

IN THE MATTER OF
CHANEL, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3096. Complaint, Apr. 3, 1937—Decision, Sept. 27, 1939

Where a domestic corporation engaged, under name "Chanel, Inc.," in making, in the United States, from compounded concentrates which it purchased from Les Parfums Chanel, S. A., of Paris and imported into the United States, its "Chanel" perfumes, through adding to such concentrates, in proper proportion to make usable and merchantable perfume, domestic alcohol, and in thus bottling, packaging, and selling its said "Chanel" perfumes, bottles, and some of cartons for which it imported from Paris, and various brands of which were blended by it to same formulae as were employed for identically named brands put up in Paris with French, instead of American, alcohol, and also to the same formulae as used for similarly named brands wherever sold, and which, as thus engaged, had no branch organization in London, Paris, or elsewhere, nor any material connection with other similarly named organizations selling "Chanel" brands under arrangement by which the famous dress maker owned 10 percent of stock of each in return for use of her name and approval of the formulae employed—

- (a) Labeled cartons and containers of different special brands of its said "Chanel" perfumes as "Glamour de Chanel, Paris, France," "Jasmin de Chanel, Paris," "No. 5, Chanel, Paris," "Gardenia de Chanel, Paris," and "Cuir de Russie, Chanel, Paris";
- (b) Made use of such brands and designations of origin in advertisements of its said products in such periodicals as "New Yorker," "Vogue," and "Toilet Requisites," and in such advertisements displayed conspicuously terms "Chanel, Paris," and nowhere name "Chanel, Inc.," though following, in some instances in some advertisements and in its catalog, word "Chanel" with its New York address;
- (c) Held out Chanel, the dress designer, as the maker of her famous perfumes, through such statements as "This most copied and popular couturiere, ardent sponsor of Youth and designs that keep you enchantingly young looking, had the same idea in mind when she made her famous perfumes * * *," there described as "romantic, alluring, youthful," and adding that "they add that last touch of real chic," and similarly stressed elsewhere association of ideas as aforesaid; and
- (d) Set forth on front cover of catalog and price list published and issued by it, "Chanel, Inc., 35 West 34th Street, New York—Paris—London," and sold individual bottles of perfume, packed for delivery to consumers, in cartons bearing words "Chanel—Paris—London—New York";

Facts being said perfumes were not made in Paris and imported, but part of ingredients were imported therefrom and other essential ingredients added in the United States, where final and essential step in manufacture was completed, and famous dressmaker referred to did not and never had made

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perfumes, but, prior to arrangement aforesaid, had her perfumes made by others, as did many Paris dressmakers;

With effect, through use of such French names and terms, with their well understood implications by many in the United States, as aforesaid, of implying French or Paris origin for products in question and indicating relationships or affiliations which did not exist between said corporation and foreign organizations, and with tendency and capacity to mislead and deceive substantial part of purchasing and consuming public into erroneous and mistaken belief that said products were made and compounded in France and imported into the United States, such as long widely popular and in demand on part of purchasing and consuming public, and considered superior by many of such public to perfumes made and compounded domestically, and with result, as consequence of such mistaken and erroneous belief, that purchasing and consuming public, bought substantial portion of its products and trade was unfairly diverted to it from competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of perfumes, powders, cosmetics, and other toilet products, and who truthfully represent the country or source of origin thereof; to the substantial injury of competition in commerce:

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

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

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

Olvany, Eisner & Donnelly, 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 Chanel, Inc., a New York corporation, hereinafter referred to as respondent, has been and is now 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 Chanel, Inc., is a corporation having its principal place of business at 35 West Thirty-fourth Street in the city of New York, State of New York. It is now, and has for more than 1 year last past been engaged in the mixing and compounding of toilet preparations, including perfumes, powders, cosmetics, and other products and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia.

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When said products are sold respondent transports or causes the same to be transported from its principal 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. There is now and has been for more than 1 year last past and still is a constant current of trade in commerce in said products so manufactured and sold by respondent between and among the various States of the United States and in the District of Columbia.

Respondent is now and has for more than 1 year last past been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture, sale and distribution, and importation of perfumes, powders, cosmetics, and other toilet requisites in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, certain of respondent's perfume products so sold bear labels purporting to describe and refer to the place of origin or of manufacture of said products as follows:

1. "Glamour de Chanel,
Paris, France"
2. CHANEL-JASMIN,
Chanel, Paris
3. No. 5,
Chanel, Paris
4. Gardenia de Chanel,
Paris

The use of such statements as herein set-out serve as representations that said products were and are manufactured or compounded in France and imported into this country.

