

IN THE MATTER OF
GEORGE ALTSTADTER TRADING AS ARGENTUM
LABORATORIES

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

Docket 5909. Complaint, July 23, 1951—Decision, Nov. 6, 1952

There is a preference on the part of a substantial portion of the purchasing public for perfumes and toilet waters compounded in France over those compounded in the United States.

A representation that a perfume contains pure gold has an appeal to the purchasing public because of the prestige and the intrinsic value of gold; and a representation that a specific perfume contains "Pure 24 Carat Gold" when samples analyzed by the Bureau of Standards show a content of less than 2 thousandths of a microgram of gold per milliliter, which is less than the lowest concentration of gold found in sea water, is false and deceptive.

Where an individual engaged in the compounding of perfumes and toilet waters and the competitive interstate sale and distribution thereof—

(a) Represented that said products were compounded in or imported from France through prominently displaying in newspapers and other advertisements the words "Greetings from Paris", together with a picture of the Eiffel Tower, and through use of such brand or trade names as "Parfum de Soir", "Danse Apache", "Bois de Rose", "Jasmin Fleurance", "Feuille de Violette", and "The Old French Glory";

The facts being that all of his said products were compounded in the United States; while certain oils used therein were imported from France, all other materials were obtained in this country, and even those perfumes which contained French oils contained domestic oils also;

(b) Falsely represented in his advertising that the price at which certain of his products were offered was a special price for a limited time only; when in fact it was his usual and customary price;

(c) Falsely represented as aforesaid that his perfumes contained a substantial amount of gold which caused the fragrance to last longer; notwithstanding the fact that the gold content was infinitesimal and much smaller than that found in ordinary sea water, and was incapable of exerting any substantial or appreciable effect upon said perfumes; and

(d) Falsely represented that a bottle of perfume was given free to purchasers of his "Treasure Chest" assortment of perfumes and that the purported gold contained in his said products was also given free to purchasers; the facts being that in order to obtain the so-called "free" perfumes it was necessary to purchase others, the price of which included a charge for the "free" product; and the price of any gold contained in the perfume was included in the charge therefor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, and thereby induce purchase of substantial quantities of its perfumes and toilet waters; and with result that substantial trade was diverted unfairly from his competitors:

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

As respects respondent's appeal from the initial decision of the hearing examiner on the ground that it prohibited him from stating that his perfume contained gold unless it contained a substantial amount, when he contended that it did in fact contain gold, that the gold was a vital part of his formula and the fact that it was present in small quantities was immaterial; it appearing that his advertisements clearly implied that his perfumes contained a substantial quantity, that the evidence indicated an infinitesimal concentration thereof, and that there was no evidence that such a concentration had any effect as a fixative or otherwise in perfume:

The Commission was of the opinion that said appeal was without merit, and that the hearing examiner's initial decision was appropriate in all respects to dispose of the proceeding, and accordingly denied the appeal and adopted said decision as its own.

Before *Mr. William L. Pack*, hearing examiner.

Mr. B. G. Wilson 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 George Altstadter, an individual trading as Argentum Laboratories, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, and stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, George Altstadter is an individual trading as Argentum Laboratories with his office and principal place of business located at 1742 Samson Street, Philadelphia, Pennsylvania.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the compounding, bottling, sale and distribution of perfumes and toilet water. Respondent causes his said products when sold to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in the various States of the United States and maintains, and at all times mentioned herein has

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maintained, a course of trade in said products in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his products, has made certain statements and representations, with reference to said products and the manner of conducting his said business, in newspapers, circulars, form letters, on order blanks and on the labels of said products. Typical of, but not all inclusive of such statements and representations are the following:

Courtesy—Coupon

Greetings from Paris (Picture of Eiffel Tower)

One large 8 grs. bottle of high class French style perfume absolutely free. This coupon entitles you to our Treasure Chest containing three different, large 8 grs. bottles of your choice of high class French style perfume "Or de France" with 24 Kt. Gold for the publicity price of \$1.00. * * * Valid 10 days!

Said advertisement contains a coupon which reads as follows:

Coupon—mark your choice of three

1. Parfume du Soir
2. My First Kiss
3. Danse Apache
4. Bois de Rose
5. Gardenia
6. Jasmin Fleurance
7. Feuille de Violette
8. Carnation
9. Lily of the Valley

* * *

The aforesaid names also appear on the labels of respondent's perfumes.

