

Syllabus

IN THE MATTER OF

MIAHATI, INC., ANDREW APICELLA, AND ROSE VIVAUDOU, TRADING UNDER THE NAME OCEANIC IMPORT COMPANY, AND ABBOT MANUFACTURING COMPANY

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

Docket 4671. Complaint, Feb. 13, 1942¹—Decision, Aug. 2, 1946

Perfume manufactured and compounded in the Territory of Hawaii, or made in the United States from flower scents and ingredients imported from the Territory of Hawaii into the United States, has for many years enjoyed widespread popularity, goodwill, and demand among the trade and consuming public of the United States, many of whom consider and believe that such perfume is superior to perfume manufactured in the United States from domestic ingredients, and many purchasers in the United States and in South America desire to purchase perfume manufactured in said Territory and imported into the United States in preference to domestic perfume.

Where an individual and a corporation of which he became president and sole owner, engaged under the trade name "Oceanic Import Company" in the manufacturing and compounding, and competitive interstate sale and distribution of their "Soul of Flowers," "Honolulu," "Waikiki," and "Pikaki" perfumes—

- (a) Represented and implied that the aforesaid perfumes originated in the Territory of Hawaii, were manufactured from hibiscus, rose, jasmine, honeysuckle, hyacinth, orange blossom, exotic woods, and amber and other ingredients from the "Gardens of Miahati," and were manufactured in the Territory of Hawaii or from ingredients imported therefrom, through use of such statements in advertisements in newspapers and periodicals, circulars, leaflets, pamphlets, and other advertising literature, as "HAWAIIAN PERFUMES IN HAND CARVED BOTTLES—"The essence of all the strange exotic flowers in the wonder garden of Hawaii's Miahati, captured in four stirring new scents. Each in a jewel-like bottle packed in a cylinder of Hawaiian maple. * * *" "New and glamorous perfumes are the Miahati scents based on the exotic fragrances of the famous Miahati gardens in Hawaii. The four scents are Honolulu, Soul of Flowers, Waikiki, and Pikaki." "The scents are as fascinating as the islands where they originated," and "Miahati perfumes have truly captured the enchantment and romance of Hawaii. * * * Distributed by the Oceanic Import Co."; through the use on the corporate letterhead, of words "Honolulu Perfume and Toilet Water" and accompanying depictions of palms and a tropical scene, in the foreground of which was pictured a fancy perfume bottle together with a wooden cylinder-shaped container on which was marked the name

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"Honolulu;" depiction of a perfume bottle with fancy top, the label printed with the words "Honolulu Bouquet—Miahati;" etc., and,

Where a second corporation, which was engaged in exporting merchandise from the United States into foreign countries, especially South American, and under agreements with said manufacturing corporation purchased former's perfumes in the original bottles, labeled "Soul of Flowers," "Honolulu," "Waikiki" and "Pikaki,"—

(b) Falsely represented and implied through the use of the aforesaid brands, labels, and names relating to said perfumes that they originated in the Territory of Hawaii and were there compounded and manufactured or were manufactured in the United States from ingredients imported from Hawaii; When in fact all of said perfumes were made in the State of New York, none of their ingredients were imported from the Hawaiian Islands, and there was no such place as the "Gardens of Miahati";

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their perfumes were a product of and imported from Hawaii, and with the effect thereby of causing it to purchase said perfumes, and of unfairly diverting trade to them from their competitors:

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

Mr. R. P. Bellinger for the Commission.

AMENDED 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 Miahati, Inc., a corporation; Andrew Apicella and Rose Vivaudou, individuals, trading under the name Oceanic Import Co.; and Abbot Manufacturing Co., a corporation, 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 thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Miahati, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 377 Fourth Avenue, New York, N. Y. Respondents Andrew Apicella and Rose Vivaudou are individuals trading under the name Oceanic Import Co., with their principal office and place of business located at 377 Fourth Avenue, New York, N. Y. Respondent Abbot Manufacturing Co., is a corporation organized and existing under and by

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virtue of the laws of the State of New York, with its principal office and place of business located at 551 Fifth Avenue, New York, N. Y. Respondents Andrew Apicella and Rose Vivaudou, individuals, operated under the name Oceanic Import Co., as a partnership up until about June 1940, at which time the said Andrew Apicella and Rose Vivaudou organized Miahati, Inc., as a corporation, and from about June, 1940, up to the present time have conducted and are now conducting the same kind of business, namely, the manufacture and sale of perfume, as conducted by them as a partnership. These respondents sold and now sell said perfume under four different brands or labels, namely:

Soul of Flowers

Honolulu

Waikiki and

Pikaki.