PAR. 3. The use of the above-quoted representations appearing on the cartons and containers of respondent's said products has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the above-referred-to products of respondent are manufactured or compounded in France and imported into the United States. In truth and in fact none of the above-referred-to products of respondent are manufactured or compounded in France but are manufactured or compounded in the United States.

PAR. 4. The respondent has caused and still causes advertising copy purported to be descriptive of its products to be inserted into magazines having a general interstate circulation. The following

is representative of said copy and the representations made therein by the respondent concerning its products:

Possibly you did not know it, but at some time or other Chanel's label was in the original model of your gown. This most copied and popular couturiere, ardent sponsor of Youth and designs that keep you enchantingly young looking, had the same idea in mind when she made her famous perfumes. They are romantic, alluring, youthful and they add that last touch of real chic. And

If you still have youth—or if you are an admirer of youth—and want to keep it in all its alluring enchantment * * * then you are Chanel's type. It is for you that she designs the clothes which made her famous, and for you she made the lovely perfumes that complete the picture of her ideal. Perfumes that will haunt you. They will accentuate your type, add that final touch of chic to your personality.

PAR. 5. For many years the French firm of Chanel, Inc., 41 Roue Cambou, Paris, France, has possessed an enviable reputation for the excellence of its products. Among the products of the aforementioned Chanel, Inc., of Paris, France, are wearing apparel, perfumes, cosmetics, and other toiletries.

PAR. 6. The above representations made by respondent in its advertising have the capacity and tendency to and do mislead customers and prospective customers into the erroneous and mistaken belief that the products of respondent so described in its advertisements are manufactured by Chanel, Inc., of Paris, France. In truth and in fact the said products are not manufactured by Chanel, Inc., of Paris, but are compounded by respondent corporation.

PAR. 7. There is a preference on the part of a certain part of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States; this is particularly true regarding perfumes and cosmetics manufactured in France and such goods so manufactured and imported command and bring from that said part of the purchasing public a higher price in the markets of the United States than domestic perfumes and cosmetics of the same nature and description.

PAR. 8. Each and all of the foregoing false and misleading statements used by the respondent in designating and describing its products and the source of origin and place of manufacture thereof were and are calculated to and had and now have the tendency and capacity to and do mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products were and are of foreign manufacture and were and are imported from France into the United States, and were and are manufactured or compounded by Chanel, Inc., of Paris, France, and into the purchase of respondent's products on account thereof.

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PAR. 9. As a result of the use of the aforesaid labels, advertising, and representations trade has been unfairly diverted to respondent from its competitors who actually import into the United States from foreign countries, perfumes, powders, cosmetics, and other toiletries manufactured in foreign countries, or who manufacture or compound perfumes, powders, cosmetics, and other toiletries in this country for sale to the buying public and who truthfully represent, and advertise the place of origin and quality of their products.

PAR. 10. The said acts and practices of respondent are all to the 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 3, 1937, issued, and on April 5, 1937, served its complaint in this proceeding upon respondent Chanel, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of said complaint and 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 Mark Eisner, of Olvany, Eisner & Donnelly, attorneys for the respondent, before John W. Norwood, a trial 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, and supplemental briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid, and the Commission having duly considered the matter, 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, Chanel, Inc., is a New York corporation. It has its principal office and place of business at 35 West Thirty-fourth Street, New York, N. Y. It is now, and has been for

some time past, engaged in the making and compounding of toilet preparations. Among the toilet preparations made and compounded by the respondent are perfumes, powders, cosmetics, and other toilet products. The respondent has for some time past been engaged in the sale and distribution of its products in commerce between and among the various States of the United States and in the District of Columbia.

When the respondent sells its products it causes them to be transported from its principal place of business in New York, N. Y., to purchasers thereof located throughout the various States of the United States. There is now, and has been for some time past, a course of trade in commerce in the respondent's products between and among the various States of the United States and in the District of Columbia.

The respondent is now, and for some time past has been, engaged in substantial competition with other corporations, and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of perfumes, powders, and other toilet preparations in commerce between and among the various States of the United States.

