for the Commission.
Olwany, Eisner & Donnelly, 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Bourjois, Inc., a corporation and Barbara Gould Sales Corporation, a corporation, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bourjois, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its factory located at Rochester in said State and its office and principal place of business located at 35 West Thirty-fourth Street, New York, in said State. Respondent, Barbara Gould Sales Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 35 West Thirty-fourth Street, in the city of New York in said State. The stock of respondent, Barbara Gould Sales Corporation, is wholly owned by respondent, Bourjois, Inc., and it, Barbara Gould Sales Corporation, is a selling agent of respondent, Bourjois, Inc., and is completely dominated and controlled by respondent, Bourjois, Inc. Respondent, Bourjois, Inc., has been for more than 1 year last past, and now is, engaged in the manufacture of cosmetics and other toilet preparations and in the sale and distribution of same through its selling agent and subsidiary, respondent, Barbara Gould Sales Corporation, and now causes, and for more than 1 year last past has caused, its said products when sold by it and by respondent, Barbara Gould Sales Corporation, to be shipped from said place of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a constant current of trade in commerce between and among the various States of the United States and in the District of Columbia in said products sold by the respondents.

Respondents are now, and for more than 1 year last past have been, in substantial competition with other corporations, partnerships, persons, and firms engaged in the sale of similar products 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 business, as described in paragraph 1 hereof, respondents adopted and now use, as and for their trade names for certain of their products the words "Barbara Gould Irradiated Skin Food," "Barbara Gould Irradiated Skin Cream," "Evening In Paris Talcum," "Talc Soir de Paris," and "Barbara Gould Irradiated Face Powder," and cause said trade names to appear prominently displayed in their advertisements and advertising matter, letterheads, and stationery; on labels affixed to the containers in which said products are packed, sold, and distributed; and on the wrappers in which said containers are packed. The respondents also cause the words "London," "New York," "Paris," "Barcelona," "Buenos Aires," "Mexico," and "Havana" to appear prominently displayed on such labels.

PAR. 3. For a good many years a substantial portion of the purchasing public has been led to believe, and does believe, that exposure of the human body to the natural sunshine and to ultraviolet rays produces beneficial results to the skin.

Perfumes, cosmetics, and other toilet preparations manufactured or compounded in London, Paris, Barcelona, Buenos Aires, Mexico, and Havana and imported into the United States have for many years enjoyed widespread popularity and goodwill among the trade and the consuming public throughout the United States, many of whom consider and believe that perfumes, cosmetics, and other toilet preparations manufactured or compounded in Paris, London, Barcelona, Buenos Aires, Mexico, or Havana and other foreign countries, are superior in quality and other desired characteristics to such commodities manufactured in the United States. Many of the consuming public throughout the United States purchase perfumes, cosmetics, and other toilet preparations manufactured in foreign countries and imported into the United States in preference to perfumes, cosmetics, and other toilet preparations manufactured in the United States.

PAR. 4. In and by the use of the words "Evening In Paris Talcum," "Talc Soir de Paris," and other labels of the products sold and distributed as aforesaid, respondents impliedly represent that the products so labeled, sold, and distributed by them have been manufactured in Paris, France, and imported into the United States, when, as a matter of fact, said products so labeled, sold, and distributed

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were not manufactured in Paris, France, or any other place in France and then imported into the United States, but, on the contrary, were manufactured and compounded in the United States. In and by the use of the words "London," "New York," "Paris," "Barcelona," "Buenos Aires," "Mexico," and "Havana," respondents impliedly represent that they have factories located at those places where the products sold by them bearing such words have been manufactured and imported into the United States, when, in truth and in fact respondents do not have factories or laboratories at London, or Paris, or Barcelona, or Buenos Aires, or Mexico, or Havana, and said products were not manufactured at such places, but on the contrary were manufactured in the United States.

PAR. 5. In the course and conduct of their business, as described in paragraph 1 hereof, in soliciting the sale of and selling their said products, respondents now represent, and for more than 1 year last past have represented in various periodicals, including magazines and newspapers having a wide interstate circulation, the following:

Beautifying, stimulating, and beneficial to the skin—Barbara Gould Irradiated Face Powder * * *

After extensive research and experiment in her laboratories, Barbara Gould, internationally known Beauty Counsellor, has developed this fine face powder. A most refreshing effect is obtained with this powder which is irradiated with ultra-violet rays to be had in your skin tone.

