

Complaint

IN THE MATTER OF

AL ROSENFELD, INC. AND AL ROSENFELD AND S. THEODORE LANDE, INDIVIDUALLY AND AS OFFICERS THEREOF

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

Docket 5051. Complaint, Sept. 20, 1943—Decision, Apr. 26, 1945

Where a corporation and its two officers, engaged in the packaging and competitive interstate sale and distribution of perfumes and toilet preparations, including those made and sold by the firms of Worth, Vigny, and Suzanne, of Paris, France, of which they had been the sole distributor for a number of years and which, prior to 1941, with two exceptions they imported, but which, subsequent thereto, were made in the United States from formulas supplied by said French concerns, by domestic firms, who placed on packages thereof the statement "Made in U. S. A."—Represented since 1941 through use of the trade names "Worth," "Vigny," and "Suzanne" and various French brand names such as "je reviens, WORTH," "Secret de Suzanne," "Heure intime VIGNY," "SUZANNE'S tout de suite," "WORTH Dans la Nuit," "Les Parfums WORTH," "Les Parfums SUZANNE" and "Les Parfums VIGNY," that the perfumes and toilet preparations they sold and distributed were compounded or manufactured in France by the firms of Worth, Vigny, or Suzanne, which had long made and compounded in Paris perfumes, colognes, and toilet preparations of high quality and enjoying general acceptance throughout the world;

With the effect of misleading a substantial part of the purchasing public into the erroneous belief that said perfumes, colognes, and toilet preparations were manufactured or compounded in France and imported into the United States, preferred over the less expensive domestic products, and of inducing it, because of such belief, to purchase substantial quantities of their products, whereby trade was diverted unfairly to them from their competitors who actually import perfumes and similar products, or who compound them in this country, and truthfully represent their place of origin:

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

Before *Mr. John L. Horner*, trial examiner.

Mr. John M. Russell for the Commission.

Mock & Blum, of New York City, 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 Al Rosenfeld, Inc., a corporation, and Al Rosenfeld and S. Theodore Lande, individually, and as officers of Al Rosenfeld, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commis-

sion 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, Al Rosenfeld, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondents, Al Rosenfeld and S. Theodore Lande, are individuals, and are president and treasurer, and vice president and secretary, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of corporate respondents. The office and principal place of business of both corporate and individual respondents is 9 East 38th Street in the city of New York, in said State.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the packaging, sale and distribution of perfumes and toilet preparations. Respondents cause said products, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their points of location 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 products 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 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 and toilet preparations 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 aforesaid business, respondents cause certain markings, names and designations to be printed on labels and tags attached to the products sold and distributed by them and imprinted on the cartons in which said products are packaged as follows:

WORTH, New York, N. Y. Distributors,
VIGNY, New York, N. Y. Distributors,
SUZANNE, New York, N. Y. Distributors,
BEAU CATCHER Eau de Cologne VIGNY,
Eau de Cologne Secret de Suzanne, SUZANNE,
Eau de Cologne Je Reviens WORTH,
SUZANNE'S tout de suite,
Vigny Parfums de luxe Heure intime.

PAR. 5. Respondents also furnish advertising mats to dealers which are used by said dealers in advertising matter disseminated by means of the United States mails or by other means in commerce for the purpose of inducing the purchase of respondents' products which contain and make use of the various names and phrases quoted in paragraph 4 herein. Respondents pay for, or participate in the payment of, the advertising matter of such dealers. Respondents also publish and distribute price lists in which the aforesaid names, designations and descriptions are employed.

PAR. 6. Perfumes and toilet preparations of high quality and enjoying general acceptance throughout the world have been sold and distributed for many years under the names "Worth," "Vigny" and "Suzanne," which were manufactured by concerns, of ingredients of French and other

foreign origin, in Paris, France. A substantial portion of the purchasing public in the United States associates the words Worth, Vigny and Suzanne with perfumes and toilet preparations manufactured or compounded in France, and when buying products designated by said names believe that they are the products manufactured or compounded in France and known as Worth, Vigny and Suzanne. There is a preference on the part of the purchasing public for certain goods, wares and merchandise which are manufactured in foreign countries and imported into the United States, and 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. Through the use of the aforesaid statements and descriptions in French and the names Worth, Vigny and Suzanne, respondents represent that their said products are compounded or manufactured into the finished product in France; that they are the well-known and preferred French perfumes and toilet preparations known as Worth, Vigny and Suzanne.

PAR. 8. Said statements, representations, descriptions and designations, in French and otherwise, are false, deceptive and misleading. In truth and in fact, respondents' products designated and described by them as aforesaid, and sold since early in 1941, are not compounded or manufactured into the finished product in France and are not the well-known French perfumes and toilet preparations known in the United States as Worth, Vigny and Suzanne, but on the contrary, are manufactured and compounded in the United States entirely or largely of domestic ingredients.

PAR. 9. The statements, representations, descriptions and designations used by respondents in connection with their said products are calculated to, and have a tendency and capacity to, and do, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are the highly regarded products known as Worth, Vigny and Suzanne; further, as a direct consequence of the mistaken and erroneous beliefs induced by the misrepresentations of respondents, substantial numbers of the purchasing public have purchased respondents' said 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 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. Further, the respondents have placed in the hands of dealers and others a means and instrumentality whereby purchasers of said products may be misled into the aforementioned mistaken and erroneous beliefs.

