

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

States, as long preferred by substantial part of consuming public, and with result, as consequence of such belief, that purchasing public bought substantial portion of their products and trade was diverted unfairly to them from their competitors who truthfully represent country or source of origin of products made, sold, and distributed by them; 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. Edward E. Reardon*, trial examiner.

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

Mr. Walter L. Post, 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 Etablissements Rigaud, Inc., and E. Fougera & Co., Inc., corporations, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in the 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 Etablissements Rigaud, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 79 Bedford Street, city of New York, State of New York. This respondent has been for more than 1 year last past engaged in the compounding, sale, and in the distribution of perfumes.

Respondent E. Fougera Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 75 Varick Street, city of New York, State of New York. It has been for more than 1 year last past engaged in the sale and distribution of perfumes compounded by the respondent Etablissements Rigaud, Inc. It is and acts as a sales agent for the respondent Etablissements Rigaud, Inc. in the sale and distribution of said perfumes to retail dealers purchasing for resale.

In doing the acts and things hereinafter alleged said respondents have acted together and in cooperation with each other.

In the course and conduct of their businesses the respondents offer for sale and sell said products in commerce between and among the

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several States of the United States and in the District of Columbia to retail dealers purchasing for resale located at various points throughout the United States. When said products are sold respondents cause the same to be transported from their place of business in the State of New York to the purchasers thereof located at various points in the several States of the United States other than the State of New York and in the District of Columbia. There has been for more than 1 year last past and still is a course of trade in said products in said commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, respondents are, and for more than 1 year last past have been, engaged in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution, or engaged in the manufacture and in the sale and distribution, of like, and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Etablissements Rigaud, Inc. buys domestically and imports from Etablissements Rigaud, S. A., Paris, France, the essential and necessary ingredients for the manufacture of perfumes. These ingredients are made into perfumes at 79 Bedford Street, in the city of New York, State of New York. These perfumes are shipped throughout the United States to the account of respondent E. Fougera & Co., Inc. and represented to said respondent E. Fougera & Co., Inc. as being imported perfumes.

Respondent E. Fougera & Co., Inc. in the course and conduct of its business, and with the knowledge that the perfumes made by respondent Etablissements Rigaud, Inc. are of domestic manufacture, through its salesmen represents and sells as imported perfumes the perfumes made by the said respondent Etablissements Rigaud, Inc. to retailers purchasing them for resale and located throughout the United States and in the District of Columbia. The said salesmen of respondent E. Fougera & Co., Inc. upon securing an order for the perfumes manufactured by Etablissements Rigaud, Inc. forward said order directly to respondent Etablissements Rigaud, Inc. who ships the perfumes directly to the retailer purchasing for resale, charges the account of E. Fougera & Co., Inc. for the purchase price of the perfumes so sold, and thereafter collects from the respondent E. Fougera & Co., Inc. for the total purchase price of the perfumes so sold and distributed.

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PAR. 4. Respondents, in soliciting the sale and in selling their products, and for the purpose of creating a demand on the part of the consuming public for said products, have advertised their products through the media of price lists, catalogs, labels, and other printed matter issued and circulated among customers and prospective customers located in the various States of the United States and in the District of Columbia. They have also advertised their commodities in newspapers and magazines having a general circulation throughout the United States.

In the aforesaid ways and by the aforesaid means the respondents make, and have made, to the general public false and misleading statements with reference to the products sold and distributed.

PAR. 5. The said price lists, advertisements, and other printed matter published and distributed by respondents as aforesaid contain misleading descriptions and misrepresentations concerning their products. Certain of the perfumes of respondents have printed on the carton thereof or on the labels thereof the following words and phrases:

I Rigaud
G
O
Paris R
A

On the bottom of the container on which the above words appear is a label upon which the following words and phrases in exceptionally small type appear:

RIGAUD—Paris—New York
Packaged in New York

On the carton in which is packed the perfume container on which the above appears, the following labeling appears:

R
RIGAUD
Paris—New York

Eau De Toilette

The above words appear on a label attached to the neck of the container while on the label appearing near the base of the container appear the following:

Un Air Embaumé
Rigaud
Paris

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On their letterheads, statements, invoices and other business stationery the respondents have placed the following statements:

(1)

Established 1849
E. FOUGERA & COMPANY, Inc.
Parfumerie Division
79 Bedford St. at Barrow St.
New York

Sole Importer RIGAUD—PARFUMEUR, 16 Rue de la Paix, Paris

(2)

ETABLISSEMENTS RIGAUD, Inc.
8, Rue Vivienne
16, Rue de la Paix

Successor to

Parfumerie Rigaud, Inc.

Laboratoire De Pharmacologie, Inc.

