

IN THE MATTER OF
SAKS & COMPANY, DOING BUSINESS AS SAKS AT 34TH
STREET

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

Docket 3298. Complaint, Jan. 12, 1938—Decision, Aug. 25, 1939

Where a corporation engaged in operating retail department stores in New York City, and in there dealing in numerous articles of merchandise, including perfumes and toilet waters, both at its said store in regular course of retail trade, and on mail order from customers in other States; in advertising perfumes in newspapers of general circulation in New York and adjacent States—

- (a) Described as "Renaud's Perfume, Famous in France" product there offered, notwithstanding fact perfume advertised by it had been purchased from dealers in said city and had been there made from concentrates imported from France, and to which alcohol and water had been added in city and State aforesaid, and which concentrates, preceding such processes and addition, were not finished products and marketable as perfumes, and product thus described was not famous in France nor even there generally well known;

With tendency and capacity to cause members of purchasing public to have erroneous and mistaken belief that perfume thus designated was imported from France and to purchase same because of such belief; and

- (b) Represented its said "Renaud's Perfume, Famous in France" as priced at \$3.95, and at about one-fifth of its value, listed at \$22.50, and perfume offered in 1-ounce flacons, priced at \$1 each, as "Perfume by Riviere, regularly \$5.00," facts being its former \$3.95 product had never been listed or sold by it in its store at \$22.50, and other product had never been listed or sold therein at \$5;

With capacity and tendency to confuse, mislead, and deceive members of public and induce them to purchase perfumes offered and sold by it in the belief that such products were being sold at prices much below their true values and list prices, and had been imported from France, and with result that trade in commerce was diverted unfairly to it from its competitors who do not misrepresent the values or list prices of perfumes offered and sold by them and do not offer perfumes of domestic manufacture as and for those imported from France:

Held, That such claims and representations, as above set forth, were all to the injury of the public and constituted unfair methods of competition in commerce.

Before *Mr. William C. Reeves*, trial examiner.

Mr. William L. Pencke for the Commission.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Saks & Co., a corporation, trading and doing business under the firm name and style of Saks at 34th Street, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Saks & Co., hereinafter referred to as respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at 1293 Broadway, in the city and State of New York. Respondent is a wholly owned subsidiary of Gimbel Bros., Inc., a corporation, and operates a retail store under the firm name and style of Saks at 34th Street, situated at Broadway and Thirty-fourth Street, in the city and State of New York.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing perfumes, toilet waters, and related articles of cosmetics. Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, causing said products when sold to be shipped from its place of business in the State of New York to purchasers thereof located in various States other than the State of New York. There is now and has been at all times hereinafter mentioned a course of trade and commerce in said perfumes, toilet waters, and kindred cosmetic articles so sold and distributed by the respondent between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the business of selling and distributing perfumes, toilet waters, and kindred cosmetic articles in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale and in the selling of its said products and for the purpose of creating a demand on the part of the consuming public for said products, has advertised said products

Complaint

29 F. T. C.

through the media of price lists, newspapers advertisements, and other printed matter published, issued, and circulated among its customers and prospective customers in the various States of the United States and in the District of Columbia. In the aforesaid ways and by the aforesaid means, the said respondent makes and has made false and misleading statements to the general public with reference to the said products offered for sale by it.

PAR. 5. The said advertisements and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions, and misrepresentations concerning its products, of which the following advertisements are examples:

Perfume by RIVIERE * * *
regularly 5.00
1.00

Only because of a very special purchase can we sell this exquisite perfume at a price so far below its value. The quantity is distinctly limited, so regular Riviere 'fans' will get their orders in early! It comes in a one-oz. flacon, beautifully packaged in a suede box. The odeurs: Gardenia, Sweet Pea and Orchid.

STREET FLOOR

* * * * *

Perfume by
RIVIERE * * *
1.00

Three fresh floral perfumes by a man who understands the important influence a perfume can have. The Sweet Pea is naive, the Gardenia subtle, the Orchid exotic. Each comes in a lovely flacon that repeses in a gift box.

Street Floor

* * * * *

Famous in France
RENAUD'S Perfume
3.95

This fine perfume, famous for the subtlety of its scent, is now available in the three-ounce size (listed at 22.50) at about one-fifth of its value! The gift bottle, of simulated quartz, is done in excellent taste. Your choice of Sweet Pea, Orchid or Gardenia.

* * * * *

Sale—Perfume by Morin
Regularly 10.00 value—2.00
full two ounces.

The aforesaid statements and descriptions appearing in said advertisements and otherwise serve as representations to members of the purchasing public that the said products so described and referred

to have regular retail values and selling prices greatly in excess of the purported special sale prices set-out in said advertisements; that said products are generally and customarily sold at retail for approximately the prices described and referred to as being the regular retail value or prices thereof; and that Renaud's perfume so advertised is not of domestic origin, but is of French origin and is made in France and subsequently imported into the United States.