PAR. 10. The acts and practices of respondents are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the 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 September 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Al Rosenfeld, Inc., a corporation, and Al Rosenfeld and S. Theodore Lande, individually, and as officers of Al Rosenfeld, Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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, and in opposition to, the allegations of said complaint were taken before 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 and exceptions filed thereto, 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. Respondent, Al Rosenfeld, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents, Al Rosenfeld and S. Theodore Lande, are individuals, and are president and treasurer, and vice president and secretary, respectively, of the corporate respondent. These individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent. The office and principal place of business of both the corporate respondent and the individual respondents is 9 East 38th Street in the city of New York, State of New York.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the packaging, sale, and distribution of perfumes and toilet preparations. Respondents cause said products, when sold by them, 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. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products among and between the various States of the United States.

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 and toilet preparations in commerce among and between the various States of the United States.

PAR. 4. Since 1941 and for a number of years prior thereto the corporate respondent has been the sole distributor in the United States of perfumes and toilet preparations manufactured and sold by the firms of Worth, Vigny, and Suzanne, of Paris, France. Prior to 1941 the corporate respondent imported the finished perfumes and toilet preparations manu-

factured and blended by said firms of Worth, Vigny, and Suzanne, of Paris, France, with the exception of two preparations sold under the trade names "Vigny Beau Catcher" and "Vigny Golliwogg," which latter preparations were compounded in the United States. Subsequent to 1941 all of the perfumes and other toilet preparations sold by the respondents under the trade names "Vigny," "Worth," and "Suzanne" have been manufactured and compounded in the United States from formulas supplied by said French concerns. The compounding and blending of said perfumes and other toilet preparations since 1941 have been performed by domestic firms engaged in the business of blending and compounding perfumes and toilet preparations, and there have been used in the course of such manufacture and compounding, certain synthetic materials and domestic alcohol. In packaging said perfumes and toilet preparations which have been compounded in the United States since 1941 the respondents have placed on said packages the statement "Made in U.S.A."

PAR. 5. For the purpose of inducing the purchase of the perfumes and toilet preparations sold and distributed by them, the respondents have, since 1941, published and caused to be published advertisements in various newspapers and periodicals having a general circulation throughout the United States and, in addition, have furnished advertising mats to dealers, which are used by said dealers in advertising the products distributed by the respondents. In most cases where said advertising mats are used by dealers, the respondents pay a portion of the cost of said advertisement. In advertising the perfumes and toilet preparations sold and distributed by the respondents in the manner hereinabove described and by circulars and other printed matter, the respondents have used trade and brand names of French origin to designate, describe, or refer to such perfumes and toilet preparations. Typical of such trade and brand names are the following:

je reviens, WORTH
Secret de Suzanne
Heure intime VIGNY
SUZANNE'S tout de suite
WORTH Dans la Nuit
Les Parfums WORTH
Les Parfums SUZANNE
Les Parfums VIGNY

PAR. 6. Since 1941 through the use of the trade names "Worth," "Vigny," and "Suzanne" and through the use of the various brand names of French origin hereinabove described, respondents represent that the perfumes and toilet preparations sold and distributed by them are compounded or manufactured in France by the firms of Worth, Vigny, or Suzanne, when in fact such products are manufactured and compounded in the United States.

PAR. 7. Perfumes, colognes, and toilet preparations of high quality enjoying general acceptance throughout the world have for many years been manufactured and compounded in Paris, France, by the firms of Worth, Vigny, and Suzanne. 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. 8. 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 a 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 and 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, answer of the respondents, testimony and other evidence in support of, and in opposition to, the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, 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 facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Al Rosenfeld, Inc., a corporation, and its officers, and the individual respondents, Al Rosenfeld and S. Theodore Lande, and their respective 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:

Using the terms "Worth," "Vigny," "Suzanne," "Secret de Suzanne," "je reviens," "Dans la Nuit," or "Heure intime," or any other French or foreign words or terms, as brand or trade names to in any way designate, describe, or refer to 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.

Complaint

IN THE MATTER OF

SAMUEL R. ISRAEL AND AL GOLDSTEIN, TRADING AS
HOUSE OF ROYALSUN

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

Docket 5078. Complaint, Nov. 10, 1943—Decision, Apr. 27, 1945

Where the words "Shetland," "Saxony" and "Scotch" were long and favorably known to the purchasing and consuming public as descriptive, respectively, of products composed of the wool of sheep raised in the Shetland Islands, of products of foreign origin, and of products made from the wool of sheep raised in Scotland; and thereafter two individuals engaged in the interstate sale and distribution of knitting yarn; in catalogues, sample books, labels, letterheads, and otherwise—

Falsely represented the composition and source of their products through use of words "Shetland," "Saxony" and "Scotch"; as respectively descriptive of domestic yarns or yarns not composed of fibers of wool from sheep raised in the Shetland Islands; of yarns not composed entirely of wool nor of wool from sheep raised in the province of Saxony; and of yarns made neither entirely nor in part from the fleece of sheep raised in Scotland;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous belief that said representations were true, on account of which a number thereof purchased a substantial volume of their said products:

Held, That said 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.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Samuel R. Israel, of New York City, for respondents.

COMPLAINT ¹

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 Samuel R. Israel and Al Goldstein, copartners, trading as House of Royalsun, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it

¹ Complaint published as amended by stipulation and agreement, approved April 19, 1945 by the Commission, as follows:

It is hereby stipulated and agreed, By and between Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, and Samuel R. Israel, attorney for the respondents, Samuel R. Israel and Al Goldstein, that the Commission's complaint in this case filed on the 18th day of November 1943, may be and hereby is amended by striking the words "or on islands contiguous to the mainland of Scotland," descriptive of Scotch wool, from the allegations in the indented subparagraph 3 of paragraph 3 and from the indented subparagraph 2 of paragraph 4 thereof.

It is hereby further agreed, By the respondents that the admission answer heretofore submitted by the respondents and dated April 17, 1944, may be received and accepted as the respondents' answer to the Commission's complaint as amended in paragraph 1 above.