BARBARA GOULD

(Pictorial representation of two jars showing labels reading "Barbara Gould Irradiated Skin Food")

This new Barbara Gould Skin Food, being irradiated with vitalizing health-giving ultra-violet rays, performs wonders in the way of improving your skin making it finer and even more tempered and causing unsightly blemishes to disappear * * *

Sunshine While You Sleep Without Tanning Your Skin. New Irradiated Skin Food By Barbara Gould.

Barbara Gould's New Skin Food slowly, gently, safely applies tiny ultra-violet rays to your skin all night long but you cannot see them * * * or feel them! They do not tan the skin like the ultra-violet rays of the sun, nor do they give you a sunburn! So mild are the rays, however, that they give only benefits to your skin.

Directly irradiated with ultra-violet rays. That is why beauty results show so quickly so shortly after you have begun to use Barbara Gould Irradiated Skin Food * * *

Barbara Gould Says:

My Irradiated Skin Food gently, safely, supplies tiny rays of light to your skin all night long! You cannot see them or feel them but they reawaken the youth glands of your skin!

"A beauty cream irradiated with ultra-violet rays—what marvelous things that would do for a woman", said Barbara Gould.

"If ultra-violet rays should be introduced into a beauty cream how marvelous that would be for a woman's skin!" thought Barbara Gould. So, in collaboration with a scientist in a great Eastern University she developed her new Irradiated Skin Food, into which is introduced just the right amount of ultra-violet rays to benefit the skin, without including "tan" or sunburn.

Barbara Gould Irradiated Skin Food * * * actually contains the health-giving rays of sunlight * * * all night long it softly sheds its invisible tiny rays into the depths of every pore—gently coaxes tired, sluggish glands to normal vigor and health * * * the gentlest, safest of sun treatments.

All said representations and statements, together with other statements not herein detailed, purported to be descriptive of respondents' products and of the beneficial results that may reasonably be expected to be obtained by the users of said products.

PAR. 6. In truth and in fact the representations made by the respondents in aid of the sale of their products are grossly exaggerated, false, misleading, and incorrect. The product sold, and distributed under the trade name of Barbara Gould Irradiated Skin Food did not and does not possess such properties or characteristics as to be a food for the human skin or tissues. There are no such glands in the human body as "youth glands." The name of Barbara Gould was and is a fictitious name and an alias for one Ruth Frances, who is employed by said respondents as a beauty counsellor, and she did not discover or develop such products, and she has no scientific degrees and is not skilled in the scientific preparation of cosmetics, and has no special knowledge regarding the therapeutic effect of ultraviolet rays. The process used in compounding said products did not and does not have the result of causing them to absorb, retain, and, upon use, emit sufficient ultraviolet rays to be beneficial in the treatment of the human skin.

PAR. 7. The use of the trade name "Barbara Gould Irradiated Skin Food" has a capacity and tendency to deceive the purchasing public into believing that the products sold by respondents give nourishment to and act as a food for the human skin. The representations of respondents as hereinabove set forth and other similar representations made by the respondents have had and do have the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous belief that there are glands in the human body known as "youth glands," which will be restored and revived if respondents' products are used; that the alleged Barbara Gould, in the employ of respondents, after extensive research and experiments, developed the talcum powder "Barbara Gould Irradiated Face Powder," and that she has special skill and knowl-

edge regarding the therapeutic effect of ultraviolet rays on the human skin and by her skill and knowledge has incorporated natural sunshine and ultraviolet rays into the products sold by respondents, which products, if applied to the skin will produce beneficial results; that the products sold by the respondents contain and, when applied to the human skin, emit sufficient violet rays to be beneficial in the treatment of the human skin; that the products sold by respondents and especially those designated by them as "Evening in Paris Talcum," "Talc Soir de Paris," were manufactured in France and imported into the United States, and that the products labeled with the words "London," "Paris," "Barcelona," "Buenos Aires," "Mexico," and "Havana" were all products manufactured in respondents' factories or laboratories in either London, Paris, Barcelona, Buenos Aires, Mexico, or Havana, and were products imported into the United States from foreign countries; that users of said products will receive beneficial results and results similar to those received from natural sunshine and from ultraviolet rays.

