

Syllabus

IN THE MATTER OF
PARFUM L'ORLE, INC.

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

Docket 4511. Complaint, May 29, 1941—Decision, Mar. 11, 1943

Where a corporation, engaged in interstate sale and distribution of perfumes and related products—

- (a) Represented, through use of its corporate and trade name "Parfum L'Orle, Inc.," which it featured about its place of business, on its stationery, business and display cards, and other matter, and in conjunction with French brand names of its products in advertisements in newspapers and on labels attached thereto and on containers thereof, including designation "Parfum Lodorante" to designate its products as a whole, that it was a French company and that its perfume was made entirely in France;
- (b) Represented, through inclusion of words "London" and "Paris" in some of its advertisements along with its said corporate name, and on its labels and packages, that it maintained offices and business houses in London, England, and Paris, France; and
- (c) Represented, through use of certain typically French names, including "Princess De Cone," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour," as brand names for its products, and use of terms "Parfum L'Odorante" and "L'Orle Odeurs," together with such depictions in advertisements and on labels and containers as women gathering flowers in a large field, together with the words "Sunny France's flowers form the rare essences from which L'Orle's exquisite fragrances are produced," that products in question were made in France and imported into the United States;

When in fact it was not a French company but a New York State corporation; it never maintained any office or place of business in either foreign city; and while for a time it had an arrangement with an English concern which actively distributed and advertised its products both in England and France, said arrangement was not in existence during the period herein involved; it never had a manufacturing establishment in Paris but its products were made in the United States from perfume essences and oils imported from France and combined in this country with domestic ingredients;

- (d) Adopted and made use of a merchandising plan under which it furnished its dealer-customers with so-called reorder blanks on one side of which it set forth its said products by their French trade names and in another column trade names of certain nationally advertised, well-known competitive perfumes; instructed its representatives to create the impression with dealers and the public generally, of a marked similarity between its own and the other respective products; suggested in "cut-off" advertisements "Send us the name of your favorite type fragrance"; and filled orders thus received, listing brands of perfumes of other manufacturers with its own products corresponding to the brand name of the competitive products listed as aforesaid; with tendency to imply that its products were identical with competitive named perfumes;

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With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to products in question, thereby inducing its purchase thereof; and with effect of placing in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby they might mislead and deceive members of said public:

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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. S. F. Rose for the Commission.

Mr. David J. Moscovitz, of New York City, for respondent.

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 Parfum L'Orle, Inc., a corporation, hereinafter referred to as respondent, has 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. The respondent, Parfum L'Orle, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 6 East Thirty-ninth Street in the city of New York, State of New York. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of perfumes and related products.

PAR. 2. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all time mentioned herein has maintained, a course of trade in said perfumes and related 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 its aforesaid business, the respondent adopted as and for its corporate or trade name the French words "Parfum L'Orle, Inc.," under which to carry on its business, which said name respondent at all times mentioned herein has used continuously, and now uses, in advertising, soliciting the sale of, and selling its products as described herein. Respondent has also referred to and designated, and now refers to and designates, its prod-

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ucts as a whole by the French word "Parfum L'Odorante" and "L'Orle Odeurs," and has adopted and used, and now uses, as and for the trade names of particular brands of its said products certain typically French names, including among others the words "Princess De Conde," "Madam D'Epinay," "Madame De Maintenon," "Duchess De Chateauroux," "Comtesse De Toulouse," and "Madame Du Deffond."

Respondent has caused, and now causes, said corporate or trade name, "Parfum L'Orle, Inc.," to be prominently and conspicuously displayed in and about its place of business and to appear on its stationery, business cards, display cards, and other written and printed matter, which respondent has distributed, and now distributes, among its customers and prospective customers; and has caused, and now causes, said corporate or trade name "Parfum L'Orle, Inc.," alone or in conjunction with said designations "Parfum L'Odorante" and "L'Orle Odeurs" and the aforesaid French names of its particular brands of products, or some one or more of them, to appear in advertisements in various newspapers and other periodicals having a wide distribution throughout the United States, on newspaper mats and other advertising material furnished dealers purchasing respondent's products, and on the label attached to the bottles and packages in which respondent's said products are bottled, packaged, and sold. In addition to said corporate or trade name and said designations of its products, the respondent has often included in said advertisements the words "London" and "Paris." In some instances, the advertisements have also featured picturizations of women gathering flowers in a large field under which appeared the words "Sunny France's Flowers form the rare essences from which L'Orle's exquisite fragrances are produced." Nothing appears in any of respondent's advertising or on any of its labels to indicate or suggest that its products are of domestic manufacture.

