

IN THE MATTER OF
YARDLEY OF LONDON, INC.

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

Docket 2330. Complaint, Mar. 15, 1935—Decision, Dec. 20, 1939

Where a domestic corporation, subsidiary of an English concern of London, engaged at its place of business in the United States in mixing, compounding, and manufacturing, among other toilet requisites, cosmetics and products, soaps, perfumes, powders, bath salts, facial creams, brillianlines, and after-shaving lotions, from such domestic products, as case might be, as alcohol, distilled water, mineral oil, borax, waxes, glycerin, menthol crystals, salt crystals, magnesium, and petroleum jelly, and from such imported products as perfume concentrates, milling chips or ribbons, imported waxes and others, and in sale and distribution of its various products from its place of business to retail dealer purchasers at various points in the several States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like and similar products in commerce as aforesaid—

- (a) Represented, in advertisements in newspapers and other publications circulating among the various States and in said District, and on labels as below set forth and otherwise, that said products were English and imported, through use of words "London," "English," or "Old English," and other words, depictions, etc., indicative of English origin, and made use of such terms and phrases as "33 Old Bond Street," "Straight from Bond Street" and word "London" as part of its corporate name, in connection with offer of said various products;
- (b) Made use of labels which were identical with those used by the parent company in England, and there made, for its perfumes compounded in this country, from London perfume concentrates, domestic alcohol and distilled water, and placed in bottles made, in some instances, in the United States from English molds and designs, and which consisted of old English print depicting vendors of lavender flowers in London in the 1770's, and bore inscription "YARDLEY'S OLD ENGLISH LAVENDER—Yardley & Company, Ltd., London—Est. 1770," and sold its said perfume, thus bottled and labeled, in containers bearing the same imprint and words "YARDLEY Old English LAVENDER—33 Old Bond Street, London,"; and
- (c) Made use of such words as "English," "Old English," "33 Old Bond Street, London," in describing its Complexion Cream and other products made as above set forth, and made use of label substantially identical with that employed on its perfume, as above described, on its bath salts, together with words "YARDLEY London," and set forth on boxes in which bottles of its said salts, thus labeled, were packed, words "YARDLEY LAVENDER BATH SALTS—Established in England in 1770," together with designation or reproduction on top of each box of Royal Coat of Arms with familiar lion and unicorn, and legend, underneath, "By Appointment to H. M. The Queen—YARDLEY—33 Old Bond Street, London";

Notwithstanding fact perfumes and other products thus referred to, designated and labeled, were mixed and compounded, as above set forth, in this country from domestic and imported ingredients, and did not originate as finished products in London, or England;

With tendency and capacity to mislead and deceive a substantial part of the purchasing and consuming public into the erroneous and mistaken belief that all of said products were made and compounded into the finished or completed product in England, and then imported into the United States, and, as such, decidedly preferred by some members of purchasing public over similar and less expensive articles of domestic manufacture by reason of widespread popularity and demand long enjoyed by toilet requisites made or compounded in England or France, and superiority thereof, as believed by many, in quality and other desirable characteristics over similar articles made or compounded in the United States; and

With result that purchasing and consuming public bought substantial portion of its said products as and for those made and compounded in England, and trade was thereby unfairly diverted to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of toilet requisites, including perfumes, cosmetics, bath salts, after-shaving lotions, brillantines and facial creams, and who truthfully represent the country wherein their products are made or compounded; 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.

Before *Mr. Edward M. Averill*, *Mr. John J. Keenan*, and *Mr. Robert S. Hall*, trial examiners.

Mr. John W. Hildrop and *Mr. Morton Nesmith* for the Commission.

Townsend & Lewis, 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 Yardley of London, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, 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, Yardley of London, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of busi-