PAR. 2. The respondent, in the conduct of its business, and for the purpose of inducing the sale of certain of its products, sold different special brands of its perfumes labeled on cartons and containers as follows: (1) "Glamour de Chanel, Paris, France"; (2) "Jasmin de Chanel, Paris"; (3) "No. 5, Chanel, Paris"; (4) "Gardenia de Chanel, Paris"; and (5) "Cuir de Russie, Chanel, Paris."

PAR. 3. Respondent advertised the aforesaid products in the New Yorker Magazine, Vogue Magazine, and Toilet Requisites Magazine, employing the brand names and origin designations as set forth above. In these advertisements, as shown by the exhibits, the words "Chanel, Paris" appear conspicuously and nowhere are the terms "Chanel, Inc." used, but respondent's catalog and some of its advertisements show that respondent's business address, 35 West Thirty-fourth Street, New York, N. Y., was used after the word CHANEL. Chanel, the dress designer, is held out as the maker of her famous perfumes in an advertisement featuring respondent's "No. 5, Chanel, Paris" brand. The statement reads:

Possibly you did not know it, but at some time or other Chanel's label was in the original model of your gown. This most copied and popular couturiere, ardent sponsor of Youth and designs that keep you enchantingly young looking, had the same idea in mind when she made her famous perfumes. They are romantic, alluring, youthful and they add that last touch of real chic.

An advertisement featuring "Gardenia de Chanel, Paris," "Glamour de Chanel," and "Jasmin de Chanel" contains the following:

If you still have youth—or if you are an admirer of youth—and want to keep it in all its alluring enchantment * * * then you are Chanel's type. It is

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for you that she designs the clothes which made her famous, and for you she made the lovely perfumes that complete the picture of her ideal. Perfumes that will haunt you. They will accentuate your type, add that final touch of chic to your personality.

The catalog and price list published and issued by respondent bears the following on the front cover: "Chanel, Inc., 35 West 34th Street, New York—Paris—London." Cartons in which individual bottles of perfume are packed for delivery to consumers bear the words "Chanel—Paris—London—New York."

PAR. 4. Respondent mixes or compounds all of its aforesaid perfumes in the United States, where it bottles, packages, sells, and ships the same to its customers therein. All of these perfumes are made from compounded concentrates which respondent purchases from Les Parfums Chanel, S. A., of Paris, France, and imports into the United States. These concentrates are not a usable commodity until alcohol, the agent of application, is added in proper proportion to make a usable and merchantable perfume. Respondent adds domestic alcohol and so completes the compound in the United States, where it is bottled, packaged, and sold. Sometimes respondent blends these concentrates in the United States, and occasionally other ingredients besides the alcohol are added in the United States; but the ingredients of a particular brand of perfume and the proportions thereof when sold by respondent are substantially the same as contained in the identical brand put-up and sold in Paris, France, or elsewhere. That is, they are blended to the same formulae, but the French perfume contains French alcohol and that compounded by respondent contains American alcohol of the same grade. The bottles and some of the cartons are imported by respondent from Paris, France. In these circumstances it is clear, and the Commission so finds, that the aforesaid perfumes are not manufactured in Paris, France, and imported therefrom to the United States. Part of the ingredients thereof are imported from Paris, France, and other essential ingredients are added in the United States where a final and essential step in its manufacture is completed.

PAR. 5. Respondent Chanel, Inc., has no branch organization in London, Paris, or anywhere else. There is no Chanel, Inc., in Paris, France, but respondent owns some of the capital stock of Les Parfums Chanel, S. A., from which it purchases ingredients for its perfumes. There are other organizations throughout the world which sell the aforesaid brands of Chanel perfumes, but respondent has no material connection with them. All sell the Chanel brands and Madame Chanel owns 10 per cent of the capital stock of each

of them which she acquired in return for the use of her name and for her approval of the formulae. Madame Chanel does not manufacture perfumes and has never done so, but, prior to the present arrangement, she had her perfumes manufactured by others. Many Paris dressmakers have their brands of perfumes, which are made up for them. Madame Chanel owns textile, jewelry, and other interests.

PAR. 6. The use by respondent, as set forth above, of the terms Paris, France, Madame Chanel, Chanel—Paris, and of the French names of its products and of the labels and advertisements heretofore mentioned, have, in the circumstances shown, the effect of implying a French or Paris origin for these perfumes and of indicating relationships or affiliations which do not exist between respondent and foreign organizations. The implications of these terms are well understood by many people in the United States and operate to increase respondent's sales in this country.

