

IN THE MATTER OF
ASSOCIATED DISTRIBUTORS, INC., ET AL.

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

Docket 4749. Complaint, June 30, 1942¹—Decision, May 18, 1943

Where a corporation and three individuals engaged in interstate sale and distribution of their "Chen Yu Nail Lacquer"—

- (a) Featured trade name "Chen Yu" on the bottles in which said product was sold and in advertisements thereof, together with purported Chinese letters or symbols, or depictions of Chinese art or objects;

With effect of misleading purchasers to believe that said lacquer was of Chinese origin, formula or manufacture, and with tendency and capacity, in the absence of a conspicuous statement that said product was made in the United States, to confuse them as to the actual country of origin; and

- (b) Falsely represented, in said advertisements in newspapers and periodicals and other matter, that said lacquer was incapable of chipping or flaking under all conditions of use;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect thereto, and to cause it to purchase substantial quantities thereof as a result of the mistaken belief so engendered:

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

Mr. R. P. Bellinger for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Petit, Olin & Overmyer*, of Chicago, Ill., for respondents.

AMENDED COMPLAINT²

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 Associated Distributors, Inc., a corporation, J. L. Younghusband, Paul Rowatt, and Douglas Walker, individuals, trading as Associated Distributors, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission, that a proceeding by it

¹ Amended.

² The amended complaint was further amended by an order of the Commission dated May 10, 1943, as follows:

This matter coming on to be heard by the Commission upon the stipulation as to the facts entered into by and between Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, and Associated Distributors, Inc., J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband, and it appearing from said stipulated facts that J. L. Younghusband, Paul Rowatt, and Douglas Walker, individuals trading as Associated Distributors, were doing business as a partnership until August 31, 1942, upon which date Douglas Walker withdrew from the partnership, and it further appearing that on September

in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPHS 1. Respondent, Associated Distributors, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of Illinois with its office and principal place of business located at 30 West Hubbard Street, in the city of Chicago, State of Illinois.

Respondents, J. L. Younghusband, Paul Rowatt, and Douglas Walker, are individuals, trading as Associated Distributors, with their principal place of business located at the same address as that of the corporate respondent shown above.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the sale and distribution of a cosmetic preparation designated as "Chen Yu Nail Lacquer" in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said cosmetic preparation, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetic preparation 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 aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission

1, 1942, Howard A. Younghusband became one of the partners trading as aforesaid and taking the place of Douglas Walker, and the Commission having duly considered such stipulated facts and the record herein and being now fully advised in the premises:

It is ordered, That the amended complaint herein be, and the same hereby is, further amended by naming Howard A. Younghusband, as an individual respondent, in lieu of Douglas Walker, and that this proceeding shall hereafter be styled "In the Matter of Associated Distributors, Inc., a corporation, J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband, Individuals, trading as Associated Distributors."

It is further ordered, That this proceeding be, and it hereby is, closed as to the respondent, Douglas Walker, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations of and concerning said product contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

NEW BEAUTY FOR NAILS!

The Thrilling Colors and Breath-taking Luster of Priceless Lacquers from China

O CHIP-PROOF NAIL LACQUER

H

E An idea stolen from China—long-lasting LACQUER to beautify your finger-
N nails. LACQUER—CHEN YU Nail LACQUER—so resistant to chipping
and peeling you'll wonder—will it NEVER wear away?

Y Positively harmless too—will never prevent your nails from growing strong
U and long! Buy CHEN YU at all smart stores—or send coupon for trial
bottles of two shades (enough for at least 10 manicures).

O Chip-Proof

H Lacquer for Nails

E Translated from the Chinese * * * Remember * * * at the
N Museum * * * that breath-taking Chinese Lacquer—5000 years
old * * *? Now—at smart stores from coast to coast—that lacquer-
Y ing * * * borrowed for an amazing new nail make-up! Like its ancient
U predecessor * * * won't crack * * * amazingly resistant to chip-
ping * * * peeling * * * remains beautifully lustrous so long
you'll wonder * * * will it NEVER wear away.

The Chinese made lacquer that has kept its amazingly lustrous color for *hundreds of years*—without chipping or cracking. Chen Yu nail lacquer has that wonderful tendency to not chip or fade—and to remain lustrous, mirror-like and lovely no matter how busy your hands become.

In some instances the foregoing statements and representations appearing in advertisements, disseminated as aforesaid, are accompanied by Chinese letters or symbols or depictions of Chinese art or objects. The bottle container of said product also prominently displays the trade name "Chen Yu" and what purport to be Chinese letters or symbols.