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ness located at Union City, in the State of New Jersey. It is now and, for a number of years last past, has been engaged as a subsidiary of Yardley and Co., Ltd., of London, England, in the importation, mixing, compounding, and manufacturing of toilet requisites, including soaps, powders, perfumes, cosmetics, and other products, and in the sale and distribution of said products in commerce between and among various States of the United States. It causes and has caused said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in a State or States other than the State of New Jersey. In the course and conduct of its business, Yardley of London, Inc., was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Yardley of London, Inc., caused advertisements and advertising matter to be inserted in newspapers and other publications having interstate circulation and wherein appeared the following statements which were published and circulated in the various States of the United States of America: "World-wide Christmas Broadcast from 33 Old Bond Street" and "Each year from Yardley House in London, thousands of gifts go out to the four corners of the earth." In the said advertisements certain articles of merchandise which respondent ships and distributes to and into various of the States of the United States of America from its place of business in the State of New Jersey, were referred to in said advertisements as "Yardley's English Lavender," "Yardley's Famous English Lavender Soap," "English Lavender," "Yardley's English Lavender Bath Salts." In said advertisements so published as aforesaid, an invitation was extended by respondent to the retailers thereof to "give yourself an English complexion," and in said advertisements the following statements were made: "Those marvelous English complexions you'll see at the Embassy Club in London—almost anywhere in Mayfair—haven't just happened that way. English women take care of their complexions * * *." Respondent, in announcing the opening of a certain retail shop by it which it maintains at 620 Fifth Avenue, New York City, in which it sells the articles of merchandise it manufactures at its place of business in New Jersey and ships to said shop at 620 Fifth Avenue in the city of New York, N. Y., in interstate commerce, caused the following advertisements to be inserted in newspapers having an interstate circulation and which were published and distributed in various of the States of the United States of America: "Straight from Bond Street and fragrant with English Lavender." "From their shop in Bond Street, London, Yard-

ley has brought gifts of dignity and charm to you." "Christmas with all the charm of Old England." "Yardley of London." "Cosmetics imported from Bond Street." "We are constantly in receipt of bulk shipments from our factories in England"; when in truth and in fact, the said products so advertised and shipped in interstate commerce as aforesaid or a large portion thereof were not manufactured, mixed, branded, or compounded into the finished product in England and were not imported into the United States of America as finished products from England, but were products composed of ingredients which though imported from England, were mixed or compounded into the finished product in the United States of America; or were products, some of the ingredients of which were obtained from or through Yardley and Company, Ltd., London, England, and thereafter mixed or compounded in the United States of America with ingredients of domestic production to form the finished product.

PAR. 3. There is a preference on the part of certain of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States of America, and such goods so manufactured and imported command and bring from the said section of the public a higher price in the markets of the United States of America than domestic goods, wares, and merchandise of the same nature and description. The advertising and the labeling of its goods, wares, and merchandise by respondent in manner and form as hereinbefore set out have a capacity to mislead and deceive the purchasing public by creating the impression and belief that the products advertised and offered for sale by respondent in interstate commerce as aforesaid are all manufactured in England and imported to America, which has the tendency and capacity to divert trade to respondent from the competitors of respondent who actually import similar goods, wares and merchandise which are manufactured in foreign countries, into the United States for sale to the buying public and from those competitors of respondent who manufacture and sell in interstate commerce similar goods, wares and merchandise to those sold in interstate commerce by respondent but who truthfully represent same to be manufactured in the United States instead of foreign countries.

PAR. 4. Wherefore, the above alleged acts and things done by respondent are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 15, 1935, issued, and on March 16, 1935, served its complaint in this proceeding upon the respondent, Yardley of London, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John W. Hilldrop and Morton Nesmith, attorneys for the Commission, and in opposition to the allegations of the complaint by Dallas S. Townsend, attorney for the respondent, before Edward M. Averill, John J. Keenan and Robert S. Hall, examiners 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 Morton Nesmith and Dallas S. Townsend; 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Yardley of London, Inc., is a New Jersey corporation. Its plant and principal place of business is located in Union City, N. J. It also maintains a retail shop at 620 Fifth Avenue, New York, N. Y. Respondent is now, and for some time last past has been, a subsidiary of Yardley and Co., Ltd. of London, England. Respondent is now, and for several years last past has been, engaged in the mixing, compounding, and manufacturing of toilet requisites and cosmetics, including soaps, perfumes, powders, bath salts, facial creams, brilliantines, after shaving lotions, and other products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, the respondent offers for sale and sells its products in commerce as aforesaid to retail dealers purchasing said products for resale. When the products are so sold, the respondent causes them to be transported from its place

of business in the State of New Jersey to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Respondent maintains, and for some time past has maintained, a course of trade in its products in 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 its business, respondent is, and has 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 several States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course of its business has caused certain representations to be made with respect to its preparations through advertisements inserted in newspapers and other publications having a circulation between and among the various States of the United States and in the District of Columbia. Typical of said representations are the following:

World-wide Christmas broadcast from 33 Old Bond Street.

Each year from Yardley House in London, thousands of gifts go out to the four corners of the earth.

Give yourself an English complexion.