R

RIGAUD

Paris—France

79 Bedford St., New York

The respondents have also made certain representations in advertisements inserted in newspapers and magazines having a general interstate circulation, of which the following is representative:

UN AIR EMBAUMÉ

\$6 an ounce Rigaud, Paris
\$1.15
perse flacon

The aforesaid representations and descriptions in the French language appearing on the aforesaid articles and their containers and the name of the corporate respondents appearing in French, as well as Parisian addresses and other representations in the French language used by and appearing on the respondents' business stationery, as aforesaid, and in advertisements inserted in newspapers and magazines, as aforesaid, serve as representations to and lead purchasers and prospective purchasers of respondents' products into the erroneous and mistaken belief that the commodities so described and referred to are made in France and imported into the United States.

In truth and in fact, the aforesaid articles are not manufactured in France or any other foreign country, but are domestic products made in the United States from foreign and domestic ingredients.

PAR. 6. For many years a substantial part of the consuming public has had, and still has, and so expressed the marked preference for perfumes which are manufactured in foreign countries, especially in France, and then imported into the United States.

PAR. 7. There are among the competitors of the respondents, manufacturers and distributors of like and similar products who advertise and represent the nature, merit, and origin of their respective products and who refrain from advertising or representing through advertisements, price lists, and other printed matter that the products offered for sale by them have a value, merit, or origin that they do not have.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the products hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to erroneously and mistakenly believe that the various articles of perfume herein described are manufactured in France and imported into the United States.

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

PAR. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the 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 February 15, 1938, issued and served its complaint in this proceeding upon respondents Etablissements Rigaud, Inc., and E. Fougere & Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other

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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 Walter L. Post, attorney for the respondents, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer 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 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. Respondent Etablissements Rigaud, Inc., is a New York corporation. It has its principal office and place of business at 79 Bedford Street, New York, N. Y. It has been for some time past engaged in the compounding, sales, and distribution of perfumes.

Respondent E. Fougera & Co., Inc., is a New York corporation. It has its principal office and place of business at 75 Varick Street, New York, N. Y. It has for some time past been engaged in the sale and distribution of perfumes made and compounded by respondent Etablissements Rigaud, Inc. It is, and acts as, sales agent of the respondent Etablissements Rigaud, Inc., in the sale and distribution of said perfumes to retail dealers purchasing for resale. In doing the acts and things hereafter set forth, the respondents have acted together and in cooperation with each other.

In the conduct of their business the respondents offer for sale and sell their products in commerce between and among the several States of the United States and in the District of Columbia to retail dealers purchasing the respondents' products for resale. The retail dealers are located at various points throughout the United States. When the products are so sold the respondents cause them to be transported from their place of business in the State of New York to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia. There has been for some time past, and there still is, a course of trade in the respondents' products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the conduct of their business the respondents are and have been for some time past engaged in substantial competition with other corporations and with partnerships, firms, and individuals, engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Etablissements Rigaud, Inc., buys domestically and imports from Etablissements Rigaud, S. A., Paris, France, certain essential and necessary ingredients for the manufacture of perfumes. These imported ingredients are mixed with domestic alcohol and made into perfumes at 79 Bedford Street, New York, N. Y. After these perfumes are manufactured they are shipped throughout the United States to the account of E. Fougere & Co., Inc.

Respondent E. Fougere & Co., Inc., in the conduct of its business, and with the knowledge that the perfumes made by respondent Etablissements Rigaud, Inc., are of domestic manufacture, through its salesmen represents and sells as imported perfumes, the perfumes made by respondent Etablissements Rigaud, Inc., to retailers purchasing them for resale and located throughout the United States and in the District of Columbia. The salesmen of respondent E. Fougere & Co., Inc., upon securing an order for the perfumes manufactured by Etablissements Rigaud, Inc., forward said order directly to respondent Etablissements Rigaud, Inc. The respondent Etablissements Rigaud, Inc., then ships the perfumes directly to the retailers purchasing for resale, charges the account to E. Fougere & Co., Inc., for the purchase price of the perfumes so sold, and thereafter collects from the respondent E. Fougere & Co., Inc., for the purchase price of the perfumes so sold and distributed.

PAR. 4. The respondents, in soliciting the sale of and selling their perfumes and for the purpose of creating a demand on the part of the consuming public for their products, have advertised their products through the media of price lists, catalogs, labels, and other printed matter issued and circulated among customers and prospective customers located in the various States of the United States and in the District of Columbia. They have also advertised their products in newspapers and magazines having a general circulation between and among the various States of the United States and in the District of Columbia. In the manner just detailed the respondents have made to the general public false and misleading statements with reference to the products sold and distributed by them.