They caused and now cause their said perfume, when sold, to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. They also sell their perfume product to respondent Abbot Manufacturing Co., which exports same under the original brands of respondents Miahati, Inc., and Oceanic Import Co. to South America and other foreign countries. All of said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said perfume in commerce between and among the several States of the United States and between the United States and foreign countries and in the District of Columbia.

In doing the acts and things hereinafter alleged, said respondents have acted together and in cooperation with each other.

PAR. 2. In the course and conduct of their said business, the respondents are in competition with corporations, partnerships and individuals engaged in the manufacture of perfume from both imported and domestic ingredients and in the sale and distribution thereof in commerce between and among the several States of the United States and between the United States and foreign countries and in the District of Columbia. Among such competitors are many who do not in anywise misrepresent the source of their perfume product or the ingredients thereof.

In the course and conduct of their aforesaid business, Andrew Apicella and Rose Vivaudou, individuals trading as Oceanic Import Co., and Miahati, Inc., have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States

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mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of said product, and said respondents have also 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, misleading, and deceptive statements and representations contained in said advertising, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertising in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

**MIAHATI'S BOW IN PERFUME FIELD SHOWS
FOUR SCENTS**

By ANTOINETTE DONNELLY

From the famous gardens of Miahati in Hawaii where the exotic vari-colored hibiscus and jasmine mingle with honey-suckle and orange blossoms in riotous fragrance, comes a group of glamorous new perfumes. Four different scents mark Miahati's debut in the perfume field. One is a dry, tantalizing blend of exotic woods and amber, a disturbingly brilliant fragrance appropriately bottled in amber. The bottles for all four scents are in jewel tones to harmonize with the different fragrances. A second scent is a dreamy symphony of tropical flowers, the very breath of romance and enchantment, we're assured. A third is a heady Oriental bouquet with top notes of rose and jasmine—sultry, alluring. The fourth is a spicy blend of hyacinth, carnation and wild jasmine in an amethyst bottle. For gift-giving, these fragrances from Hawaii are packed in tall cylinders of native maple.

The perfumes referred to above are Miahati's "Soul of Flowers," "Pikaki," "Waikiki," and "Honolulu" perfumes.

HAWAIIAN PERFUMES IN HAND CARVED BOTTLES

The essence of all the strange exotic flowers in the wonder-garden of Hawaii's Miahati, captured in four stirring new scents. Each in a jewel-like bottle packed in a cylinder of Hawaiian maple. * * *

Honolulu, dry sparkling Pikaki, subtle as jasmine

Waikiki, sensuous, heady Soul of Flowers, languorous

(Above this printed advertisement is a picture showing palms and a tropical scene, in the foreground of which is pictured a fancy

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perfume bottle with a round-top stopper, together with a wooden cylinder-shaped container on which is marked the name "Honolulu.")

Some inexpensive but delicious perfume from Hawaii comes in lovely bottles. They are double-walled vials of colored transparent plastic. Between the walls are carved flowers and the whole thing comes in a smart wooden cylinder. The odors are Miahati, Soul of Flowers, Hawaiian Maple, and several others. Most of them are fresh clear flower scents.

New and glamorous perfumes are the Miahati scents based on the exotic fragrances of the famous Miahati gardens in Hawaii. The four scents are Honolulu, Soul of Flowers, Waikiki, and Pikaki. The bottles are softly tinted translucent containers with hand-carved native flowers. A ¼-ounce bottle is \$3.50. * * *

Utterly unique and lovely enough to keep on the dressing table long after the scent has been used are the hand-carved floral bottles in jewel tones which contain exotic Hawaiian perfumes from Miahati. The scents are as fascinating as the islands where they originated. Soul of Flowers is the name of the floral blend; Honolulu is a dry, tangy scent made from tropical woods.

OCEANIC IMPORT CO.

Miahati perfumes have truly captured the enchantment and romance of Hawaii. The first four scents to be introduced are "Soul of Flowers," "Honolulu," "Waikiki," and "Pikaki." The unique, attractively carved bottles are packed in tall cylinders of Hawaiian maple wood. Distributed by the Oceanic Import Co.