PAR. 4. Through the use of the trade name "Chen Yu" and accompanying Chinese letters or symbols or depictions of Chinese art or objects, and the statements and representations published and disseminated as aforesaid, respondents represent and have represented that

"Chen Yu Nail Lacquer" is of Chinese origin, formula, or manufacture, and that said product is incapable of chipping or flaking, or that it offers effective resistance to cracking or peeling under all conditions of use.

PAR. 5. The aforesaid representations, as well as others of similar import or meaning which have not been specifically set out herein, are exaggerated, false, misleading, and deceptive.

In truth and in fact, respondents' said "Chen Yu Nail Lacquer" is not manufactured in nor imported from China. Said preparation is a domestic product made in the United States and bears no relationship whatsoever to any product of Chinese manufacture. Said preparation is not compounded from a formula of Chinese origin. Said "Chen Yu Nail Lacquer" is capable of chipping or flaking, and it does not offer effective resistance to cracking or peeling under all conditions of use.

PAR. 6. The use by respondents of said false advertisements containing the trade name "Chen Yu" and accompanying Chinese letters or symbols or depictions of Chinese art or objects, and the aforesaid statements and representations, pictorial and otherwise concerning their said product had, and has, the capacity and tendency to, and did and does, deceive and mislead purchasers and prospective purchasers into the erroneous and mistaken belief that said statements, representations, implications, and false advertisements are true.

PAR. 7. The acts and practices of respondents 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 June 30, 1942, issued and subsequently served its amended complaint in this proceeding upon the respondents named therein, Associated Distributors, Inc., a corporation, and J. L. Younghusband, Paul Rowatt, and Douglas Walker, individuals, trading as Associated Distributors, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On July 20, 1942, the respondents filed their answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, and the respondents, Associated Distributors, Inc., J. L. Younghusband, Paul Rowatt, and Howard A. Young-

Findings

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husband (the last-named party having been substituted as a respondent in lieu of Douglas Walker), by their attorneys, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the amended complaint, answer, and stipulation (the stipulation having been approved and accepted by the Commission); 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, Associated Distributors, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 30 West Hubbard Street, Chicago, Ill. While the corporation has not since July 30, 1941, been engaged in the business hereinafter described and has taken certain steps looking toward its dissolution, such dissolution proceedings have not yet been completed and the corporation is still a legally constituted corporate entity.

On August 1, 1941, the assets of the respondent corporation were transferred to J. L. Younghusband, the sole shareholder, and he continued as sole proprietor of the business under the trade name "Associated Distributors" until October 1, 1941. Subsequent to that date, various parties have held interests in the business along with J. L. Younghusband, but since September 1, 1942, the business has been a copartnership composed of J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband. The office and principal place of business of the copartnership is located at 30 West Hubbard Street, Chicago, Ill.

PAR. 2. The individual respondents are now and since September 1, 1942, have been, and the corporate respondent for some time prior to July 30, 1941, was, engaged in the sale and distribution of a cosmetic preparation designated "Chen Yu Nail Lacquer." Respondents cause or during the periods of time herein mentioned have caused their preparation, when sold, to be shipped from their place of business in the

State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain or have maintained a course of trade in their preparation 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 and for the purpose of inducing the purchase of their product, the respondents have disseminated and have caused the dissemination of advertisements concerning their product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their product by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated by the United States mails, by insertion in newspapers and periodicals, and by circulars and other printed or written matter, were the following:

NEW BEAUTY FOR NAILS!

The Thrilling Colors and Breath-taking Luster
of Priceless Lacquers from China

CHIP-PROOF NAIL LACQUER

An idea stolen from China—long-lasting

LACQUER to beautify your fingernails.

LACQUER—CHEN YU NAIL LACQUER—so resistant to chipping and peeling you'll wonder—will it NEVER wear away? Positively harmless too—will never prevent your nails from growing strong and long!

Buy CHEN YU at all smart stores—or send coupon for trial bottles of two shades (enough for at least 10 manicures)."

Chip-proof

Lacquer for Nails

Translated from the Chinese * * * Remember * * * at the Museum * * * that breath-taking Chinese Lacquer—5000 years old * * * ? Now—at smart stores from coast to coast—that lacquering * * * borrowed for an amazing new nail make-up Like its ancient predecessor * * * won't crack * * * amazingly resistant to chipping * * * peeling * * * remains beautifully lustrous so long you'll wonder * * * will it NEVER wear away.