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PAR. 5. Respondents have caused certain of the perfumes sold by them to be labeled as follows:

Paris—IGORA—Rigaud

The same inscription appears on the carton in which the perfume is packed.

The words "Eau De Toilette" appear on a label attached to the neck of the perfume container, while another label attached to the container near its base bears the following inscription:

Un Air Embaume
Rigaud
Paris

The carton in which the perfume container is packed bears the following label:

R

RIGAUD

Paris—New York

Respondents have placed the following statements on their letter-heads, statements, invoices and other business stationery:

(1) Established 1849

E. FOUGERA & COMPANY, Inc.
Parfumerie Division
79 Bedford St. at Barrow St.
New York
Sole Importer RIGAUD-PARFUMEUR, 16 Rue
De la Paix, Paix, Paris

(2) ETABLISSEMENTS RIGAUD Inc.

8, Rue Vivienne PARIS
16, Rue de la Paix

R	Successor to
RIGAUD	Parfumerie Rigaud Inc.
Paris-France	Laboratoire De Pharmacologie Inc.

79 Bedford St., New York

The respondents have also caused advertisements to be inserted in newspapers and magazines having a general circulation between and among the various states of the United States and in the District of Columbia of which the following is representative:

UN AIR EMBAUME
\$6 an ounce Rigaud, Paris
\$1.15
purse flacon

Each and all of the representations and descriptions in the French language appearing on respondents' products and in respondents' newspaper and magazine advertisements, the Parisian addresses and other representations in the French language appearing on respondents' business stationery, as hereinabove set forth, serve as representations to the purchasing public that respondent Etablissement Rigaud, Inc., is a French firm with its headquarters in France, and that respondents' perfumes are made in France and imported into this country.

In truth and in fact, respondent Etablissements Rigaud, Inc., is not a French firm and has no foreign office. Respondents' products are not manufactured in France or in any other foreign country, but are domestic products made in the United States by blending domestic and imported ingredients.

PAR. 6. For many years a substantial part of the consuming public has had a preference for perfumes which are manufactured in foreign countries, especially in France, and then imported into the United States.

PAR. 7. The use of the statements and representations made by respondents as herein set out, in connection with the sale and distribution of their products, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said products are made or compounded in France and imported into the United States.

As a result of this mistaken and erroneous belief, the purchasing public have purchased a substantial portion of respondents' products, with the result that trade has been unfairly diverted to the respondents from their competitors engaged in the manufacture, sale and distribution, who truthfully represent the country or source or origin of their products. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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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 the respondents, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein and oral arguments by S. Brogdyne Teu, II, counsel for the Commission, and Walter L. Post, counsel for the respondents, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Etablissements Rigaud, Inc., and E. Fougere & Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and distribution of perfumes 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," or "Paris, France" or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes which are made or compounded in 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 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 "Un Air Embaume," "Rigaud," "Igora," or any other French or other foreign words or terms as brand or trade names for perfumes 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
PARFUMS CORDAY, INCORPORATED

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

Docket 3639. Complaint, Oct. 28, 1938—Decision, Sept. 27, 1939

Where a domestic corporation engaged, as "Parfums Corday, Incorporated," in sale and distribution of perfumes, toilet waters, and other cosmetic preparations, which were made into finished perfumes in the United States through addition of alcohol and other necessary ingredients to the perfume concentrates or other essentials imported from France or other foreign countries, and which, after being thus made and delivered to it, were by it packaged and advertised and thereafter sold and distributed to retail dealers throughout the United States—

Represented, through such words as "Paris, France," "Voyage a Paris," "Orchidee Bleue," "Toujours Moi," and other French words, and statements such as "Voyage a Paris, Le Parfum et l'Eau de Cologne Corday, 15 Rue de la Paix, Paris," "Orchidee Bleue * * * Toujours Moi * * * Quand * * * Voyage a Paris * * *," and "* * * Corday, famous French parfumeur * * * offers you these memorable parfums * * *," etc., in its advertising and price lists and on its labels, that the perfumes, toilet waters, and other cosmetic preparations sold and distributed by it were made in France and imported into the United States, facts being they were, as aforesaid, made in this country from imported ingredients, processed as above set forth;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous and mistaken belief that such products were made in France and imported into the United States, for which, as made abroad, there is preference on part of buying public, and particularly for the higher-priced French products, and with result, as consequence of such erroneous and mistaken belief, that number of purchasing public bought substantial portion of its products and trade was diverted unfairly to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of perfumes, and who truthfully represent the country or source of origin of their products; 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 in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. Edward E. Reardon*, trial examiner.

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

Mr. Joseph L. Hochman, of New York City, for respondent.