(This advertisement is accompanied by a photograph of a wooden cylinder and a fancy perfume bottle.)

On the letterhead of Miahati, Inc., is printed the following:

MIAHATI, INC.

THE WISHING WELL—LITTLE DUTCH GIRL—HONOLULU PERFUME AND TOILET WATERS—
PICABIA PERFUMES—LUCKY SAMBO

120 Greenwich Street—New York City—Rector 2-4497

The following is one of several illustrated advertisements placed together in a circular reputed to be a reprint from "TOILET REQUISITES":

TROPICAL ALLURE

* * * Enticingly packaged

(There appears immediately beneath this statement a picturization of a perfume bottle with fancy top, the label on the bottle being printed with the words "Honolulu Bouquet—Miahati." At the right of said picturization is a drawing of a face and a tropical flower.)

Below the picturization and drawing is the following statement:

Miahati captures the romance of tropical nights in an alluringly different eau de toilette * * * beautifully packaged in a smartly styled modern bottle

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with an exquisitely hand-carved wooden cap. A de luxe toilet water for your discriminating clientele.

\$1.00 4 oz.

Fragrances: Honolulu, Pikaki, Waikiki, Cherry Blossom

MIAHATI
Incorporated

377 Fourth Avenue

New York, N. Y.

PAR. 3. Respondent Abbot Manufacturing Co. is engaged in the business of exporting merchandise from the United States into foreign countries, especially to countries located in Central and South America. Under agreement with respondent Miahati, Inc., respondent Abbot Manufacturing Co. purchases perfume manufactured by respondent Miahati, Inc., as aforesaid, in the original bottles used by Miahati, Inc., retaining the original labels of "Soul of Flowers," "Honolulu," "Waikiki" and "Pikaki" and other labels importing and implying that said perfume is manufactured in, or of ingredients imported from, the Territory of Hawaii. Said bottles also contain the name Oceanic Import Co., the trade name used by respondents Andrew Apicella and Rose Vivaudou, and the name "Honolulu" Respondent Abbot Manufacturing Co. purchases said perfume for exportation to foreign countries with full knowledge that the aforementioned perfume product is not manufactured in the Territory of Hawaii or composed of ingredients imported from the Territory of Hawaii and manufactured in the United States. Said respondent has knowledge that said perfume is made in the State of New York from domestic ingredients there purchased.

PAR. 4. Through the use of the aforesaid false statements, representations, picturizations, brands and labels, and others of similar import and meaning not herein set out, disseminated as aforesaid, relating to said perfume manufactured by respondent Miahati, Inc., and Andrew Apicella and Rose Vivaudou and sold by all of said respondents in commerce, as commerce is defined in the Federal Trade Commission Act, respondents directly, and by suggestion and innuendo, represent and imply that the aforesaid perfume originates in the Territory of Hawaii, is manufactured from hibiscus, rose, jasmine, honey-suckle, hyacinth, orange blossom, exotic woods and amber, and other ingredients from the Gardens of Miahati, and that said perfume is made and manufactured in the Territory of Hawaii or from ingredients imported from the Territory of Hawaii and manufactured in the United States.

PAR. 5. The aforesaid advertisements, brands, labels, picturizations, representations, and implications are false, misleading, and deceptive. In truth and in fact, none of the perfume manufactured and sold by the respondents is manufactured in the Territory of Hawaii or from ingredients imported from the Territory of Hawaii, and none of the scents, oils, and fragrances are extracted from flowers grown in, nor are they imported from, the Territory of Hawaii. There is no such place as the "Gardens of Miahati" in the Territory of Hawaii. In truth and in fact, all of the perfume heretofore mentioned and described as manufactured by the respondents Miahati, Inc., and Andrew Apicella and Rose Vivaudou is manufactured in the State of New York, and all of the ingredients used in the making of said perfume are purchased by said respondents from local and domestic chemists operating within the State of New York.

PAR. 6. Perfume, manufactured and compounded in the Territory of Hawaii, or manufactured or concocted in the United States from flower scents and ingredients imported from the Territory of Hawaii into the United States, has for many years enjoyed widespread popularity, good will, and demand among the trade and consuming public of the United States, many of whom consider and believe that perfume manufactured and compounded in the Territory of Hawaii, or from flower scents or ingredients imported into the United States from the Territory of Hawaii, is superior in quality and other characteristics to perfume manufactured in the United States from ingredients originating in the United States, and many purchasers in the United States and in South America desire to purchase perfume manufactured in the Territory of Hawaii and imported into the United States in preference to perfume manufactured in the United States from domestic ingredients.