PAR. 6. In truth and in fact, said products have not been and are not customarily sold at retail prices higher than those advertised and represented as being special sale prices, and said products have never been sold at approximately the prices represented as being the regular and customary retail sales prices thereof. The Riviere perfumes have not customarily been sold at retail for \$5 an ounce or for any sum substantially approximating that amount. Morin perfumes have never been sold at \$10 for a 2-ounce flacon or for any sum substantially approximating that amount. In truth and in fact, said perfumes are customarily and generally sold at retail at the prices which are stated and represented to be special sales prices and have never been customarily sold at retail for prices in excess of those prices. The perfume designated as Renaud's is actually manufactured in the United States and is not imported from France.

PAR. 7. The public generally understands the custom of marking or otherwise designating the actual customary retail price or value of various commodities and has been led to, and does, place its confidence in such price marking or designation and the representations thereby made as to the quality and value of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 8. For many years a substantial portion of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes which are manufactured or compounded in foreign countries, especially in France, and then imported into the United States, over any perfumes of domestic manufacture.

PAR. 9. There are among the competitors of respondent distributors and dealers in like or similar products who truthfully advertise the quality, merit, nature, and origin of their respective products, and do not represent in any way that said products are of foreign origin when they are in fact of domestic origin, and do not misrepresent the quality, value, or price of said products by representing said products to have a customary and regular retail sales price which is greatly in excess of the purported special sales price, which is in fact the regular price for said product.

PAR. 10. The aforesaid misleading representations and practices of the respondent in selling and offering for sale the above-described perfumes have had, and have, a tendency and capacity to, and do, mislead a substantial portion of the purchasing and consuming public into the erroneous and mistaken beliefs that Renaud's perfume is made or compounded in France and imported into the United States and is not a domestic perfume, and that all of said perfumes have customary and regular prices greatly in excess of the purported special sales prices set-out in the advertisements, and that the consuming public in purchasing said perfumes at the purported special sales prices obtains the benefit of a substantial reduction in prices from the ordinary and customary selling prices of said perfumes.

The aforesaid false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of consumer purchasers of said products to buy the products so offered for sale, sold, and distributed by the respondent on account of the aforementioned mistaken and erroneous beliefs. As a result thereof, trade has been diverted to respondent from those of respondent's competitors engaged in similar businesses who truthfully advertise their said products. As a consequence thereof, substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 12, 1938, issued its complaint in this proceeding and caused same to be served upon the respondent, Saks & Co., a corporation, trading and doing business under the firm name and style of Saks at 34th Street, with principal place of business at 611 Fifth Avenue in the city and State of New York, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer thereto by said respondent, testimony and other evidence in support of the allegations of said com-

plaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Chadbourne, Wallace, Parke & Whiteside, attorneys for the respondent, before William C. Reeves, an examiner for the Commission theretofore duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral argument not having been requested), 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. The respondent, Saks & Co., is a corporation organized, existing, and carrying on business under the laws of the State of New York, with principal place of business at 611 Fifth Avenue, in the city and State of New York. It is a wholly owned subsidiary of Gimbel Bros., Inc., another corporation organized under the laws of the State of New York. Said respondent operates a retail department store under the name and style of Saks at 34th Street, which store is located at Broadway and Thirty-fourth Street in the city and State of New York. For more than 2 years said respondent has offered for sale and sold at its said store numerous articles of merchandise including perfumes and toilet waters. The greater portion of the business of respondent consists of sales of merchandise at its said store in the regular course of retail trade, but it also makes a substantial volume of sales of some articles of merchandise, including perfumes, on mail orders from customers located in States of the United States other than the State of New York, and respondent has caused the merchandise so sold to be transported from its store in the State of New York through and into or into other States of the United States to the respective purchasers thereof, and in the course and conduct of its said business respondent has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of perfumes, toilet waters, and similar articles of merchandise in commerce among several of the States of the United States.

PAR. 2. Respondent, in the course of its business as set out in paragraph 1 hereof, has caused advertisements to be published in news-

Findings

29 F. T. C.

papers of general circulation in the State of New York and States adjacent thereto, in which advertisements a 3-ounce bottle of perfume described as "Renaud's Perfume, Famous in France" was priced at \$3.95 and was represented in said advertisements to be about one-fifth of its value and was listed at \$22.50. Other advertisements which respondent caused to be published related to 1-ounce flacons of perfume priced at \$1 each, which were described as "Perfume by Riviere, regularly \$5.00." The item priced at \$3.95 in such advertisements had never been listed or sold by respondent in its store at \$22.50 as stated in the advertisements and the item priced at \$1 in said advertisements had never been listed or sold by respondent in its store at \$5. The perfume so advertised by respondent had been purchased by respondent from dealers in New York City, State of New York, and had been made in said city and State from concentrates imported from France, to which concentrates alcohol and water had been added in said city and State. The concentrates from which such perfumes were made were not finished products and were not marketable as perfumes until alcohol had been added.

