

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.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Parfums Corday, Inc., hereinafter referred to as respondent, has violated the provisions of the said act and it appearing to the 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. Parfums Corday, Inc., is a corporation created by and existing under the laws of the State of New York with its principal office and place of business located at 485 Fifth Avenue, city of New York, State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing perfumes. Respondent causes said products when sold to be transported from its place of business in the State of New York to customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained a course of trade in said perfumes sold and distributed by it in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said products, respondent has made representations concerning the character of said products by means of advertising folders and price lists disseminated in said commerce, and by means of advertisements inserted in magazines and newspapers having an interstate circulation. Among said representations made by respondent are the following:

Voyage a Paris, Le Parfum et l'Eau de Cologne CORDAY, 15 Rue de La Paix, Paris.

Corday, 15 Rue de La Paix, Paris, toujours moi "Always Me," orchidee bleue "Blue Orchid."

Each of these Corday odors has a haunting meaning of its own—stimulating to the senses and gladsome to the soul * * * their witchery enhanced by lingering, lasting eloquence. Corday, famous French parfumeur * * * offers you these memorable parfums to endow you with an exciting glamour * * * to lead fond memory to precious moments.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products. In all of its advertising literature and through other means and other statements of similar import and effect, respondent directly or by inference represents that the perfume, toilet water, and other cosmetic preparations sold and distributed by it are manufactured in France and imported into the United States.

PAR. 5. The representations made by respondent with respect to the character of its products are grossly exaggerated, misleading, and untrue. In truth and in fact the perfumes, toilet water and other cosmetics sold and distributed by respondent are not imported from France or any other foreign country into the United States but are manufactured from essential ingredients imported from France into the United States. Further, in truth and in fact a concern, to wit, Empress Cosmetics, Inc., imports from France into the United States the essential ingredients of perfumes, flower essence, musk, and aromatic chemicals. After these essential ingredients are imported into the United States, Empress Cosmetics, Inc., makes them into perfume by the addition of alcohol. Thereafter, Empress Cosmetics, Inc., delivers the perfume so manufactured in bulk to the respondent, Parfums Corday, Inc. The respondent, Parfums Corday, Inc., packages and advertises the perfume received from Empress Cosmetics, Inc., and thereafter sells and distributes it to retail dealers throughout the United States.

PAR. 6. There is a preference on the part of the buying public for perfumes 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 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. 7. There are among respondent's competitors many who manufacture, distribute and sell perfumes who do not in any way misrepresent the character of their products.

PAR. 8. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic.

PAR. 9. The acts and practices of the respondent in using said false statements and representations in designating and describing its products, and the dissemination of said false advertisements in said commerce in connection with the sale and distribution of said products

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as above alleged, have had and now have a tendency and capacity to mislead and deceive a substantial part of the purchasing public into the erroneous belief that all of said representations are true, and that respondent's said products are imported from France. As a direct result of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's products with the effect that trade has been diverted unfairly to respondent from its competitors likewise engaged in the business of distributing and selling perfumes, who truthfully advertise and represent their products. As a consequence thereof, injury has been done and is now being done by respondent to competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and to the respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 28, 1938, issued and, on October 29, 1938, served its complaint in this proceeding upon respondent, Parfums Corday, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the 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 Joseph L. Hochman, attorney for the respondent, 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 the said complaint, the answer thereto, testimony and other evidence, briefs in support of the allegations of the complaint and in opposition thereto (respondent not having requested oral argument) 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. Parfums Corday, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 485 Fifth Avenue, New York, N. Y.

PAR. 2. The respondent is now, and for some time past has been, engaged in selling and distributing perfumes, toilet waters, and other cosmetic preparations. When sold, the respondent causes its products to be transported from its place of business in the State of New York to customers located throughout the United States and in the District of Columbia.

The respondent maintains, and has maintained for some time past, a course of trade in said products sold and distributed by it in commerce throughout the United States and in the District of Columbia.

PAR. 3. In the conduct of its business the respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumes, toilet waters, and other cosmetic preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the conduct of its business and for the purpose of inducing the purchase of its products, the respondent made representations concerning the character of its products by means of labels, advertising, folders, price lists, and by means of advertisements inserted in magazines and newspapers all of which were circulated between and among the various States of the United States and the District of Columbia. Among the representations just referred to and made by the respondent the following are representative:

Voyage a Paris, Le Parfum et l'Eau de Cologne CORDAY, 15 Rue de La Paix, Paris.

Corday, 15 Rue de La Paix, Paris, toujours moi "Always Me," orchidee bleue "Blue Orchid."