PAR. 4. Through the use of the aforesaid acts and practices, including the use of said corporate or trade name, "Parfum L'Orle, Inc.," and the designations of its products as herein described, the respondent has represented, and still represents, directly or by inference, that it is a French company; that it has offices and business connections in London, England, and Paris, France; and that its products have been and are manufactured or compounded in France and thereafter imported into the United States.

PAR. 5. The foregoing representations are confusing, false, and misleading. In truth and in fact, the respondent is not a French company. Respondent has not had, and does not now have, an office

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or business connection in either London, England or Paris, France. Respondent's said products have not been, and are not now, manufactured or compounded in France and thereafter imported into the United States, but, on the contrary, have been, and are now, manufactured or compounded in the United States, and are domestic and not imported products.

PAR. 6. There is, and for many years has been, a preference on the part of a substantial portion of the purchasing public for perfumes and related products manufactured or compounded in France and imported into the United States, such preference being due in part to a belief on the part of this portion of the public that such perfumes and related products are superior in quality to and possess other advantages over perfumes and related products manufactured or compounded in the United States.

PAR. 7. In the course and conduct of its aforesaid business, the respondent, in order to promote the sale of its products, has also adopted and used a further plan or scheme to mislead and deceive the purchasing public with regard to respondent's said products. In carrying into effect said plan or scheme, the respondent has furnished and caused to be furnished to its dealer customers so-called "reorder blanks," and other printed matter on each of which appears on the left-hand side a printed list of the French names of respondent's products, together with a number for each product, and paralleling which list in another column the respondent has written, or caused to be written, with pen and ink or lead pencil the trade names of certain well-known perfumes manufactured, sold, and distributed by individuals, firms, and corporations other than respondent. As an illustration, a partial list of said names so prepared and distributed is as follows:

Princess De Conde	Shalimar
Madam D'Epinay	L'Heure Bleu (Blue Hour)
Madame Adelaide	Zaza
Madame De Maintenon	Chanel 5
Madame De Pompadour	Femme De Paris

Said trade names listed in the right-hand column, and all others similarly listed or caused to be listed by respondent as alleged herein, are owned by and are the names of products of manufacturers or distributors of perfumes other than respondent. Said products have been nationally advertised by their respective owners over long periods of time, and are well and favorably known by a substantial portion of the purchasing public as perfumes of quality and as possessing other desirable characteristics.

As a further part of said plan or scheme, and in promotion thereof, the respondent has instructed its salesmen and other representatives to create an impression in the minds of dealers and the public generally that there is a marked similarity in odor between respondent's said products and the products of the other manufacturers and distributors as shown on said lists; has outlined in detail to its said salesmen and other representatives, and has caused them in soliciting the sale of and selling respondent's products to employ a method whereby the dealers and salespeople handling said products may be, and are, informed of a definite manner in which respondent's products may be sold as, for and instead of the listed products of other manufacturers and distributors of perfumes; and has received and filled orders through the mails, and otherwise, with its own products as and for various brands of perfumes ordered from respondent by the trade names of other manufacturers and distributors included on the lists prepared and distributed as herein set forth.

PAR. 8. The use by the respondent of the aforesaid acts and practices has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and has the tendency and capacity to, and does, induce such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

PAR. 9. Through and by the means herein set forth, the respondent has also placed directly in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers have been, and are, enabled to mislead and deceive members of the purchasing public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 29th day of May 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Parfum L'Orle, Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 28, 1941, the respondent filed its answer in this proceeding. Thereafter, on January 25, 1943, in the course of a hearing scheduled for the purpose of receiving testimony

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in support of the charges stated in the complaint, a stipulation by and between counsel for the Commission and counsel for the respondent was read into the record. By the terms of this stipulation it was agreed that the statement of facts read into the record may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission, without intervening procedure, may proceed upon said statement of facts, including inferences which it may draw from such stipulated facts, to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, 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. The respondent, Parfum L'Orle, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 6 East Thirty-ninth Street in the city of New York, State of New York. The respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of perfumes and related products.