PAR. 3. Users of perfumes in the United States prefer imported perfumes to domestic perfumes. The designation by the respondent in the aforesaid advertisements of said perfume as "Renaud's Perfume, Famous in France" has the tendency and capacity to cause members of the purchasing public to have the erroneous and mistaken belief that said perfume was imported from France and to purchase said perfume because of said erroneous and mistaken belief. The perfume advertised by respondent as "Renaud's Perfume, Famous in France," is not famous in France as represented in the advertisements which respondent caused to be published, as set out in paragraph 2 hereof, and is not even generally well known in France.

PAR. 4. The claims and representations made by respondent in the advertisements which it caused to be published, as set out in paragraph 2 hereof, concerning the values and list prices and place of manufacture of perfumes offered for sale and sold by it, are false, misleading, and deceptive, and have and have had the capacity and tendency to confuse, mislead, and deceive members of the public and to induce them to purchase the perfumes offered for sale and sold by respondent in the belief that such perfumes were being sold at prices much below their true values and list prices and had been imported from France, and as a result trade in interstate commerce has been diverted unfairly to respondent from its competitors who do not misrepresent the values or list prices of perfumes offered

698

Order

for sale and sold by them, and who do not offer perfumes of domestic manufacture for sale as and for perfumes which had been imported from France.

CONCLUSION

The claims and representations made by respondent concerning perfumes offered for sale and sold by it, as hereinbefore set out, are all to the injury of the public and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 respondent, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (oral argument not having been requested), 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, Saks & Co., a corporation, trading under its own corporate name and also trading and doing business under the firm name and style of Saks at 34th Street, 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 and other toilet preparations in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Famous in France," or of any other terms, words, symbols, or picturizations, indicative of French or other foreign origin of such products, or in any manner, that perfumes or other toilet preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country, provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied with a statement that such products are made or compounded in the United States.

2. Using the term "Renaud's Perfume—Famous in France," or any other terms indicative of French origin, or any French or other foreign words or terms, as brand or trade names for perfumes, or other toilet preparations, made or compounded in the United States without clearly and conspicuously stating in immediate connection

Order

29 F. T. C.

therewith that such products are made or compounded in the United States.

3. Representing by any specified sum or in any other manner that the ordinary retail price or prices of said products are other than the price or prices at which said products are ordinarily offered for sale and sold at retail.

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.

Syllabus

IN THE MATTER OF
ALLE-RHUME REMEDY COMPANY, INC. AND BLOCK
DRUG COMPANY, INC.

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

Docket 3678. Complaint, Dec. 28, 1938—Decision, Aug. 25, 1939

Where two corporations, under common control and directed by same set of officers, respectively engaged as manufacturer and as exclusive distributor, in compounding, selling, and distributing their "Allenru" medical or pharmaceutical preparation to members of purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of medical and other preparations and products designed and intended for use in treatment of ailments and conditions for which they recommended their said product, and including many who do not in any manner misrepresent their preparations and do not make any other false statements in connection with sale and distribution thereof; in advertisements which they disseminated through the mails and through newspapers and periodicals of general circulation, and through circulars and printed matter distributed in commerce among the various States, and through various means, and which were intended and calculated to induce, directly or indirectly, purchase of their said product—

- (a) Represented, directly or by implication, that said "Allenru" would drive out of or rid joints or muscles of all uric acid deposits, and that excess uric acid caused or aggravated most cases of rheumatism, and that it would cause uric acid poisons to be eliminated from body in 24 hours, facts being it would not drive out of joints and muscles all uric acid deposits that cause suffering, or drive out uric acid poisoning from body in 24 hours, and excess uric acid in system does not cause or aggravate most cases of rheumatism;
- (b) Represented, as aforesaid, that said preparation was compounded from a safe or scientific formula, and was free from harmful drugs and constituted a remedy or cure for rheumatism, sciatica, neuritis, lumbago, and neuralgia, facts being it was not a safe, sensible, scientific formula free from harmful or pain-deadening drugs, nor competent and effective remedy or treatment or cure for said or any other ailments or conditions which may be present in or afflict the body, and had no substantial therapeutic value in treatment thereof; and
- (c) Represented, as aforesaid, that use of said "Allenru" would remove cause of, or effect quick relief from, sciatica, neuritis, or lumbago, and would quickly stop distress and pain of said ailments caused by excess uric acid or other circulating poisons, and would stop the pain, agony, and inflammation within 48 hours, facts being it would not accomplish such results, and most of aches and pains and stiffness, soreness, and lameness of rheumatism, sciatica, neuritis, and rheumatic gout are not caused or aggravated by such excess uric acid and other circulating poisons, and it would not drive out pain and agony caused by said ailments within 48 hours or in any other period of time, and their claims as to therapeutic value or