Perfumes made or compounded in France have for many years enjoyed widespread popularity and demand on the part of the purchasing and consuming public throughout the United States, many of whom believe and consider that perfumes made or compounded in France are superior in quality and other desirable characteristics to perfumes made and compounded in the United States.

PAR. 7. The use by the respondent of the statements and representations herein set-out, and others of similar import not herein set-out, in connection with the sale and distribution of its aforesaid products, has had and now has the tendency and capacity to mislead and deceive a substantial part of the purchasing and consuming public into the erroneous and mistaken belief that said products are manufactured and compounded in France and imported into the United States.

As a result of this mistaken and erroneous belief, the purchasing and consuming public have purchased a substantial portion of the respondent's products, with the result that trade has been unfairly diverted to the respondents from its competitors engaged in the manufacture, sale, and distribution, or in the sale and distribution of perfumes, powders, cosmetics, and other toilet products, 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 respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice 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, the answer of respondent, 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 S. Brogdyne Teu, II, counsel for the Commission, and by Mark Eisner, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Chanel, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes, powders, cosmetics, and other toilet preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Paris, France," or of any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes, powders, cosmetics, or other toilet preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country; provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

2. Using any French or other foreign terms or words, except as provided in paragraph 3 hereof, to designate, describe, or in any way refer to perfumes, powders, cosmetics, or other toilet preparations made or compounded in the United States, unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith.

3. Using the terms "Glamour de Chanel," "Jasmin de Chanel," "Gardenia de Chanel," "Cuir de Russie," or any other French or other foreign words or terms as brands or trade names for perfumes,

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powders, cosmetics, or other toilet preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

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
ETABLISSEMENTS RIGAUD, INC., AND E. FOUGERA &
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 3337. Complaint, Feb. 15, 1938—Decision, Sept. 27, 1939

Where a corporation engaged, as "Etablissements Rigaud, Inc.," in buying domestically and importing from Etablissements Rigaud, S. A., in Paris, certain essential and necessary ingredients for manufacture of perfumes, and in mixing with domestic alcohol such ingredients and making same into perfumes at its place of business in New York City, and in sale and distribution thereof as hereafter indicated, and second New York corporation which was engaged as sales agent for the former in sale and distribution of perfumes made and compounded by it as aforesaid, and which, in conduct of its business and with knowledge that perfumes made by said Etablissements Rigaud, Inc., were of domestic manufacture, represented and sold, through its salesmen, as imported, such perfumes to retailers throughout the United States and in the District of Columbia;

In advertising their products through price lists, catalogs, labels, and other printed matter issued and circulated among customers and prospective customers among the various States and in said District, and through newspapers and periodicals of general circulation as aforesaid, and acting together and in cooperation with one another in the matters below set forth—

- (a) Labeled perfume and carton in which packed with words "Paris—Igora—Rigaud," and also set forth on containers of said perfume words "Eau De Toilette" and "Un Air Embaume, Rigaud, Paris," and on carton, in addition to labeling aforesaid, legend "R. Rigaud, Paris-New York";
- (b) Placed on their letterheads, statements, invoices, and other business stationery, as case might be, "Established in 1849 E. Fougere & Company, Inc. Parfumerie Division," followed by New York address, and words "Sole Importer Rigaud-Parfumeur, 16 Rue De la Paix, Paix, Paris," and "Etablissements Rigaud Inc., 8, Rue Vivienne, Paris, 16, Rue de la Paix. R Rigaud Paris-France. Successor to Parfumerie Rigaud, Inc., Laboratoire De Pharmacologie Inc., followed by New York address; and
- (c) Made such statements, in their advertisements in newspapers and periodicals of general circulation as aforesaid, as "Un Air Embaume \$6 an ounce Rigaud, Paris \$1.15 purse flacon";

Notwithstanding fact said Etablissements Rigaud, Inc., was not, as thus represented, a French firm with foreign office, and their said products were not, as aforesaid represented, made in France or in any other foreign country, but were domestic products made in the United States by blending domestic and imported ingredients;

With tendency and capacity, through use of statements and representations made by it as aforesaid, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that their said products were made and compounded in France and imported into the United