PAR. 2. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said perfumes and related 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 its aforesaid business, the respondent adopted as and for its corporate or trade name the words "Parfum L'Orle, Inc.," under which to carry on its business, which said name respondent at all times mentioned herein has used continuously, and now uses, in advertising, soliciting the sale of, and selling its products as described herein. The respondent has in the

past also referred to and designated its products as a whole by the words "Parfum L'Odorante" and "L'Orle Odeurs." The respondent has abandoned the use of the term "L'Orle Odeurs" and has changed the phrase "Parfum L'Odorante" to "Parfum Lodorante." Respondent used, as trade names for particular brands of its products, certain typically French names, including among others the words "Princess De Conde," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour," but, prior to the issuance of the complaint herein, discontinued such use.

Respondent has caused, and now causes, said corporate or trade name, "Parfum L'Orle, Inc.," to be prominently and conspicuously displayed in and about its place of business and to appear on its stationery, business cards, display cards, and other written and printed matter, which respondent has distributed. Prior to, but not since, the issuance of the complaint herein, respondent also caused its corporate name, "Parfum L'Orle, Inc.," to appear in conjunction with the aforesaid French names of its particular brands of products in advertisements in various newspapers and other periodicals having a wide distribution throughout the United States; likewise, at that time, respondent also furnished newspaper mats and other advertising material containing the same corporate name and brand names above referred to, to dealers purchasing the respondent's products for resale. Prior to, but not since, the issuance of the complaint herein, respondent's corporate name, "Parfum L'Orle, Inc.," and the terms "Parfum L'Odorante" and "L'Orle Odeurs," and also the French names of its particular brands of products appeared on the labels attached to the individual bottles and packages in which respondent's products were bottled, packaged, and sold. Since the issuance of the complaint herein, respondent has used its corporate name, "Parfum L'Orle, Inc.," and the general designation "Parfum Lodorante" in conjunction with typically American names for its various types and brands of products. Prior to, but not since, the issuance of the complaint herein, in addition to the use of respondent's corporate name and the use of the various French terms to designate its product in the manner hereinabove described, the respondent had also included in some of its advertisements the words "London" and "Paris"; and, in some instances, the advertisements had also featured picturizations of women gathering flowers in a large field, under which picturization appeared the words, "Sunny France's flowers form the rare essences from which L'Orle's exquisite fragrances are produced." Prior to the date of this stipulation, neither the advertisements of respondent's products nor the labels or packages contained any statement to the effect that the products

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offered for sale by the respondent were actually compounded in the United States.

PAR. 4. The use of the corporate name, "Parfum L'Orle, Inc," and the use of the designation "Parfum Lodorante," when not accompanied by a conspicuous statement that the products offered for sale under the respondent's corporate name and under the designation above set forth were actually compounded or made in the United States, constituted a representation that the respondent corporation is a French company and the perfume is one entirely made in France. The appearance of the words "London" and "Paris" on respondent's labels, packages, and in its advertisements constituted a representation that respondent maintained offices and business houses in London, England, and Paris, France. The respondent's use of certain typically French names, including among others the words "Princess De Conde," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour" as trade names for particular brands of its said products and the use of the terms "Parfum L'Odorante" and "L'Orle Odeurs," constituted a representation that such products were made or compounded in France and thereafter imported into the United States.

PAR. 5. The respondent corporation is not a French company. It is a domestic corporation, incorporated under and by virtue of the laws of the State of New York. It does not now maintain any office or place of business either in Paris, France, or in London, England. Respondent corporation has never maintained, under its own name, any place of business in either London, England, or Paris, France, but it did at one time have an exclusive distributorship contract with an English corporation known as "A. & V. Limited," which actively distributed, advertised and sold respondent's products both in England and France. This distributorship arrangement, however, was not in existence during all of the time during which respondent's advertising literature, labels and packages contained the words "London" and "Paris." The respondent corporation has never maintained a manufacturing establishment in Paris, France. Respondent's products have not been and are not now manufactured or compounded in France and thereafter imported into the United States. Respondent's products are made or compounded in the United States, and, in the past and up to the present time, have been and are made from perfume essences and essential oils which were imported from France and which are combined in this country with the domestic ingredients necessary to complete the compounding of the finished product.

PAR. 6. There is, and for many years has been, a preference on the part of a substantial portion of the purchasing public for perfumes

and related products manufactured or compounded in France and imported into the United States, such preference being due in part to a belief on the part of this portion of the public that such perfumes and related products are superior in quality to and possess other advantages over perfumes and related products manufactured or compounded in the United States.