Each of these Corday odors has a haunting meaning of its own—stimulating to the senses and gladsome to the soul * * * their witchery enhanced by lingering, lasting eloquence. CORDAY, famous French parfumeur * * * offers you these memorable parfums to endow you with an exciting glamour * * * to lend fond memory to precious moments.

Extrait Luxe—604. "ORCHIDEE BLEUE" CORDAY. Contenance: 110 cmc. environ.

CORDAY PERFUME WARDROBE (LIONETTE). Containing $\frac{1}{12}$ Orchidee Bleue, $\frac{1}{12}$ Toujours Moi, $\frac{1}{12}$ Quand, $\frac{1}{12}$ Voyage A Paris, $\frac{1}{12}$ Gardenia STOCK no. 795.

All of the above statements, together with similar statements appearing in respondent's advertising literature, price lists and on its

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labels, purport to be descriptive of respondent's products. In all of its advertising literature and by other means through the statements and representations herein set out and through other statements of similar import and effect, the respondent has directly and indirectly represented that the perfumes, toilet waters and other cosmetic preparations sold and distributed by it are manufactured in France and imported into the United States.

PAR. 5. The representations made by respondent herein set out, and other similar thereto not herein set out, with respect to the character of its products, are confusing, misleading, and untrue. The perfumes sold and distributed by respondent are not made in France or any other foreign country and imported into the United States; they are manufactured in the United States by Empress Cosmetics, Inc., from perfume concentrates or other essential ingredients imported from France or other foreign countries into the United States, where the perfume concentrate or other essential ingredients to which is added American and French alcohol are processed by Empress Cosmetics, Inc., by the addition of alcohol and other necessary ingredients into the finished perfumes. Empress Cosmetics, Inc., after making the perfumes from imported ingredients, delivers the perfumes to the respondent. The respondent packages and advertises the perfumes received from Empress Cosmetics, Inc., and thereafter sells and distributes them to retail dealers throughout the United States.

PAR. 6. There is a preference on the part of the buying public for perfumes which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes manufactured in France, and such goods command and bring from the purchasing public a higher price than domestic perfumes of the same nature and description.

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

As a result of this erroneous and mistaken belief a number of the purchasing public have purchased a substantial portion of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the manufacture, sale, and distribution, or in the sale and distribution of perfumes, who truthfully represent the country or source of origin of their products. As a consequence thereof, substantial injury has

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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.

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 and unfair and deceptive acts and practices 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 Edward E. Reardon, 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 by S. Brogdyne Teu, II, counsel for the Commission, and by Joseph L. Hochman, counsel for the respondent, respondent not having requested oral argument, 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, Parfums Corday, 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 its perfumes, toilet waters, and other cosmetic 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 any other terms, words, symbols, or picturizations, indicative of French or other foreign origin of such products, or in any manner, that perfumes, toilet waters or other cosmetic preparations which are made or compounded in the United States are made or compounded in France or any other foreign country, provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied with 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, toilet water, or other cosmetic preparations made or compounded in the United States unless the English translation or equivalent thereof appears as conspicuously and in immediate connection therewith.

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3. Using the terms "Voyage a Paris," "Orchidee, Bleue," "Toujours Moi," or any other French or other foreign words or terms as brand or trade names for perfumes, toilet waters or other cosmetic preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and in 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.

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IN THE MATTER OF

T. E. BROOKS, DOING BUSINESS AS T. E. BROOKS
& COMPANY

MODIFYING CEASE AND DESIST ORDER

Docket 1442. Order, September 28, 1939

Order modifying on Commission motion prior cease and desist order entered against said respondent in Docket 1442, March 14, 1932, 16 F. T. C. 81, so as to prohibit, as below set forth, use of word "Havana" in connection with offer, sale, and distribution of cigars.

Mr. Marshall Morgan for the Commission.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of Richard P. Whiteley, Assistant Chief Counsel for the Commission to modify the order to cease and desist heretofore issued in this proceeding on March 14, 1932, and the Commission having considered said motion and the record herein, and being now fully advised in the premises.

It is ordered, That the motion to modify the order to cease and desist, as issued herein on March 14, 1932, be, and the same hereby is, granted as prayed;

It is further ordered, That the order to cease and desist issued herein on March 14, 1932, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the Commission, and the answer of respondent thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts with its conclusion that said respondent has been, and is, violating the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

It is now ordered, That respondent T. E. Brooks, doing business under the trade name and style, T. E. Brooks & Co., his agents, individual or corporate, representatives, servants, employees, and successors in business, on and after 2 years and 30 days from August 10, 1939, in connection with the offering for sale, sale, and distri-