

## Complaint

## IN THE MATTER OF

HOUBIGANT, INC., CHERAMY, INC., AND HOUBIGANT  
SALES CORPORATION

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

*Docket 3343. Complaint, Mar. 2, 1933—Decision, Apr. 16, 1942*

Where three corporations, with a common New York address, engaged in manufacture and competitive interstate sale and distribution of perfumes, colognes, cosmetics, and toilet preparations—

Represented that certain of their products were made or compounded in France and imported into the United States through use upon labels, markers, and containers of words "Houbigant—Paris—New York" and "Cheramy—Paris—New York—France," and on bottom of glass bottles of words "Houbigant—Paris—New York"; and made use also of trade names of French origin, such as "Quelques Fleurs," "Rose de France," and others, for their various products;

The facts being their said products were not made or compounded in France by La Parfumerie Houbigant, old and long and favorably known manufacturer of such products, as represented by use of trade name "Houbigant," but were made of imported ingredients to which was added domestic alcohol; and, excepting about 10 percent of the products of one, which did consist of imported perfumes brought in in finished condition in bulk and bottled in the United States, their said products were not the higher priced preferred perfumes, colognes, and toilet preparations made or compounded in France and imported into the United States;

With effect of misleading a substantial part of the purchasing public into the mistaken belief that said products were manufactured or compounded in France and imported into the United States, thereby inducing it to purchase substantial quantities thereof, and with result of unfairly diverting trade to them from their competitors who truthfully represent the place of origin of their products:

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

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

*Mr. S. Brogdyne Tew, II*, and *Mr. Gerard A. Rault* for the Commission.

*Mock & Blum* and *Miller, Owen, Otis & Bailly*, of New York City, for respondents.

## COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal

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Trade Commission, having reason to believe that Houbigant, Inc., a corporation, Cheramy, Inc., a corporation, and Houbigant Sales Corporation, a corporation, hereinafter referred to as respondents, have been and are 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. Respondents, Houbigant, Inc., Cheramy, Inc., and Houbigant Sales Corporation, are corporations organized, existing, and doing business under the laws of the State of New York, with their principal place of business located at 539 West Forty-fifth Street, New York, N. Y. All respondents are now, and for some time last past have been, engaged cooperatively in the business of manufacturing perfumes, colognes, cosmetics, and toilet preparations, 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 New York to purchasers thereof located at various points in the various States of the United States other than the State of New York and in the District of Columbia. Respondents now maintain, and for several years last past have maintained, a course of trade in said products manufactured, distributed, and sold by them in commerce 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 corporations, and with individuals and firms likewise engaged in the business of selling and distributing perfumes, colognes, cosmetics, and toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Perfumes, colognes, and toilet preparations of high quality enjoying general acceptance throughout the world have been manufactured, compounded, and distributed since 1775 by Parfumerie Houbigant of 19 Rue du Fauborg, St. Honore, Paris, under the name Houbigant. A substantial portion of the purchasing public in the United States has associated the word "Houbigant" with perfumes, colognes, and toilet preparations manufactured or compounded in France by the firm of Parfumerie Houbigant, and when buying perfumes, colognes, and toilet preparations designated "Houbigant" they believe that said products are manufactured or compounded in France by the firm of Parfumerie Houbigant.

PAR. 5. In the course and conduct of their business as described in paragraph 1 hereof, 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:

Houbigant,  
Houbigant—Paris—New York,  
Cheramy—Paris—New York—France.

On the bottom of all the glass bottle containers of said products the words "Houbigant—Paris—New York" are blown into the glass. Invoices used by respondents in connection with the sale of Houbigant and Cheramy products bear the words "Distributors for Houbigant, Paris—Cheramy, Paris."

The use of such statements as herein set out, and the use of the name "Houbigant" by respondents in designating their products, serve as representations that said products are manufactured or compounded in France by the firm of Parfumerie Houbigant; that said products are manufactured or compounded in France and that respondents maintain an office in Paris, France. In truth and in fact, said products are not manufactured or compounded in France by Parfumerie Houbigant and are not made up or compounded into the finished or completed perfumes, colognes, or other toilet preparations in France, but are compounded into the finished product and bottled in the United States of America by respondents. Respondents do not maintain an office in Paris, France.

PAR. 6. 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; this is particularly true regarding perfumes, colognes, and toilet preparations manufactured or compounded in France, and such goods so manufactured or compounded and imported command and bring from the purchasing public a higher price in the markets of the United States than perfumes, colognes, and toilet preparations manufactured or compounded in the United States.