PAR. 7. The acts, practices, and methods of the respondents in disseminating and using the aforesaid false advertisements, statements, representations, and implications in connection with the offering for sale, sale and distribution of said perfume in said commerce as aforesaid have had and now have the capacity and tendency to, and did and do, mislead and deceive prospective purchasers of said perfume into the erroneous and mistaken belief that said advertisements, statements, representations, and implications are true, and that said perfume is a product of, and imported from, the Territory of Hawaii, and have caused a number of the purchasing public because of said erroneous and mistaken belief, engendered as aforesaid, to purchase said perfume, thereby unfairly diverting trade to the respondents from their competitors in commerce between and among the several States of

the United States and in the District of Columbia and in commerce between the United States and foreign countries, to their injury and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of February, 1942, issued and thereafter served its amended complaint in this proceeding upon respondents Miahati, Inc., a corporation; Andrew Apicella and Rose Vivaudou, individuals, trading under the name Oceanic Import Co.; and Abbot Manufacturing Co., a corporation, 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. On March 7, 1942, the respondents Miahati, Inc., Andrew Apicella, and Rose Vivaudou filed their answers; and on March 5, 1942, the respondent Abbot Manufacturing Co., Inc., filed its answer in this proceeding. Thereafter, stipulations were entered into, whereby it was stipulated and agreed that statements of facts signed and executed by the respondents Miahati, Inc. and Andrew Apicella and by Abbot Manufacturing Co., Inc., and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the amended complaint or in opposition thereto, and that the said Commission may proceed upon said statements of 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended complaint, answers and stipulations, said stipulations having been approved, accepted and filed, and the Commission having duly considered the same 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 Miahati, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 377 Fourth Avenue, New York, N. Y. Respondents Andrew Apicella and Rose Vivaudou are individuals who, prior to some time during the year 1941, traded as copartners under the name Oceanic Import Co., having their principal office and place of business at the above designated address. In 1940, respondents Andrew Apicella and Rose Vivaudou organized the corporate respondent Miahati, Inc., and thereafter transacted their business in the said corporate name. In the year 1943, the respondent Andrew Apicella purchased the entire interests and holdings of the respondent Rose Vivaudou in the said businesses herein described and referred to, namely, the corporation Miahati, Inc., and the copartnership trading as aforesaid. Since the purchase thereof in 1943, the respondent Andrew Apicella has been, and still is, the president of, and sole owner and proprietor of, the corporate respondent Miahati, Inc., with his principal office and place of business at the same address as stated above.

The corporate respondent Miahati, Inc., and the respondent Andrew Apicella as the president and sole owner and proprietor thereof, for several years last past, and now, are engaged in the business of manufacturing, compounding and selling perfume; and individual respondent Andrew Apicella, trading in the name of Oceanic Import Co., prior to some time in 1941, was engaged in the business of manufacturing and compounding perfume and selling the same in commerce as "commerce" is defined in the Federal Trade Commission Act. The said respondents have been selling, and are now selling, said perfume under four different brands or labels, namely: "Soul of Flowers," "Honolulu," "Waikiki," and "Pikaki." They have caused, and now cause, their said perfume, when sold, to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia.

The respondent Abbot Manufacturing Co., Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 551 Fifth Avenue, New York, N. Y. Prior to December 21, 1944, the respondents Miahati, Inc., and Andrew Apicella, trading as aforesaid, sold substantial quantities of their perfume to respondent Abbot Manufacturing Co., Inc., which exported the same under the original brand names of respondents Miahati, Inc., and Oceanic Import Co. to South

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America and other foreign countries. Since December 21, 1944, the respondent Abbot Manufacturing Co., Inc., has not made any purchases of products of the respondents Miahati, Inc., and Andrew Apicella; and respondent Abbot Manufacturing Co., Inc., is not now engaged in the perfume business in any manner whatever. The respondents Miahati, Inc., and Andrew Apicella maintain, and at all times mentioned herein have maintained, a course of trade in said perfumes in commerce between and among the several States of the United States and in the District of Columbia. The respondent Abbot Manufacturing Co., Inc., prior to December 21, 1944, maintained a course of trade in said perfume in commerce between the United States and foreign countries.

