

IN THE MATTER OF
JOHN H. DAVIS AND DALE S. DAVIS, TRADING AS
NORMANDIE ET CIE

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

Docket 3341. Complaint, Feb. 26, 1938—Decision, Oct. 6, 1941

Where two individuals engaged in the manufacture of perfumes and kindred products, and in competitive interstate sale and distribution thereof; directly or by implication—

- (a) Represented that their products were made or compounded in France and imported into the United States in finished form and ready for use, through such statements on labels and cartons of their perfume as "Normandie et Cie—Pois de Senteur—Paris, France," "Parfums—Normandie—Paris," "Qualite Superieure," and "True Flower Fragrances—Made in France," and through prominently displaying, in small folders enclosed with each vial of perfume, the words "Paris" and "France" and the statement "Imported True Flower Fragrances"; and
- (b) Represented thereby and through such statements, on letterheads and invoices following their trade name "Normandie et Cie," as "11 Rue des Champs Asnieres, pres Paris, France. U. S. Sales Division: 92 Maplewood Street, Watertown, (Boston), Massachusetts," that they had a place of business in France where such products were manufactured;

Facts being that their perfume was domestically made by them through importing from France certain perfume essences or compounds in bulk, to which they added domestic alcohol, the latter substance making up about 75 percent of the finished product; their bottles and cartons and the advertising matter included therewith were made in the United States, and all their operations were carried on in this country;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their products were those preferred perfumes manufactured or compounded in France and imported into the United States, and to cause it to purchase substantial quantities of their product because of such belief, and with result that trade was diverted unfairly to them from their competitors, many of whom do not misrepresent their products or the place of origin thereof:

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 E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. David S. Grant, *Mr. Harry Ehrlich* and *Walsh & Walsh*, of Boston, Mass., for respondents.

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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 John H. Davis, an individual, and Dale S. Davis, an individual, trading as Normandie et Cie, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, John H. Davis and Dale S. Davis, are individuals trading under the name and style of Normandie et Cie, with their principal office and place of business located at 92 Maplewood Street, Watertown, Boston, Mass. Respondents are now, and for some time last past have been, engaged in the business of importing certain oils and ingredients used in the manufacture of perfumes and of similar products and of manufacturing the same into perfumes which respondents sell and distribute throughout the various States of the United States.

PAR. 2. Said respondents being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and principal place of business in the State of Massachusetts to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made and in the District of Columbia. Respondents now maintain a constant current of trade in commerce in said products manufactured, distributed and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other individuals, and with corporations and firms likewise engaged in the business of selling and distributing 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 their business as hereinabove described, certain of respondents' perfume products so sold bear labels, tags, and markings purporting to describe and refer to the place of origin or manufacture of said products, as follows:

Respondents' perfume product designated "Sweet Pea" bears a sticker, on which appears the wording "Normandie et Cie—Pois de Senteur—Paris, France." Around each vial of perfume is wrapped

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a folder printed in French and English describing the product with the words "Paris, France" prominently displayed, as well as the words, "Imported True Flower Fragrance," appearing thereon. The carton containing the vial and folder above described has printed thereon the following words:

Parfums Normandie—Paris

Said carton also depicts flowers followed by the words:

Pols de Senteur Sweet Pea,

and

Qualite Superleure;
True Flower Fragrances Made in France

Letterheads and invoices distributed by respondents bear the following statements:

Suel Inventeur et Fabricant Du Celebre
Parfums "Secrets of the Flowers"

NORMANDIE ET CIE

11 Rue de Champs
Asnieres Pres Paris, France

U. S. Sales Division: 92 Maplewood
Street, Watertown, (Boston) Mass.

The use of such statements, as herein set out, by respondents serve as representations that respondents' products are manufactured or compounded in France; that said products are imported into this country finished and completed for use, and that respondents have an office and place of business at 11 Rue de Champs, Asnieres, Paris, France. In truth and in fact, said products are not manufactured in Paris or in France and are not made up or compounded into the finished or completed articles in Paris or in France, but are composed of certain oils and ingredients compounded or mixed by respondents with domestic alcohol, and bottled and packaged in the United States of America. Respondents do not have an office or place of business at 11 Rue de Champs, Asnieres, near Paris, France.