PAR. 7. The foregoing representations made by respondents in designating and describing their products and the source of origin and place of manufacture or compounding thereof are calculated to, and have a tendency and capacity to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are manufactured or compounded by Parfumerie Houbigant of Paris, France, and are imported from France into the United States, and that respondents maintain an office in Paris, France. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the

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misrepresentations of respondents, a number of the consuming public purchase a substantial volume of respondents' products.

As a result, trade has been unfairly diverted to respondents from their competitors who actually import into the United States from foreign countries perfumes and similar products compounded in foreign countries, or who 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. As a result thereof, substantial injury has been done, and is now 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. 8. 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 March 2 A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Houbigant, Inc., a corporation, Cheramy, Inc., a corporation, and Houbigant Sales Corporation, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by Hugo Mock and Redmond F. Kernan, attorneys for the respondents, before Edward E. Reardon, a trial 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer of the respondents, testimony, and other evidence, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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. Respondents, Houbigant, Inc., Cheramy, Inc., and Houbigant Sales Corporation, are corporations organized, existing, and doing business under the laws of the State of New York, with their principal place of business located at 539 West Forty-fifth Street, New York, N. Y. All of said respondents are now, and for some time last past have been engaged in the business of manufacturing perfumes, colognes, cosmetics, and toilet preparations, which respondents sell and distribute throughout the various States of the United States. Respondents cause said products when sold to be transported from their place of business in the State of New York 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 said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business the respondents are now, and have been, in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution of perfumes, colognes, cosmetics, and toilet preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Perfumes, colognes, and toilet preparations of high quality enjoying general acceptance throughout the world have been manufactured, compounded, and distributed since 1775 by La Parfumerie Houbigant of 19 Rue du Faubourg, St. Honore, Paris, under the name "Houbigant." For many years La Parfumerie Houbigant of Paris, France, sold and distributed its various preparations in the United States through salesmen and local distributors.

Respondent Houbigant, Inc., has no corporate connection with La Parfumerie Houbigant. It does have, however, an agreement with La Parfumerie Houbigant whereby the respondent is exclusively authorized to reproduce and distribute in the United States, products compounded according to the secret formula of La Parfumerie Houbigant. In like manner respondent, Cheramy, Inc., is authorized to reproduce and distribute perfume products heretofore created and manufactured in Paris, France, by Parfums Cheramy S. A. of Paris, France.

PAR. 4. A substantial portion of the purchasing public in the United States has associated the word "Houbigant" with perfumes, colognes, and toilet preparations manufactured or compounded in France by the firm of La Parfumerie Houbigant, and when buying perfumes,

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colognes, and toilet preparations designated "Houbigant," they believe that said products are manufactured or compounded in France by the firm of La Parfumerie Houbigant. There is a preference on the part of the buying public for perfumes, colognes, and toilet preparations manufactured or compounded in France and imported into the United States, and such goods so manufactured or compounded and imported, command and bring from the purchasing public a higher price in the markets of the United States than perfumes, colognes, and toilet preparations manufactured or compounded in the United States.

PAR. 5. In the course and conduct of their business, the respondents represent that certain of their perfume products are manufactured or compounded in France and imported into the United States by the use of words and statements upon labels, markers, and containers for said products as follows:

Houbigant,  
Houbigant—Paris—New York,  
Cheramy—Paris—New York—France,

and also by the use of glass bottle containers, on the bottom of which the words "Houbigant—Paris—New York" are blown into the glass. The use of the trade name "Houbigant" serves as a representation that products so designated are manufactured or compounded in France by the firm of La Parfumerie Houbigant and imported into the United States. In addition, the respondents designate and describe their various products by the use of trade names of French origin, such as "Quelques Fleurs," "Rose de France," and others.

PAR. 6. Respondents' products are not manufactured or compounded in France by La Parfumerie Houbigant and are not made up or compounded into the finished or completed perfumes, colognes, or other toilet preparations in France, but are compounded into the finished product and bottled in the United States of America by the respondents.

In connection with the manufacture of these various perfumes, colognes, and toilet preparations, respondent, Houbigant, Inc., imports its perfume products in the form of concentrates or compounds. When these concentrates arrive in this country, they are blended with certain imported fixatives or essential oils or synthetic materials, or combinations thereof, to which domestic alcohol is added to complete the perfume product. After such blending they are sold to the public as perfumes or colognes. In launching new perfume products, very often initial shipments are made of such products in finished condition, bottled and ready for sale. In some cases the respondent,

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Houbigant, Inc., imports perfume products in finished condition in bulk, which are bottled in the United States without the addition of alcohol or other substances. This constitutes approximately 10 per cent of said respondent's business.