PAR. 2. In the course and conduct of their said business, the respondents Miahati, Inc., and Andrew Apicella are in competition with corporations, partnerships and individuals engaged in the manufacture of perfume and in the sale and distribution thereof in commerce between and among the several States of the United States and in the District of Columbia; and the respondent Abbot Manufacturing Co., Inc., prior to December 21, 1944, was in competition with individuals, partnerships and other corporations engaged in the sale and distribution of perfume in commerce between the United States and foreign countries.

In the course and conduct of their aforesaid business, the respondents Andrew Apicella, trading as Oceanic Import Co., and Miahati, Inc., have disseminated and have caused the dissemination of, false advertisements concerning their said products by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products; and said respondents have also disseminated and have caused the dissemination of, false advertisements concerning their said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said advertising disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertising in newspapers and periodicals and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

MIAHATI'S BOW IN PERFUME FIELD SHOWS FOUR SCENTS

By ANTOINETTE DONNELLY

From the famous gardens of Miahati in Hawaii where the exotic vari-colored hibiscus and jasmine mingle with honey-suckle and orange blossoms in riotous fragrance, comes a group of glamorous new perfumes. Four different scents mark Miahati's debut in the perfume field. One is a dry, tantalizing blend of exotic woods and amber, a disturbingly brilliant fragrance appropriately bottled in amber. The bottles for all four scents are in jewel tones to harmonize with the different fragrances. A second scent is a dreamy symphony of tropical flowers, the very breath of romance and enchantment, we're assured. A third is a heady Oriental bouquet with top notes of rose and jasmine—sultry, alluring. The fourth is a spicy blend of hyacinth, carnation and wild jasmine in an amethyst bottle. For gift-giving, these fragrances from Hawaii are packed in tall cylinders of native maple.

The perfumes referred to above are Miahati's "Soul of Flowers," "Pikaki," "Waikiki" and "Honolulu" perfumes.

HAWAIIAN PERFUMES IN HAND CARVED BOTTLES

The essence of all the strange exotic flowers in the wonder-garden of Hawaii's Miahati, captured in four stirring new scents. Each in a jewel-like bottle packed in a cylinder of Hawaiian maple * * *

Honolulu, dry sparkling Pikaki, subtle as jasmine.

Waikiki, sensuous, heady Soul of Flowers, languorous.

(Above this printed advertisement is a picture showing palms and a tropical scene, in the foreground of which is pictured a fancy perfume bottle with a round-top stopper, together with a wooden cylinder-shaped container on which is marked the name "Honolulu.")

Some inexpensive but delicious perfume from Hawaii comes in lovely bottles. They are double-walled vials of colored transparent plastic. Between the walls are carved flowers and the whole thing comes in a smart wooden cylinder. The odors are Miahati, Soul of Flowers, Hawaiian Maple and several others. Most of them are fresh clear flower scents.

New and glamorous perfumes are the Miahati scents based on the exotic fragrances of the famous Miahati gardens in Hawaii. The four scents are Honolulu, Soul of Flowers, Waikiki and Pikaki. The bottles are softly tinted translucent containers with hand-carved native flowers. A ¼-ounce bottle is \$3.50. * * *

Utterly unique and lovely enough to keep on the dressing table long after the scent has been used are the hand-carved floral bottles in jewel tones which contain exotic Hawaiian perfumes from Miahati. The scents are as fascinating as the islands where they originated. Soul of Flowers is the name of the floral blend; Honolulu is a dry, tangy scent made from tropical woods.

OCEANIC IMPORT CO.

Miahati perfumes have truly captured the enchantment and romance of Hawaii. The first four scents to be introduced are "Soul of Flowers," "Honolulu,"

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"Waikiki" and "Pikaki." The unique, attractively carved bottles are packed in tall cylinders of Hawaiian maple wood. Distributed by the Oceanic Import Co.

(This advertisement is accompanied by a photograph of a wooden cylinder and a fancy perfume bottle.)

On the letterhead of Miahati, Inc., is printed the following:

MIAHATI, INC.

THE WISHING WELL—LITTLE DUTCH GIRL—HONOLULU PERFUME AND TOILET
WATERS—PICABIA PERFUMES—LUCKY SAMBO

120 Greenwich Street—New York City—Rector 2-4497

The following is one of several illustrated advertisements placed together in a circular reputed to be a reprint from "Toilet Requisites":

TROPICAL ALLURE

* * * Enticingly packaged

(There appears immediately beneath this statement a picturization of a perfume bottle with fancy top, the label on the bottle being printed with the words "Honolulu Bouquet—Miahati." At the right of said picturization is a drawing of a face and a tropical flower.)