The said representations of respondents have had and do have the tendency and capacity to induce members of the purchasing public to buy and use said preparations because of the erroneous beliefs engendered, as above set forth, and as a result thereof to unfairly divert trade to respondents from competitors engaged in the sale, in interstate commerce, of similar competing preparations who truthfully represent the origin of and the therapeutic value of their respective products. As a further result thereof injury has been and is now being done by respondents to competitors in commerce as hereinabove set out.

There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce similar preparations who do not misrepresent the origin or place of manufacture of such products or the properties or qualities, or therapeutic virtues or effects of their said competing products.

PAR. 8. The above-alleged acts and practices of respondents are all to the prejudice of the public and 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."

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 9, 1936, issued, and subsequently served, its complaint in this proceeding upon respondents Bourjois, Inc., and Barbara Gould Sales Corporation, 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of said complaint, by Mark Eisner, attorney for respondents, and said testimony and other evidence were duly recorded and filed at 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid, and the Commission having duly considered the same and being fully advised in the premises found that this proceeding is in the interest of the public and made its findings as to the facts and its conclusion drawn therefrom, and its order to cease and desist. Subsequent thereto said respondents filed their motion for rehearing and for modification of the said order to cease and desist, which said motion for rehearing was denied although argument on the said motion to modify was heard. Subsequent to the hearing of said motion to modify, a stipulation of facts, approved by the Commission, was entered into between the respondents and the Chief Counsel of the Commission in which said stipulation it was agreed that the facts therein stipulated might be used as a basis of making such further or modified findings as to the facts as to the Commission might seem appropriate. The Commission having duly considered the aforesaid complaint, answers, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, the oral argument of counsel aforesaid, and the said stipulation, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts, and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bourjois, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its offices and principal place of business located at 35 West Thirty-fourth Street, New York City, in said State. Respondent, Bourjois, Inc., has been for more than 1 year last past, and now is, engaged in the manufacture of cosmetics and other toilet preparations at its factory located at Rochester, N. Y., and in the sale and distribution of said products to and through its subsidiary,

Barbara Gould Sales Corporation, respondent, and through other subsidiaries. Respondent, Bourjois, Inc., maintains an office in Paris, France, at an expense varying upon business conditions from \$2,400 to \$10,000 per year. Through that office, requests for concentrates from respondent, Bourjois, Inc., are received, and there are also received at that office from respondent, Bourjois, Inc., orders for bottles, labels, and other materials. Orders on such requisitions are placed where most advantageous, except as to concentrates which are purchased only from A. Bourjois & Cie, Wertheimer Freres, Successeurs. Pierre Wertheimer of said A. Bourjois & Cie, Wertheimer Freres, Successeurs, is president of respondent, Bourjois, Inc., and of respondent, Barbara Gould Sales Corporation.

Respondent, Barbara Gould Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 35 West Thirty-fourth Street in the city of New York, in said State. The stock of respondent Barbara Gould Sales Corporation is wholly owned by respondent Bourjois, Inc.

Respondents cause, and for more than 1 year last past have caused, their said products, when sold by them, to be shipped from said places of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in various States of the United States other than the State of New York, and in the District of Columbia.

There is now, and has been for more than 1 year last past, a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia in said products sold by the respondents. Respondent, Barbara Gould Sales Corporation, purchases the products sold by it exclusively from Bourjois, Inc., taking deliveries from Rochester, N. Y., to New York City and Chicago, Ill. From these cities it ships said merchandise to purchasers located in every State of the United States and in the District of Columbia.

Respondents are now, and for more than 1 year last past have been, in substantial competition with other corporations and with partnerships, persons and firms engaged in the sale of cosmetics and other toilet preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. During the year 1935 and prior thereto, respondents manufactured and sold in commerce as hereinbefore described a skin preparation under the trade name and brand "Barbara Gould Irradiated Skin Food." On or about July 1, 1935, the label on said

product was changed and substantially the same product was labeled, branded, and marketed in commerce as hereinbefore described by respondents as "Barbara Gould Irradiated Skin Cream." During the year 1935 and prior thereto, respondents manufactured and sold in commerce as hereinbefore described a face powder which they labeled and branded as "Barbara Gould Irradiated Face Powder." Respondents have manufactured and sold, and do now manufacture and sell in commerce as hereinbefore described, a talcum powder which they brand and label as "Evening in Paris Talcum."