PAR. 5. There is a preference on the part of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States; and this is particularly true regarding perfumes manufactured in France, and such goods so manufactured and imported command and bring from the

purchasing public higher prices in the markets of the United States than domestic perfumes of the same nature and description.

PAR. 6. The foregoing statements on tags, labels, and invoices made by respondents in designating and describing their products and the source of origin and place of manufacture had and now have a tendency and capacity to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that the products are of foreign manufacture, and are imported from France into the United States. Further as a direct consequence of the mistaken and erroneous beliefs induced by the representations of respondents, a number of the consuming public purchased a substantial volume of respondents' products.

As a result, trade in said commerce has been unfairly diverted to respondents from their competitors who actually import into the United States from foreign countries perfumes manufactured in foreign countries, or who manufacture or compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin and quality of their products.

PAR. 7. The acts and practices of respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 26, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, John H. Davis and Dale S. Davis, individuals trading as Normandie et Cie, 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' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Charles S. Cox, attorney for the Commission, and in opposition thereto by respondent John H. Davis, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, answers, testimony,

and other evidence, report of the trial examiner upon the evidence 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. The respondents, John H. Davis and Dale S. Davis, are individuals trading under the name Normandie et Cie, with their principal office and place of business located at 92 Maplewood Street, Watertown, Boston, Mass. Respondents are now, and for more than 6 years last past have been, engaged in the manufacture, sale, and distribution of perfumes and kindred products.

PAR. 2. Respondents cause, and for more than 6 years last past have caused, their products, when sold, to be transported from their place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals and firms, and with corporations, engaged in the sale and distribution of perfumes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their products, the respondents use various names, legends, and statements purporting to be descriptive of their products and of the place of origin or manufacture of such products. For example, the label on respondents' perfume designated "Sweet Pea" bears the wording "Normandie et Cie—Pois de Senteur Paris, France." The carton in which this perfume is displayed and sold to purchasers bears, in addition to the foregoing legend, the further legends, "Parfums—Normandie—Paris," "Qualite Supérieure," and "True Flower Fragrances—Made in France." Substantially similar legends appear on the labels and cartons used by respondents for other varieties of their perfumes. Respondents also enclose with each vial of perfume a small folder or circular on which

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the words "Paris" and "France" are prominently displayed. This folder also bears the statement "Imported True Flower Fragrances."

Letterheads and invoices used by the respondents bear the following statements:

Suel Inventeur et Fabricant Du Celebre Parfums "Secrets of the Flowers"

NORMANDIE ET CIE

11 Rue des Champs

Asnieres, pres Paris, France

U. S. Sales Division: 92 Maplewood Street, Watertown, (Boston,) Massachusetts

PAR. 5. Through the use of the foregoing legends and statements and others of a similar nature, the respondents represent, directly or by implication, that their products are manufactured or compounded in France and are imported into the United States in finished form and ready for use; and that respondents have a place of business in France where such products are manufactured.

PAR. 6. The Commission finds that the respondents import from France certain perfume essences or compounds in bulk, and then add to such materials domestic alcohol. The imported essences constitute approximately 25 percent of the finished perfume product, while the alcohol constitutes approximately 75 percent of the finished product. After the manufacture of the perfume has been completed by the addition of the alcohol, the respondents bottle the perfume in new bottles or containers and then proceed to sell it to retail dealers, who in turn resell it to the public. All of the bottles in which the perfume is packaged are manufactured in the United States, and this is true also of the cartons in which the bottles are enclosed. Likewise, the advertising matter enclosed in the cartons is prepared and printed in the United States.