Below the picturization and drawing is the following statement:

Miahati captures the romance of tropical nights in an alluringly different eau de toilette * * * beautifully packaged in a smartly styled modern bottle with an exquisitely hand-carved wooden cap. A de luxe toilet water for your discriminating clientele.

\$1.00 4 oz.

Fragrances: Honolulu, Pikaki, Waikiki, Cherry Blossom

MIAHATI
Incorporated

377 Fourth Avenue

New York, N. Y.

PAR. 3. Respondent Abbot Manufacturing Co., Inc., is engaged in the business of exporting merchandise from the United States into foreign countries, especially South America. Under agreement with Miahati, Inc., respondent Abbot Manufacturing Co., prior to December 21, 1944, purchased perfumes manufactured by respondent Miahati, Inc., as aforesaid in the original bottles used by Miahati, Inc., retaining the original labels of Soul of Flowers, Honolulu, Waikiki, and Pikaki, thereby representing and implying that said perfumes were manufactured in, or of ingredients imported from, the Territory of Hawaii.

PAR. 4. Through the use of the aforesaid statements, representations, picturizations, brands and labels, and others of similar import and meaning not herein set forth, disseminated as aforesaid, the respondents Miahati, Inc., and Andrew Apicella have represented and implied that the aforesaid perfumes originated in the Territory of Hawaii, are

manufactured from hibiscus, rose, jasmine, honeysuckle, hyacinth, orange blossom, exotic woods and amber, and other ingredients from the Gardens of Miahati, and that said perfume was made and manufactured in the Territory of Hawaii, or from ingredients imported from the Territory of Hawaii and manufactured in the United States.

Through the use of the aforesaid brands, labels and names relating to said perfumes manufactured by respondents Miahati, Inc., Andrew Apicella and Rose Vivaudou, the respondent Abbot Manufacturing Co., Inc., in the manner aforesaid, has represented and implied that the aforesaid perfumes originated in the Territory of Hawaii and were compounded and manufactured in the Territory of Hawaii or from ingredients imported from the Territory of Hawaii and manufactured in the United States.

PAR. 5. The aforesaid advertisements, brands, labels, picturizations, representations and implications are false, misleading and deceptive. None of the perfumes manufactured and sold by said respondents is or was manufactured in the Territory of Hawaii and none of the scents, oils and fragrances are or were extracted from flowers grown in, nor were they imported from, the Territory of Hawaii. There is no such place as the "Gardens of Miahati" in the Territory of Hawaii. All of the perfumes heretofore referred to as manufactured by the respondents Miahati, Inc. and Andrew Apicella and Rose Vivaudou are or were manufactured in the State of New York, and none of the ingredients used in the making or compounding of said perfumes is or was imported from the Hawaiian Islands.

PAR. 6. Perfume manufactured and compounded in the Territory of Hawaii, or made in the United States from flower scents and ingredients imported from the Territory of Hawaii into the United States, has for many years enjoyed widespread popularity, goodwill, and demand among the trade and consuming public of the United States, many of whom consider and believe that perfume manufactured and compounded in the Territory of Hawaii or from flower scents or ingredients imported into the United States from the Territory of Hawaii, is superior in quality and other characteristics to perfume manufactured in the United States from ingredients originating in the United States, and many purchasers in the United States and in South America desire to purchase perfume manufactured in the Territory of Hawaii and imported into the United States in preference to perfume manufactured in the United States from domestic ingredients.

PAR. 7. The use by the respondents of the acts and practices hereinabove set forth and the use of the foregoing false, deceptive and mis-

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leading advertisements with respect to their preparations, disseminated as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements, statements and representations are true and that respondents' perfumes are a product of and imported from the Territory of Hawaii, and has caused a number of the purchasing public, because of said erroneous and mistaken belief engendered as aforesaid, to purchase said perfumes thereby unfairly diverting trade to respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia and in commerce between the United States and foreign countries.