PAR. 3. The talcum powder designated "Evening in Paris Talcum" is placed in a glass container to which is attached a label that reads

Evening
in Paris

BOURJOIS
New York—Paris.

The said glass container of talcum powder is enclosed in a cardboard container on which appear the words

Evening
in Paris

BOURJOIS
New York—Paris

and on which cardboard container appear certain lineal outline scenes which may be observed only in Paris, France, including the Eiffel Tower located in Paris, France.

PAR. 4. In the course and conduct of their businesses, as described in paragraphs 1 and 2 hereof, in soliciting the sale of and selling their products designated "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin Cream," respondents represented in various periodicals including magazines having a Nation-wide circulation and in newspapers having a wide interstate circulation, and through advertising matrices sent to retailers throughout the United States to be reproduced, as follows:

1. Beautifying, stimulating and beneficial to the skin—Barbara Gould Irradiated Face Powder * * * After extensive research and experiment in her laboratories, Barbara Gould, internationally known Beauty Counsellor, has developed this fine face powder. A most refreshing effect is obtained with this powder which is irradiated with ultra-violet rays to be had in your skin tone.

Findings

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BARBARA GOULD

2. (Pictorial representation of two jars showing labels reading "Barbara Gould Irradiated Skin Food.") This new Barbara Gould Skin Food, being irradiated with vitalizing, health-giving ultra-violet rays, performs wonders in the way of improving your skin, making it finer and even more tempered and causing unsightly blemishes to disappear * * * Sunshine While You Sleep Without Tanning Your Skin. New Irradiated Skin Food by Barbara Gould. Barbara Gould's New Skin Food slowly, gently, safely applies tiny ultra-violet rays to your skin all night long but you cannot see them * * * or feel them! They do not tan the skin like the ultra-violet rays of the sun, nor do they give you a sunburn! So mild are the rays, however, that they give only benefits to your skin. Directly irradiated with ultra-violet rays. That is why beauty results show so quickly so shortly after you have begun to use Barbara Gould Irradiated Skin Food * * *

BARBARA GOULD SAYS:

3. "My Irradiated Skin Food gently, safely, supplies tiny rays of light to your skin all night long! You cannot see them or feel them but they reawaken the youth glands of your skin!

"A beauty cream irradiated with ultra-violet rays—what marvelous things that would do for a woman," says Barbara Gould.

"If ultra-violet rays should be introduced into a beauty cream how marvelous that would be for a woman's skin!" thought Barbara Gould. So, in collaboration with a scientist in a great Eastern University she developed her new Irradiated Skin Food, into which is introduced just the right amount of ultra-violet rays to benefit the skin, without including "tan" or sunburn.

Barbara Gould Irradiated Skin Food * * * actually contains the health-giving rays of sunlight * * * all night long it softly sheds its invisible tiny rays into the depths of every pore—gently coaxes tired, sluggish glands to normal vigor and health * * * the gentlest, safest of sun treatments.

4. Barbara Gould Irradiated Skin Cream has a normalizing effect on all types of skin. This is brought about through the atomic oxygen element of the cream which is imparted to it by the irradiation of ultra-violet rays. U. V. R. This cream has a revitalizing, rejuvenating and normalizing effect on all skins—

Due to irradiation with ultra-violet rays, this cream literally teems with oxygen atoms. They, too, are released to your skin—toning, invigorating and generally building up normal health.

PAR. 5. In the manner and by the means described in paragraph 3 hereof, respondents represent that their talcum powder designated "Evening in Paris Talcum" and sold and distributed by them, was, and is, manufactured in France and imported into the United States; and in the manner and by the means described in paragraphs 2 and 4 hereof, that their product, "Barbara Gould Irradiated Skin Food," was a beauty cream irradiated with ultraviolet rays, which, when applied to the skin, released rays of lights and sunlight to the skin, which were of therapeutic and beneficial value; that "Barbara Gould Irradiated Skin Food" possessed such properties and char-

acteristics as to be a food for the human skin; that "Barbara Gould Irradiated Skin Food" awakened and restored the youth glands of the skin; that one Barbara Gould, an internationally known beauty counsellor, had developed the products "Barbara Gould Irradiated Face Powder" and "Barbara Gould Irradiated Skin Food"; that such products were beautifying, stimulating, and beneficial in the treatment of the skin by reason of the fact that they had been irradiated with ultraviolet rays; that the product "Barbara Gould Irradiated Skin Cream" had been irradiated with ultraviolet rays and, as a consequence, released atomic oxygen, when applied to the skin, which atomic oxygen was absorbed through the skin, and that by reason thereof, therapeutic and beneficial results were received by the users of such cream.