Respondents do not have a place of business in France or any other country outside the United States. All of the respondents' business operations, including the manufacture of their perfumes, are carried on in respondents' place of business near Boston, Mass.

PAR. 7. The Commission therefore finds that the representations made by the respondents with respect to their products and the place of origin thereof, as set forth in paragraphs 4 and 5 hereof, are false, misleading, and deceptive.

PAR. 8. The Commission further finds that there is a marked preference on the part of a substantial portion of the purchasing public in the United States for perfumes which are manufactured or compounded in France and imported into the United States.

PAR. 9. The acts and practices of the respondents have the tendency and capacity to mislead and deceive a substantial portion of the

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purchasing public into the erroneous and mistaken belief that respondents' products are manufactured or compounded in France and imported into the United States, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of such erroneous and mistaken belief. In consequence thereof trade has been diverted unfairly to the respondents from their competitors, many of whom do not misrepresent their products or the place of origin thereof.

CONCLUSION

The 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony, and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, 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 the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, John H. Davis and Dale S. Davis, individually and trading as Normandie et Cie, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their perfumes and kindred products, do forthwith cease and desist from:

1. Using the terms "Paris," "France," "Made in France," or "Imported" to designate or describe products which are made or compounded in the United States, or otherwise representing that such products are manufactured in or imported from France or any other foreign country: *Provided, however*, That the country of origin of the various ingredients of such products may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

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2. Using any French or other foreign words or terms to designate or describe products made or compounded in the United States, unless there appear in connection and conjunction therewith other words in English clearly stating that such products are made or compounded in the United States.

3. Using the words "11 Rue des Champs, Asnieres, pres Paris, France" or "U. S. Sales Division" in connection with respondents' trade name, or otherwise representing that respondents have a place of business in France or in any country other than the United States.

4. Representing in any manner whatsoever that products which are made or compounded in the United States are made in or imported from countries other than 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.

IN THE MATTER OF

CLAIROL, INC., AND JOAN GELB, LEON A. SPILO, AND
MORRIS GELBCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3615. Complaint, Sept. 30, 1938—Decision, Oct. 8, 1941*

Where three individuals engaged, through a corporation, since dissolved, which they controlled, in the competitive interstate sale and distribution of hair dyeing preparations which they designated generally as "Clairol," and more specifically as "Instant Clairol" and "Progressive Clairol"; in advertisements in circulars, leaflets, display cards and other advertising material distributed among retailers and beauty shops, and by them among the purchasing public, and also through extensive advertisements in trade journals and in advertisements which said individuals inserted in newspapers, or caused to be inserted therein, by dealers and beauty shops; directly or by implication—

- (a) Represented that their said products were not hair dyes, but preparations which reconditioned and supplied nourishment to the hair, and restored the natural or youthful color thereof, imparting thereto color which was permanent; facts being said preparations were shampoos which contained certain dyeing ingredients and their effect on the color of the hair was due solely to such ingredients, they were incapable of reconditioning the hair or restoring the natural or youthful color thereof, and their effect was not permanent, since they served only to color the hair to which applied and had no effect upon new hair, and they were incapable of supplying nourishment to the hair; and
- (b) Represented that said preparations were harmless and safe for use, and were made or compounded in Paris, France, and that as many as 12 million treatments thereof had been used in America in 1 year; facts being said "Instant Clairol" contained paratolylene diamine, and would result in irritation or rash to users allergic to such coal tar derivative, and blindness might result from its use for dyeing eyelashes or eyebrows; said preparations were compounded in the United States and not in Paris, France; and the actual number of treatments used in America in 1 year was not in excess of 1,500,000;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and to cause such portion of the public, because of said belief, to purchase substantial quantities of their preparations, and with result of diverting substantial trade to them from their competitors, among whom are those who do not misrepresent their products:

Held, That such acts and practices, under the circumstances set forth, were 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.