PAR. 7. At one time, in the course and conduct of its aforesaid business, prior to the issuance of the complaint herein, the respondent, in order to promote the sale of its deodorizing perfume products, adopted and used a plan to merchandise such products which is hereinafter described. In carrying into effect this plan, the respondent furnished and caused to be furnished to its dealer customers so-called "reorder blanks," and other printed matter, on each of which appeared on the left-hand side a printed list of the French trade names of respondent's products, together with a number for each product, and paralleling which list, in another column, the respondent had written, or caused to be written, the trade names of certain well-known perfumes manufactured, sold, and distributed by individuals, firms, and corporations other than respondent, with which perfumes respondent's deodorizing perfumes were considered by respondent to harmonize. As an illustration, a partial list of said names so prepared and distributed is as follows:

Princess De Conde	Shalimar
Madam D'Epinay	L'Heure Bleu (Blue Hour)
Madame Adelaide	ZaZa
Madam De Maintenon	Chanel 5
Madame De Pompadour	Femme De Paris

Said trade names listed in the right-hand column, and all others similarly listed or caused to be listed by respondent, are owned by and are the names of products of manufacturers or distributors of perfumes other than respondent. Said products have been nationally advertised by their respective owners over long periods of time, and are well and favorably known by a substantial portion of the purchasing public as perfumes of quality and as possessing other desirable characteristics.

As a further part of said plan or scheme and in promotion thereof, the respondent instructed its salesmen and other representatives to create an impression in the minds of dealers and the public generally that there is a marked similarity in odor and a harmonization between respondent's said deodorizing perfume products and the products of the other manufacturers and distributors as shown in said lists. Respondent in some "cut-off" advertisements of its products under

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this plan suggested to the public, "Send us the name of your favorite type fragrance," and received orders through the mails and otherwise, listing brands of perfumes by the trade names of other manufacturers and distributors included on the right-hand side of the list prepared and distributed by the respondent, as herein set forth, and respondent filled such orders with those of its deodorizing perfume products appearing on the left-hand side of the list in the position corresponding to the brand name of the product listed. The plan described in paragraph 7 hereof was discontinued by respondent prior to the issuance of the complaint herein.

PAR. 8. The use by the respondent of the aforesaid acts and practices has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and has the tendency and capacity to induce such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

PAR. 9. Through and by the means herein set forth, the respondent has also placed directly in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers have been enabled to mislead and deceive members of the purchasing public.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts read into the record at a hearing held in New York, N. Y., on January 25, 1943, which stipulation provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; 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 Parfum L'Orle, Inc., a corporation, and 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 respondent's perfumes and perfume products 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," "Paris, France," "London," or "London, England," or in any other manner, that respondent maintains branches or business establishments in those cities, unless and until respondent does in fact actually maintain such branches; or otherwise representing that respondent maintains branches in any city in which it does not maintain an actual bona fide branch.

2. Representing, through the use of the terms "Parfum L'Odorante," "L'Orle Odeurs," "Princess De Conde," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," "Madame De Pompadour," or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any other manner, that perfumes 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.

3. Using respondent's corporate name "Parfum L'Orle, Inc.," or the brand name "Parfum Lodorante," to describe or refer to its products, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

4. Using or furnishing to others for their use, printed or other advertising matter which contains the name of any of the well-known perfumes of respondent's competitors in connection with the listing or other offering of its own products, so as to import or imply, or the effect of which tends or may tend to convey the implication, that the products of respondent are identical with or are the same as the named perfumes of such competitors.

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.

IN THE MATTER OF

F. A. STUART COMPANY, AND BENSON & DALL, INC.

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

Docket 4753. Complaint, Apr. 24, 1942—Decision, Mar. 11, 1943

Where a corporation, engaged in interstate sale and distribution of "Stuart's Laxative Compound Tablets," and an advertising agency, aiding in the preparation of its advertising material; by means of advertisements in newspapers and magazines, circulars, and other advertising literature—

- (a) Represented that product in question was entirely safe and harmless and might be used without danger of ill effects, through such statements as "Try Stuart's Laxative Compound * * * for its safe * * * results," and "No bad after-effects";

When in fact it was neither safe nor harmless in that it contained phenolphthalein in quantities sufficient to cause, in some instances, injury to health if used under prescribed or usual conditions; and

- (b) Failed to reveal facts material with respect to consequences which might result from use thereof under such conditions, in that said laxative was potentially dangerous when taken by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that use of said preparation was entirely safe and harmless, thereby inducing its purchase thereof:

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.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Alfred P. Stuart, of Marshall, Mich., for respondents.

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 F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, F. A. Stuart Co., is a corporation, existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 117 South Jefferson Street, Marshall, Mich.