The Chinese made lacquer that has kept its amazingly lustrous color for *hundreds of years*—without chipping or cracking. Chen Yu nail lacquer has that wonderful tendency to not chip or fade—and to remain lustrous, mirror-like and lovely no matter how busy your hands become.

In some instances these statements and representations were accompanied by Chinese letters or symbols or by depictions of Chinese art or objects. The bottles in which the product is sold also display prominently the trade name "Chen Yu," together with markings which purport to be Chinese letters or symbols.

PAR. 4. Through the use of the trade name "Chen Yu" accompanied by Chinese letters or symbols or by depictions of Chinese art or objects, respondents have led purchasers and prospective purchasers of their product to believe that "Chen Yu Nail Lacquer" is of Chinese origin, formula, or manufacture. The use of the trade name "Chen Yu," when not accompanied by a conspicuous statement that the product is made in the United States, has a tendency and capacity to confuse purchasers and prospective purchasers as to the actual country of origin or manufacture. Through the use of the statements and representations set forth in paragraph 3 hereof, respondents have led purchasers and prospective purchasers to believe that "Chen Yu Nail Lacquer" is incapable of chipping or flaking, and that it offers effective resistance to cracking or peeling under all conditions of use.

PAR. 5. Respondent's "Chen Yu Nail Lacquer" is not manufactured in or imported from China, nor is the preparation compounded from a formula of Chinese origin. It is a domestic product made in the United States, and bears no relationship whatsoever to any product of Chinese manufacture. The preparation is capable of chipping or flaking, and does not offer effective resistance to cracking or peeling under all conditions of use.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their product, including the use of the unqualified name "Chen Yu" to designate such product, are misleading and deceptive.

Prior to the Commission's investigation of respondents' practices, their labels and advertising material did not disclose that the product was made in the United States, but since December, 1940, respondents have caused the statement "Made in U. S. A." to be printed on their labels and cartons and in their advertising material in connection with the name "Chen Yu."

PAR. 7. The use by respondents of these misleading and deceptive representations, including the use of the name "Chen Yu" when not accompanied by other words disclosing the origin of the product, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the origin and properties of respondents' product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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 amended complaint of the Commission, the answer thereto, and a stipulation as to the facts entered into between the respondents and Richard P. Whiteley, assistant chief counsel for the Commission; 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, Associated Distributors, Inc., a corporation, its officers, and J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband, individually, and trading as Associated Distributors, or trading under any other name, and respondent's agents, representatives, 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 respondents' cosmetic preparation designated "Chen Yu Nail Lacquer," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' preparation is incapable of chipping or flaking, or that said preparation effectively resists cracking or peeling under all conditions of use.

2. Using Chinese letters or symbols, or any simulation thereof, or any picturization of Chinese art or objects, in connection with the designation or description of respondents' preparation.

3. Representing, directly or by implication, that respondents' preparation is manufactured in or imported from China or any other foreign country, or that the formula from which said preparation is compounded is of Chinese or other foreign origin.

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.

Complaint

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IN THE MATTER OF

JOHN F. EBERHARD, WALTER J. KEAVNEY, AND
EDMUND DIAZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4639. Complaint, Nov. 21, 1941—Decision, May 24, 1943*

Where three individuals, operating over a period of years through different corporations which successively became insolvent; engaged directly and through salesmen in securing signatures to contracts providing for the purchase of magazine subscriptions and scientific books, both selected by the purchaser from the list furnished, at specified combination or group prices—

- (a) Represented that purchasers under any of their combination or group offer plans would receive the books, magazines, and periodicals listed in such plan upon payment of the purchase price;
- (b) Represented that various books or magazines were given free to purchasers with their combination or group offer plans; and
- (c) Represented that the scientific books concerned were original, standard, unabridged editions expensively bound and printed, and worth at least \$6 a volume;

When in fact it was their frequent practice to collect the subscription price without making remission to the publishers of the periodicals requested, with the result that purchasers failed to receive any magazine or, in some instances, received only part of their selection, or other periodicals than those ordered; items which they represented as being free were in fact usually included by them in their group offers, the price being thus actually included in the regular price for the particular combination; and the scientific books in question were not original, standard, unabridged editions, and worth said amount, but were monographs or condensed articles by the authors named, printed on cheap paper and cheaply bound;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and to induce it, because of such mistaken belief, to purchase their books and magazines offered as aforesaid:

Held, That said 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. J. W. Carter, Jr., 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 John F. Eberhard, Walter J. Keavney, and Edmund Diaz, individuals, 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