Those marvelous English complexions you'll see at the Embassy Club in London—almost anywhere in Mayfair—haven't just happened that way. English women take care of their complexions * * *.

Straight from Bond Street and fragrant with English Lavender.

From their shop in Bond Street, Yardley has brought gifts of dignity and charm to you.

Christmas with all the charm of Old England.

Yardley of London.

Cosmetics imported from Bond Street.

In said advertisements, on the labels used for the products herein-after referred to, and in other ways, the respondent has described and referred to all of said products as being English and as being imported products. Some of said products are specifically designated as follows:

Yardley's English Lavender.

Yardley's Famous English Lavender Soap.

English Lavender, and

Yardley's English Lavender Bath Salts.

PAR. 4. The procedure generally followed by respondent in manufacturing its products is as follows: The respondent receives certain imported ingredients in bulk from its parent company, Yardley and Co., Ltd. of London. At the respondent's plant in Union City, New Jersey, these ingredients are mixed, in most cases, with

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certain domestic ingredients according to the parent company's formula for that particular product. Among the domestic ingredients which are used in the manufacture of respondent's products are the following: Alcohol, borax, carbonate, magnesium, calcium carbonate, castor oil, bath salt crystals, colors and dyes, glycerin, mineral oil, paraffin wax, rice starch, potassium hydroxide, zinc oxide, greases, vaseline, menthol crystals, and magnesium stearate.

The procedure followed by respondent in the manufacture of its perfumes is as follows: Respondent imports from London perfume concentrates or compounds which consist of a blended mixture of various oil extracts from flowers and plants. The concentrate is not a usable commodity until alcohol, which is the diluting medium is added. Respondent, at its plant in New Jersey, adds domestic alcohol and distilled water in varying percentages to this concentrate and produces a usable and merchandisable perfume. The perfume is then placed into bottles which are in some instances made in the United States from English molds and designs. The bottles are then labeled with labels made in England which are identical with those used by respondent's parent company. Each of these labels consists of an old English print depicting the vendors of lavender flowers in London in the 1770's and bears the following inscription:

YARDLEY'S OLD ENGLISH
LAVENDER

Yardley & Company, Ltd.
London
Est. 1770

After being bottled and labeled, the perfume is placed into boxes. Each box has imprinted upon it the print above described and is inscribed as follows:

YARDLEY
Old English
LAVENDER

33 Old Bond Street
London

The procedure followed by respondent in the manufacture of its soap is as follows: Respondent imports from London milling chips or ribbons. At its plant in New Jersey, it adds the perfume concentrate to the chips or ribbons and this mixture is then pressed or stamped by machines into cakes of soap. The cakes are then imprinted, wrapped and put into boxes for shipment.

Respondent's English Complexion Cream is composed of several imported ingredients and two domestic ingredients, namely, mineral oil and borax. The mixing, compounding and transformation takes place in respondent's plant in Union City, N. J.

Respondent's "Lavender Brilliantine" is composed of five waxes and one perfume. Three of these waxes are obtained domestically and are mixed in respondent's plant in New Jersey with the imported ones. To this mixture is added the perfume. This perfume consists of the imported compound or concentrate to which has been added varying percentages of domestic alcohol as above described. The completed product is packed in metal containers upon which appear the print above described and which bear the following inscription:

YARDLEY'S
Old English Lavender
Solidified
BRILLIANTINE
YARDLEY
33 Old Bond Street
London

Respondent's "After Shaving Lotion" is composed of the following domestic products: alcohol, distilled water, glycerin, and menthol crystals, to which is added the imported perfume concentrate. These ingredients are mixed and compounded at respondent's plant in Union City, N. J.

Respondent's "Lavender Bath Salts" is composed of salt crystals, magnesium and perfume. The salt crystals and magnesium are domestically obtained and the perfume which is added consists of the perfume concentrate plus domestic alcohol. These ingredients are mixed and compounded at respondent's plant in Union City, N. J. The completed product is bottled and labeled, the label, except for the addition of the words "Bath Salts," being identical with that used on respondent's perfume. The metal top has imprinted thereon:

YARDLEY
London

These bottles are then packed in boxes which are labeled:

YARDLEY
LAVENDER BATH SALTS

Established in England in 1770

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On the top of each box appears the Royal Coat of Arms with the familiar lion and unicorn, under which appears:

By Appointment

to

H. M. The Queen

YARDLEY

33 Old Bond Street

London

Respondent's "Night Cream #1441," as it is known in this country, or "Skin Food" as known in England, is composed of six ingredients, three of which are domestically obtained, namely, mineral oil, petroleum jelly, and borax. These ingredients are mixed and compounded at respondent's plant in Union City, N. J.

PAR. 5. Toilet requisites, including cosmetics and perfumes, made or compounded in England or France, have for many years enjoyed widespread popularity and demand on the part of a portion of the American purchasing public, many of whom believe and consider that such articles made or compounded in England or France are superior in quality and other desirable characteristics to similar articles made or compounded in the United States. There is, therefore, a decided preference for such articles by some members of the purchasing public, and such imported articles sell for a higher price in this country than similar articles of domestic manufacture. Tariff duties are higher on such imported articles in the finished or completed form than on bulk shipments of certain of the ingredients thereof.

PAR. 6. The use by the respondent of the statements, claims, and representations as 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 all of said products are manufactured and compounded into the finished or completed product in England and then 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 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 toilet requisites, including perfumes, cosmetics, bath salts, after shaving lotions, brillian-tines, and facial creams, who truthfully represent the country wherein their products are made or compounded. As a consequence thereof,

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substantial injury has been and is being done by respondent to competition in commerce between and among the several 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 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 the respondent, testimony and other evidence taken before Edward M. Averill, John J. Keenan, and Robert S. Hall, examiners 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 Morton Nesmith, counsel for the Commission, and by Dallas S. Townsend, 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, Yardley of London, 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 toilet requisites and cosmetics, including, without limitation, perfumes, bath salts, facial creams, brilliantines, and after shaving lotions 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 words "London" (except as provided in paragraph 3 hereof), "English," or "Old English," or through the use of any other words, phrases, symbols or picturizations indicative of English origin, or through any other means or device, or in any manner, that any of the aforesaid toilet requisites and cosmetics which were in fact made, compounded, diluted or bottled in the United States, or in any place other than England, were made, compounded, diluted or bottled in England or are of English origin; provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products were made, compounded, diluted or bottled, as the case may be, in the United States or in such place other than England.

2. Using the terms or phrases "33 Old Bond Street," "Straight from Bond Street," or any other words or phrases of similar import to de-

scribe or in any way refer to any of the aforesaid toilet requisites or cosmetics which were in fact made, compounded, diluted or bottled in the United States or in any place other than England.

3. Using the word "London" as part of its corporate name in connection with the offering for sale, sale, and distribution of any of the aforesaid toilet requisites or cosmetics, which were in fact made, compounded, diluted or bottled in the United States or in any place other than England, without clearly and conspicuously stating in immediate connection therewith that such products were made, compounded, diluted or bottled, as the case may be, in the United States or in such place other than England.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order

Syllabus

IN THE MATTER OF

W. H. SHANKS, W. J. GOGGIN, CLARA SHANKS AND
JESSIE G. GOGGIN, TRADING AS SHANKS
LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3860. Complaint, Aug. 29, 1939¹—Decision, Dec. 20, 1939*

Where four partners engaged in sale and distribution of their drug-containing "Mange Lotion" to purchasers in various other States and in the District of Columbia; in advertisements which they disseminated through the mails, through insertion in circulars and other printed or written matter distributed in commerce in the various States, and in other ways and through various other means, and which were likely and intended to induce, directly or indirectly, purchase of their said preparation—

- (a) Represented that their said product was a competent and effective cure or remedy and treatment for eczema and all types of mange, abscesses, cuts, sores, and other diseases and disorders of the skin on dogs and that, where thus used, it would in all cases cause hair to grow;
- (b) Represented that, applied to human beings, it constituted such a cure or remedy and treatment for eczema and all cases of itching scalp, and competent and effective cure or remedy for athlete's foot and dandruff, and would cause hair to grow on bald spots on the head of human beings; and
- (c) Represented that it was a guaranteed treatment for itching of scalp on human beings and for scratching dogs;

Facts being said preparation would not in all cases cause hair to grow on dogs, was not such a cure, remedy, or treatment for eczema or itching scalp or for other conditions above set forth, would not cause hair to grow on bald spots as above, was not such a cure, remedy, or treatment for any diseases or disorders of skin on dogs or human beings due to or persisting because of systemic disorder or condition, guarantee was limited to refund of purchase price and was not of preparation's therapeutic value, and representations and claims made as above were otherwise false and misleading and false advertisements;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of its said drug-containing preparation:

Held, That such acts and practices, under the circumstances set forth were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Maurice C. Pearce for the Commission.

¹ Amended and supplemental.