The representations made by the respondents as aforesaid were and are misleading, for the following reasons: The talcum powder designated as "Evening in Paris Talcum" is not manufactured in France and imported into the United States, but on the contrary is manufactured at Rochester, N. Y. The ingredients of the "Evening in Paris Talcum" are separately imported into the United States and compounded and processed into the completed product, then assembled and packaged for sale and distribution at the factory of respondent, Bourjois, Inc., located at Rochester, N. Y. The product designated "Barbara Gould Irradiated Skin Food" does not possess such properties or characteristics as to be a food for the human skin or tissues. Such product did not serve to furnish nourishment to the skin. There are no such glands in the human body as "youth glands." Glands in the human body are not restored or revived by the use of respondents' products or by the use of any preparations applied externally. The processes used in compounding said products did not, and do not, have the result of causing them to absorb, retain, and, upon use, emit sufficient ultraviolet rays to be beneficial in the treatment of the human skin. "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin Cream" give out no radiation whatever, neither do they give out any ultraviolet rays or sun rays or light or reirradiation of any kind. They emit no form of light rays.

The name "Barbara Gould" is a fictitious name used by respondents and the name "Barbara Gould" was an alias for Ruth Frances who, at one time, was employed by respondents as a beauty counsellor. She did not discover or develop such products; she has no scientific degree or degrees; is not skilled in the scientific preparation of cosmetics; and has no special knowledge regarding the therapeutic effect of ultraviolet rays.

PAR. 6. For a good many years a substantial portion of the purchasing public has been led to believe, and does believe, that exposure of the human body to the natural sunlight and to ultraviolet rays produces beneficial results. To represent a cosmetic as one which emits ultraviolet rays or sunshine causes such cosmetic to have an added sales value.

Perfumes, cosmetics, and other toilet preparations manufactured in France and imported into the United States have been popular for many years among the trade and with the purchasing public throughout the United States. A substantial portion of the purchasing public throughout the United States purchase perfumes, cosmetics, and other toilet preparations manufactured in France and imported into the United States in preference to perfumes, cosmetics, and other toilet preparations manufactured in the United States. The labeling of domestic cosmetics as of French origin causes such cosmetics to have added sales value and enable dealers in the cosmetics so labeled to sell same more readily than if they were otherwise labeled.

PAR. 7. The use of the trade name "Barbara Gould Irradiated Skin Food" had the capacity and tendency to mislead the purchasing public into mistakenly believing that said product sold by respondents gave nourishment to and acted as a food for the human skin. The representations by respondents regarding "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin Cream," as hereinabove set forth have had, and do have, the tendency and capacity to confuse and mislead members of the purchasing public into the erroneous beliefs that there are glands in the human body known as "youth glands" which will be restored and revived if such products of respondents are used; that the alleged Barbara Gould employed by respondents, after extensive research and experiments, developed the products "Barbara Gould Irradiated Face Powder" and "Barbara Gould Irradiated Skin Food"; that she had special skill and knowledge regarding the therapeutic effect of ultraviolet rays on the human skin and by her skill and knowledge had incorporated natural sunlight and ultraviolet rays into said products which, if applied to the skin, would produce beneficial results; that the products designated "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin Cream," when applied to the human skin, would emit ultraviolet rays and release atomic oxygen which would be absorbed through the skin, all of which would be beneficial in the treatment of the human skin; and that users of said products would receive beneficial results and

results similar to those received from exposure to natural sunshine and from ultraviolet rays.

The use of the word "Paris" and the outlined scenes appearing on the containers of the face powder designated "Evening in Paris," as described in paragraph 3 hereof, has the capacity and tendency to mislead the purchasing public into mistakenly believing that the said talcum powder designated "Evening in Paris" is manufactured in France and imported into the United States.