The respondent, Cheramy, Inc., imports no perfume in finished condition, either in bulk or bottled form, and does not import concentrates for use in the manufacture of perfumes. Said corporation does import most of the ingredients used in the manufacture of its perfumes, to which ingredients is added domestic alcohol to complete said perfume products for sale to the purchasing public.

PAR. 7. The use by the respondents of the foregoing representations in designating and describing their products and the source of origin and place of manufacture or compounding thereof, has the tendency and capacity to, and does, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are imported into the United States, and to induce a portion of the purchasing public, because of such erroneous belief, to purchase substantial quantities of respondents' products. As a result, trade has been diverted unfairly to the respondents from their competitors who actually import into the United States from foreign countries perfumes and similar products compounded in foreign countries, or who compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin of their products.

## CONCLUSION

The acts and practices of the respondents as herein found 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence taken before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the

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facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondents, Houbigant, Inc., a corporation, Cheramy, Inc., a corporation, Houbigant Sales Corporation, a corporation, and their respective officers, representatives, agents, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of perfumes, colognes, and other toilet 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 terms "Paris" or "Paris, France," or any other terms indicative of French or other foreign origin of such products, or in any manner, that perfumes, colognes, or other toilet preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country, provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States;

2. Using the terms "Houbigant," "Cheramy," or any other French or foreign words or terms as brand or trade names for perfumes, colognes, or other toilet preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

*It is further ordered,* That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

## IN THE MATTER OF

AL MODEY LOUGHNEY, TRADING UNDER THE NAME OF  
DR. A. M. LOUGHNEY, AND ROGER G. LOUGHNEYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4531. Complaint, July 7, 1941—Decision, Apr. 20, 1942*

Where two individuals, engaged under trade name Dr. A. M. Loughney, in interstate sale and distribution of a "Regimen" for the treatment of asthma, hay fever, constipation, and various other diseases and disorders, which consisted of a mimeographed brochure and supplemental inserts containing a regimen entitled "Dr. A. M. Loughney's Dependable Guide to Self-Help," and two medicinal preparations respectively designated "Dr. Loughney's Special Compound of Disinfectant Oils" (sometimes referred to as "Intra-Lung Medicant" and "Anti-Spsthma-Oyl"), and "Dr. Loughney's Natural Bowel and Intestinal Cleanser" (referred to also as "Tonic Normalizer," "Good Botanical Remedy," "Mother Nature's Own and Best Tonic Normalizer" and "Bowelkleen"); in advertisements through the mails, in newspapers, circulars, form letters, testimonials, pamphlets, and other advertising media, directly and by implication—

- (a) Represented that said "Regimen" and the individual items thereof, separately or in combination, constituted a cure or remedy and safe and effective treatment for asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus colitis, stomach and bowel troubles, high blood pressure, weight control, acute diabetes and nephritis, and would eradicate and cause asthma and hay-fever symptoms lastingly to "disappear as if by Magic in 36 hours;"

The facts being said "Regimen" and items, used separately or in combination, were not a cure or remedy for aforesaid ailments and conditions, and would not eradicate or cause hay-fever symptoms to disappear;

- (b) Falsely represented that their said "Anti-Spsthma-Oyl" was a cure and remedy for, and constituted a safe and effective treatment for, asthma, hay fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest colds, head colds and pneumonia, and would protect the mucus membrane against such diseases, cleanse and disinfect the head cavities, and was an intralung medicant possessing sedative, healing, and disinfecting properties;

The facts being said preparation was nothing more than an emollient containing ineffectual amounts of volatile oils; and, whether used alone or in conjunction with said "Dependable Guide to Self-Help" and the preparation "Bowelkleen," was not a cure or remedy for the diseases listed;

- (c) Falsely represented that their said medicinal preparation "Bowelkleen" was a cure and remedy, and constituted a safe and effective treatment, for constipation; would eliminate gas, and act as a neutralizer and counteract gastric acidity; was a natural bowel and intestinal cleanser and eliminator; was a normalizer and natural blood remedy with tonic value; and would correct the cause of intestinal putrescence and aid digestion;