CONCLUSION

The aforesaid acts and practices of the respondents Miahati, Inc., Andrew Apicella and Abbot Manufacturing Co., Inc., as herein found, are all to the prejudice 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 amended complaint of the Commission, the answers of the respondents and stipulations as to the facts entered into between the respondents Miahati, Inc., Andrew Apicella, and Abbot Manufacturing Co., Inc., and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provide, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon said respondents Miahati, Inc., Andrew Apicella, and Abbot Manufacturing Co., Inc., 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, that the respondents Miahati, Inc., a corporation, its officers, representatives, agents and employees, and Andrew Apicella, individually and as an officer of respondent Miahati, Inc., trading under the name Oceanic Import Co., or under any other name or names, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly :

1. Disseminating or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference that their said perfumes are manufactured or compounded from flowers, scents, oils or other ingredients from the Gardens of Miahati or from the Territory of Hawaii; or that their said perfumes originate in the Territory of Hawaii or are made and manufactured in the United States from ingredients imported from Hawaii.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said perfumes, which advertisement contains any of the representations prohibited in paragraph 1 above.

It is further ordered, that the respondents Miahati, Inc, a corporation, its officers, representatives, agents and employees, Andrew Apicella, individually and as an officer of respondent Miahati, Inc., trading under the name Oceanic Import Co., or under any other name or names, and Abbot Manufacturing Co., Inc., a corporation, 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 perfumes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word Honolulu or any other word indicative of Hawaii as a brand or trade name for perfumes or other toilet preparations manufactured or compounded in the United States, or in any other manner representing that perfumes or other toilet preparations so compounded are made or compounded in Hawaii.

2. Using the terms Pikaki or Waikiki or any other Hawaiian word or terms as brand or trade names to in any way designate, describe or refer to perfumes 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 said 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.

It is further ordered, that as the record indicates that the individual respondent Rose Vivaudou is no longer connected with, nor has any interests in, the businesses of the other respondents named herein, the amended complaint against her is hereby dismissed.

Order

43 F. T. C.

IN THE MATTER OF
STANDARD OIL COMPANY

MODIFIED CEASE AND DESIST ORDER¹*Docket 4389. August 9, 1946*

Order modifying original order of October 9, 1945, 41 F. T. C. 263, requiring respondent, its officers, etc., in connection with the sale of gasoline in commerce, to cease and desist from discriminating among purchasers, directly or indirectly, in the price of such gasoline of like grade and quality, in violation of the provisions of subsection (a) of section 2 of an act of Congress approved October 15, 1914 (the Clayton Act), as amended by an act approved June 19, 1936 (the Robinson-Patman Act), as in said order below set out; Commissioner Mason dissenting in the following opinion.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Cyrus B. Austin for the Commission.

MacMahon, Abbott & Roberts, of Detroit, Mich., and *Mr. Albert L. Green* and *Mr. Buell F. Jones*, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission as amended, answer of the respondent, testimony and other evidence in support of the allegations

¹ The original order was modified, as herein set forth, and certain motions disposed of, by Commission order also dated August 9, 1946, as follows:

This matter coming on to be heard upon motion of counsel for the Commission dated January 21, 1946, and supplemental motion dated February 15, 1946, to modify the order to cease and desist entered herein by the Commission on October 9, 1945, and answers and briefs of the respondent in opposition thereto; motion of the respondent filed January 28, 1946, for rehearing and reconsideration of the order to cease and desist; petition of the National Council of Independent Petroleum Associations for leave to intervene and to set aside the order to cease and desist and reopen the proceeding for further hearings and the taking of further testimony; and upon oral argument of counsel in support of and in opposition to said motions; and the Commission having duly considered the various motions, answers, briefs, and oral argument of counsel and the record herein and being now fully advised in the premises:

It is ordered, that the motion of respondent for rehearing and reconsideration of the order to cease and desist be, and the same hereby is, denied;

It is further ordered, that the petition of National Council of Independent Petroleum Associations for leave to intervene and to set aside the order to cease and desist and reopen the proceeding for further hearings and the taking of further testimony be, and the same hereby is, denied;

It is further ordered, that the motions of counsel for the Commission dated January 21, 1946, and February 15, 1946, to modify the order to cease and desist issued October 9, 1945, be, and the same hereby are, granted, and that said order to cease and desist be modified substantially in the manner and to the extent as set out in the supplemental motion of counsel for the Commission dated February 15, 1946;

It is further ordered, that a modified order to cease and desist incorporating the modifications provided for in the supplemental motion of counsel for the Commission be issued and served upon the respondent.