The said representations of respondents have had and now have the tendency and capacity to induce members of the purchasing public to buy and use said products because of the erroneous beliefs brought about as hereinabove set forth. The representations made by respondents as aforesaid have the capacity and tendency unfairly to divert trade to respondents from competitors herein referred to, some of which said competitors do not in any manner misrepresent the therapeutic value or effects of said products nor the places of origin of such products.

CONCLUSION

The aforesaid acts and practices of the respondents Bourjois, Inc., and Barbara Gould Sales Corporation are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Astor Hogg, counsel for the Commission, and Mark Eisner, counsel for the respondents, and a motion of respondents to modify the order to cease and desist previously issued herein, and a stipulation of facts approved by the Commission entered into between its chief counsel and counsel for the respondents, and the Commission having made its modified findings as to the facts and its conclusion that said respondents have violated the Federal Trade Commission Act, and the Commission now being desirous of modifying its said order to cease and desist in conformity with its said modified findings as to the facts, and conclusion, and being fully advised in the premises.

It is ordered, That the said order to cease and desist be and the same is hereby modified to provide as follows:

It is ordered, That the respondents, Bourjois, Inc., and Barbara Gould Sales Corporation, corporations, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetics and other toilet preparations in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said products contain any beneficial elements of the natural rays of the sun, or that the use of said products will bring the beneficial effects of sunshine to the users thereof, or that said products emit or give off ultraviolet rays or any other rays which are beneficial in the treatment of the human skin;

2. Representing in any manner that their face creams when applied to the skin, release oxygen which is absorbed through the skin or that said creams are beneficial in the treatment of the human skin by reason thereof;

3. Representing, through the use of the words "skin foods" or any other word or words of similar import to describe or designate their products, or in any manner, that the product designated "Barbara Gould Irradiated Skin Food" or said product under any other designation or any other product containing similar ingredients and having substantially similar properties, possesses such properties as to be a food for the human skin or tissues;

4. Representing in any manner that any of their said products will reawaken or restore so-called "youth glands" or any other glands;

5. Representing in any manner that their products were developed or discovered after research or experimentation by one Barbara Gould, or that Barbara Gould collaborated with a scientist, or scientists, in developing or originating any of such products;

6. Using the words "Paris" or "France," or any other word or words indicating French origin, on the labels, cartons, or containers of, or in advertising talcum powder, perfumes, cosmetics, or toilet preparations made, compounded, bottled, packaged, or assembled in the United States, without clearly and conspicuously stating in immediate connection or conjunction therewith that such products are made, compounded, bottled, packaged, or assembled (as the case may be) in the United States;

Provided, that the prohibition in this paragraph of this order shall not apply to the trade name, "Evening in Paris," when and if used alone without the additional words "Paris" or "France," or any other

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word or words, symbol or symbols, picturization or picturizations indicating or suggesting French origin.

It is further ordered, That the respondents shall, within 20 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
GEORGE H. LEE COMPANY

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

Docket 2841. Complaint, June 11, 1936—Decision, June 30, 1938

Where a corporation engaged in the sale of a vermifuge designated "Gizzard Capsules"; in advertising said capsules through printed matter accompanying the product and through newspapers and periodicals of interstate circulation—

Falsely and deceptively represented that the product was effective for all three kinds of worms and "Why bother with several remedies when one easy complete dose is so much better?"; facts being said product was not an effective vermifuge for all three kinds, nor better than separate remedies for each kind and, through its action in the case of certain kinds of such poultry pests, tended to be ineffective;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief concerning the therapeutic value, efficacy, and effect of said product, and with result that a substantial portion of said public, as a direct result of such mistaken and erroneous belief, bought same, and trade was diverted unfairly to it from competitors likewise engaged in selling and distributing products designed for similar uses and who truthfully advertised and represented the properties of their respective products and the results that might be obtained from their use; to the substantial injury of competition in commerce among the various States and in the District of Columbia:

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

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

Mr. T. H. Kennedy, *Mr. J. T. Welch*, and *Mr. Gerard A. Rault* for the Commission.

Mr. Donald J. Burke, of Omaha, Nebr., for respondent.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that George H. Lee Co., a corporation, hereinafter referred to as the 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, and states its charges in that respect as follows: