

IN THE MATTER OF

RENAUD SALES COMPANY, INC., AND MURRAY W. MORIN,
IRVING UNTERMAN, AND IRVING LIPSCHITZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3500. Complaint, July 20, 1938—Decision, Sept. 16, 1941*

Where, for a number of years ending in 1934, the perfumes, powders, and allied products of "Societe Anonyme Renaud Paris 1817" of Paris, France, had been sold and distributed in the United States by "Renaud et Cie of America," and said products and its perfumes known as "Sweet Pea," "Gardenia," "Narcisse," "Orchidee," "Ghedma," "Notchenka," and others, all further identified by name "Renaud," "Renaud Paris," or "Renaud Paris 1817," had acquired a reputation as high quality French perfumes with the trade and purchasing public in the United States, the "Sweet Pea" being particularly well and favorably known; and thereafter, a New York corporation and three officers thereof who controlled its business, engaged in competitive interstate sale and distribution of perfumes, powders and other products;

Following the insolvency, in 1934, of said "Renaud et Cie of America," and their purchase at assignee's sale of a substantial part of the stock of said Societe's products, together with the name and good will, and including also large numbers of Renaud bottles, containers, and labels, and, in the case of the perfumes purchased by them, substantial quantities of certain odors and small quantities of others such as "Sweet Pea," amounting to a few gallons only, which perfumes and other products they sold at much lower prices than had previously been obtained for said Societe's products—

- (a) Bottled in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817," perfumes which they manufactured by mixing alcohol with perfume essences and essential oils purchased at the assignee's sale, and, when their supplies of perfumes of certain odors purchased at said sale became exhausted, bottled and sold, in containers bearing such labels, substitutes therefor which were made for them by a New York concern from essences, essential oils, or other products purchased from various sources, of which none were said Societe; and
- (b) Made use, in continuing their sale and distribution of perfumes, including those compounded in the United States of alcohol with essences and essential oils, of containers simulating those previously used in the bottling and sale of products of said Societe, and of labels which bore the words "Renaud Paris" and "Made in France," together with depiction of a Norman crown and a woman's face superimposed thereon, or "Renaud Paris 1817" together with name of the odor "Sweet Pea," or the typical Norman crown with a woman's face superimposed thereon and the name "Renaud," simulating the labels formerly used on the products of said Societe; and made advertising allowances to retailers to assist in defraying the cost of advertisements circulated by the latter such as "Famous

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in France RENAUD's Perfume * * * famous for the subtlety of its scent, is now available in the three-ounce size (listed at 22.50) at about one-fifth of its value. * * *";

With effect of misleading and deceiving the purchasing public into believing that such perfumes were those of said Societe and were those made or compounded in France and imported, for which a substantial part of the consuming public has long had a marked preference, and with consequence that substantial numbers of such public bought their products and trade was thereby diverted to them from competitors who truthfully advertise their respective goods and refrain from representing, through labels or otherwise, that their perfumes have a value, merit, or origin contrary to the fact; to the substantial injury of competition in commerce: Held, That such acts and practices, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

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

Mr. Charles S. Cox for the Commission.

Munn, Anderson & Liddy and *Mr. Abraham B. Hertz*, of New York City, for *Renaud Sales Co., Inc.*, *Murray W. Morin* and *Irving Unterman*.

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 *Renaud Sales Co., Inc.*, a corporation, *Murray W. Morin*, *Irving Unterman*, and *Irving Lipschitz*, individually, and as officers of *Renaud Sales Co., Inc.*, hereinafter referred to as respondents, have violated the provisions of 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. Respondent, *Renaud Sales Co., Inc.*, is and has been since the year 1934, a corporation organized and doing business under and by virtue of the laws of the State of New York with its principal place of business at 245 Fifth Avenue, New York, N. Y. Respondents, *Murray W. Morin*, *Irving Unterman*, and *Irving Lipschitz*, are, respectively, president, vice president, and secretary and treasurer of the said *Renaud Sales Co., Inc.*, and individually, and as such officers, control and direct, and have controlled and directed, the policies, practices, and activities of said *Renaud Sales Co., Inc.*, during the time hereinafter mentioned. Respondents are now and have been for more than 1 year last past engaged in the sale and distribution of domestic and imported perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents are now and have been in substantial competition with individuals, partnerships, firms, and corporations, likewise engaged in the business

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of distributing and selling perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. When said products are sold respondents transport or cause the same to be transported from their 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, and in the District of Columbia.

PAR. 4. Respondents, in soliciting the sale and in the sale of their products, and for the purpose of creating a demand on the part of the consuming public for said commodities, have adopted and are employing a method or form of advertising the same in newspapers, on labels, containers, cartons, bottles, and otherwise, by the use of the trade name "Renaud" or "Renaud—Paris—1817," and by so doing the respondents create and have created in the general public, and among buyers of perfumes for retail stores, misleading conceptions with reference to said articles and commodities, in that the name "Renaud" in connection with perfumes and cosmetics implies to the public that said products are of a superior quality manufactured or sold by "Renaud—Paris—1817," of Paris, France. "Renaud—Paris—1817" is a French perfumer of international reputation, and for a number of years cosmetics and perfumes manufactured or sold by said concern and bearing that name have been imported into the United States, where they have been and are recognized by the buying public as high-grade French products of superior quality, and a substantial part of the buying public of the United States has shown and does show a decided preference for such products of "Renaud—Paris—1817."

PAR. 5. The said practices and said advertisements by respondents are misleading in that many of the products so advertised and thus labeled are not in truth manufactured or compounded by "Renaud—Paris—1817," and are not products manufactured or compounded in France at all, but are products wholly compounded or manufactured within the United States.

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

PAR. 7. There are among the competitors of respondents manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective product. There are also among the competitors of respondents manufacturers and distributors of like and similar products who

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refrain from advertising or representing, through their labels or otherwise, that the merchandise offered for sale by them has a value, merit, or origin that it does not have.

PAR. 8. The acts and practices of respondents, as hereinabove alleged, have had, and now have, the tendency and capacity to and do mislead and deceive a substantial part of the purchasing and consuming public and cause them mistakenly and erroneously to believe that said perfumes so sold and distributed by the respondents were and are manufactured in France and imported from that country into the United States; and as a result of such mistaken and erroneous belief to cause a substantial number of members of the purchasing and consuming public to purchase the products of the respondents.

PAR. 9. The aforesaid false and misleading statements and representations on the part of respondents have induced and still induce a substantial number of consumer purchasers of said products, as well as many purchasers for retail stores, to buy the products offered for sale and distributed by the respondents on account of the aforementioned erroneous belief. As a result thereof substantial trade in said commerce has been unfairly diverted to the respondents from their competitors, and as a consequence 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.

PAR. 10. The aforementioned methods, acts, and practices of respondents are all to the prejudice and injury 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 20, 1938, issued and subsequently served its complaint in this proceeding upon respondent, Renaud Sales Co., Inc., a corporation, and upon respondents Murray W. Morin, Irving Unterman, and Irving Lipschitz, individually and as officers of the corporate respondent, charging said respondents 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 evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition to the allegations of the complaint by attorneys for the respondents before an examiner of the Commission theretofore duly designated

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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, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); 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, Renaud Sales Co., Inc., is and has been since 1934 a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 245 Fifth Avenue, New York, N. Y. Respondents, Murray W. Morin, Irving Unterman, and Irving Lipschitz are, respectively, president, vice president, and secretary-treasurer of the corporate respondent, and individually and as such officers, control and direct, and have controlled and directed, the policies, practices, and activities of said Renaud Sales Co., Inc.

PAR. 2. Respondents have, during the time alleged in the complaint, been engaged in the sale and distribution of perfumes, powders, and other products. When sold, respondents transport or cause said products to be transported from their 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 and in the District of Columbia. In the course and conduct of their said business respondents are now, and have been, in substantial competition with individuals, partnerships, firms, and corporations likewise engaged in selling and distributing like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For a number of years ending in 1934 the perfumes, powders, and allied products of Societe Anonyme Renaud Paris 1817 of Paris, France, were sold and distributed in the United States by Renaud et Cie of America, which company had its principal place of business at 210 South Street, Boston, Mass. These products included perfumes known as "Sweet Pea," "Gardenia," "Narcisse," "Orchidee," "Ghedma," "Notchenka," and others, all further identified by the name "Renaud," "Renaud Paris," or "Renaud Paris 1817." These products acquired a reputation of being high quality French

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perfumes and were so known to and accepted by the trade and the purchasing public in the United States. The perfume known as "Sweet Pea" was particularly well and favorably known.

In 1934, Renaud et Cie of America became insolvent, and at the assignee's sale of the assets of that company the respondents in this proceeding purchased certain of such assets, including the name and good will, a substantial part of the stock of perfumes of various odors and other products made by the Societe Anonyme Renaud Paris 1817, large numbers of empty perfume bottles and containers for Renaud products, and large quantities of Renaud labels for use on or with such bottles and containers. In the case of perfumes purchased by respondents there were substantial quantities of certain odors, and small quantities of other odors such as "Sweet Pea," in which instance the quantity purchased by respondents amounted to only a few gallons.

PAR. 4. After the aforesaid purchase respondents began selling the perfumes and other products acquired at said assignee's sale at much lower prices than had previously been obtained for products of Societe Anonyme Renaud Paris 1817, and began the manufacture of perfumes by mixing alcohol with perfume essences and essential oils purchased at the assignee's sale. Perfumes so manufactured were bottled in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817." Within a short time respondents removed their remaining stock of the products of the Societe Anonyme Renaud Paris 1817, containers, and labels to New York City; and when their supplies of perfumes of certain odors purchased at the assignee's sale became exhausted, they purchased substitutes therefor which were manufactured for them by Special Toiletries Corporation of New York City from essences, essential oils, or other products, purchased from various sources, none of which was the Societe Anonyme Renaud Paris 1817. Such essences, essential oils, or other products were combined with alcohol of domestic manufacture and the perfumes so manufactured were bottled and sold by respondents in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817."

PAR. 5. In the continuation of their business in the aforesaid manner respondents purchased large quantities of containers from glass manufacturers, which containers simulated in appearance the containers previously used in the bottling and sale of products of the Societe Anonyme Renaud Paris 1817. Respondents also purchased large quantities of labels simulating labels previously used on the products of the Societe Anonyme Renaud Paris 1817 and with which members of the trade and the purchasing public were familiar as identifying the products of the Societe Anonyme Renaud Paris 1817. For example, they purchased 100,000 labels from the Quality Seal & Engraving Company

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of Framingham, Mass., bearing the words, "Renaud," "Paris," "Made in France," with a pictorial representation of a Norman crown and a woman's face superimposed thereon, which label is a simulation in size, shape, color, and appearance of the labels previously used on products of the Societe Anonyme Renaud Paris 1817. Respondents also purchased from the Foxon Company of Providence, R. I., 125,000 labels similar in size, shape, color, and appearance to those purchased from the Quality Seal & Engraving Company and having thereon a pictorial representation of a Norman crown with a woman's face superimposed, but with the words "Renaud Paris 1817" and the name of the odor "Sweet Pea" appearing near the edge of the label. At other times, but subsequent to the purchases specifically mentioned, respondents purchased quantities of labels similar in size, shape, color, and appearance to the labels described above. These additional labels bore the typical Norman crown with a woman's face superimposed and the name "Renaud" but did not bear the words "Paris" or "Made in France."

PAR. 6. In the sale and distribution of perfumes, including those manufactured or compounded in the United States by the mixing of alcohol with essences and essential oils and packed in containers simulating those used for the products of Societe Anonyme Renaud Paris 1817 and with labels simulating those used on the products of such company, respondents' direct and implied statements to retailers purchasing such products for sale to the public resulted in their being advertised and sold with representations such as:

Famous in France

RENAUD'S Perfume

This fine perfume, famous for the subtlety of its scent, is now available in the three-ounce size (listed at 22.50) at about one-fifth of its value! The gift bottle, of simulated quartz, is done in excellent taste. Your choice of Sweet Pea, Orchid or Gardenia.

Respondents further contributed to the circulation of advertisements containing such representations by making advertising allowances to retailers to assist in defraying the cost of so advertising and representing the products in question.

PAR. 7. For many years a substantial part of the consuming public has had, and still has, a marked preference for imported perfumes manufactured or compounded in foreign countries, especially in France.

PAR. 8. There are among the competitors of respondents manufacturers and distributors of perfumes who truthfully advertise the nature, merit, and origin of their respective products and who refrain from advertising or representing through their labels or otherwise

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that the perfumes so offered for sale by them have a value, merit, or origin that they do not have.

PAR. 9. The acts and practices of respondents in offering for sale, selling, and distributing perfumes and other products not manufactured by Societe Anonyme Renaud Paris 1817 but packaged in containers simulating those in which Renaud et Cie of America sold and distributed the products of Societe Anonyme Renaud Paris 1817, with labels identical or closely simulating those used on such products, have the capacity and tendency to, and did, mislead and deceive the purchasing public into believing that such perfumes were the products of the Societe Anonyme Renaud Paris 1817. The offering for sale, sale, and distribution of perfumes which were manufactured or compounded in the United States, in the aforesaid containers and with the aforesaid labels, have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that such perfumes are manufactured or compounded in France and imported into the United States. As a result of such acts and practices substantial numbers of the purchasing and consuming public have purchased the products of respondents under such erroneous belief and trade in commerce has been diverted from competitors of respondents, and as a consequence substantial injury has been done, and is being done, 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 are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition 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 respondents, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Renaud Sales Company, Inc., a corporation, and respondents, Murray W. Morin, Irving Unterman,

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and Irving Lipschitz, individually and as officers of the corporate respondent, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of perfumes and other products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly:

1. From using the terms "Paris," "Renaud Paris," "Renaud Paris 1817," "Made in France," or any other terms, words, symbols, or pictorial representations indicative of French or other foreign origin, on or in connection with products which are made or compounded in the United States; *provided, however*, that the country or countries of origin of the various ingredients of any such product may be stated when immediately accompanied with a statement that such product is made or compounded in the United States.

2. From using the term "Renaud Paris" or "Renaud Paris 1817" on or in connection with products not made or compounded by the Societe Anonyme Renaud Paris 1817; or using on or in connection with such products containers or labels simulating the containers or labels used on or in connection with products of the Societe Anonyme Renaud Paris 1817; or otherwise representing, importing, or implying in any manner that products not made or compounded by the Societe Anonyme Renaud Paris 1817 are made or compounded by or are the products of that company.

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.

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IN THE MATTER OF

DOMESART CORPORATION AND JOSEPH ZWEIGENTHAL
AND WILLIAM M. SAFRIN, INDIVIDUALLY AND AS
OFFICERS OF DOMESART CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3620. Complaint, Oct. 3, 1938—Decision, Sept. 17, 1941

Where a corporation, and the two individuals who were its only officers and directors, and represented the ownership of its capital stock, engaged in competitive interstate sale and distribution of candy through agents or operators whose names and addresses it obtained from mailing list brokers—

Made use of sales method which involved the mailing to prospective agents of catalogs describing its product, its list of premiums, and its sales plan, involving use of pull cards in sale and distribution of its said candy, under which the amount paid by the purchaser was dependent upon the number disclosed beneath the feminine name he selected from those displayed on the tabs, the purchaser pulling a certain tab received in addition to the candy the pen and pencil set described in the catalog, and the agent or operator had choice of certain premiums for his services or alternative privilege of retaining \$2 of the amount collected for said candies, customarily sold at retail for considerably less than the price listed; and Placed in the hands of others thereby plans, methods, and devices which involved games of chance, gift enterprise, or lottery schemes for use in the sale and distribution of its product, notwithstanding "Notice to Purchasers" in the catalog advising purchaser of privilege of buying a box of candy at the price listed which, as far as appeared, was never shown to any purchaser of a pull;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to purchase its merchandise in preference to that of its competitors, including those who do not use such or a similar method and are unwilling so to do, and from whom, as a result, trade was thereby unfairly diverted to it:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and contrary to an established public policy of the United States Government, and constituted unfair methods of competition in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

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 Domesart Corpora-