On order forms sent to prospective customers in response to inquiries, respondent lists his toilet water as "Eau D'Or" and uses as names therefor the following "Glorie de France," "Baiser Defendu," "Danse Apache," "Bois de Rose," "Cyclamen des Alpes," "Jasmin Fleurance," "Feuille de Violette," "Oeillet" and "Muguet de Mai." The aforesaid names also appear on the labels of respondent's toilet water.

24 KARAT GOLD GIVEN AWAY FREE

Every bottle of "The Old French Glory" our latest creation of French Style perfume contains pure 24 Karat Gold. This unique feature—no other perfume in the world has it—makes its lovely fragrance last on and on * * * at the pre-introductory price of \$1.00 we honestly believe this is the greatest bargain ever offered * * *.

PAR. 4. Through the use of the various French words above set forth and the name "The Old French Glory" in his advertising, on

order blanks and on the labels of his products and the words "Greetings from Paris" and the picture of the Eiffel Tower, in his advertising, respondent represented that his perfumes and toilet water were compounded in France and imported into the United States; by means of the aforesaid advertisements respondent further represented that the offer for sale for a certain price was limited in time; that a bottle of perfume was given absolutely free to the purchasers of his "Treasure Chest"; that his perfumes contained a substantial amount of 24 Kt. Gold which makes its fragrance last longer than perfumes that do not contain gold and that the gold in said perfume was given away free.

PAR. 5. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondent's perfumes and toilet water were compounded in the United States, using domestic ingredients. There was no actual limitation on the time within which respondent's offer has to be accepted. Perfume was not given free since it was necessary to purchase other perfume, the price of which included the price of the so-called "free" perfume. The amount of gold in respondent's perfumes is so infinitesimal that any reference to gold is misleading. Gold is not known to have any effect upon the lasting qualities of the fragrance of perfumes. Such gold as may have been contained in respondent's perfume was not given free as the amount charged for the perfume included the price of the gold.

PAR. 6. There is a preference on the part of substantial numbers of the purchasing public for perfumes and toilet water compounded in France over those compounded in the United States.

PAR. 7. Respondent at all times mentioned herein has been and is now in substantial competition in commerce with firms and individuals selling perfumes and toilet water compounded in the United States and with firms and individuals selling such products which are compounded in France and imported into the United States.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were true and to cause substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products. As a result trade has been diverted to respondent from his competitors and substantial injury has been done and is now being done to competition in commerce.

PAR. 9. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in

commerce within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5909, November 6, 1952, follows:

This matter came on to be heard by the Commission upon the respondent's appeal from the hearing examiner's initial decision herein and brief in opposition thereto filed by counsel in support of the complaint (oral argument not having been requested).

Respondent in his appeal specifically objects only to that portion of the order contained in the initial decision which prohibits him from stating that his perfume contains gold unless it contains a substantial amount of gold. Respondent contends that the perfume so represented does, in fact, contain gold, that it is a vital part of his formula and that the fact it is present in small quantities is immaterial. The record shows that respondent considers the gold to act as a fixative in his perfume.

A consideration of respondent's advertisements in the record shows that they clearly imply that his perfume contains a substantial quantity of gold. Three members of the public, who had received certain of respondent's advertisements through the mail, testified that in their opinion a substantial gold content was implied by his advertisements.

An analysis of samples of perfume represented by respondent as containing gold was made by a chemist of the National Bureau of Standards who testified that they contained less than two thousandths of a microgram of gold per milliliter, an extremely small amount. This amount is less than the lowest concentration of gold found in sea water. There is no evidence of record indicating that such an infinitesimal concentration of gold has any effect as a fixative or otherwise in perfume. Also, in addition to respondent's claims as to the utility value of gold in his perfume, the representation that the perfume contains pure gold in itself has an appeal to the purchasing public because of the prestige and intrinsic value of gold. Respondent's representation that perfume contains "Pure 24-Karat Gold" which, in fact, contains gold in such microscopic quantities, is false and deceptive.

The Commission, therefore, being of the opinion that the respondent's appeal is without merit and that the hearing examiner's initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondent's appeal from the hearing examiner's initial decision be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall on the 6th day of November, 1952, become the decision of the Commission.

It is further ordered, That the respondent George Altstadter, an individual trading as Argentum Laboratories, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist contained in said initial decision, a copy of which is attached hereto.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, George Altstadter, an individual trading as Argentum Laboratories, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of his answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, and testimony and other evidence (the filing of proposed findings and conclusions having been waived and oral argument not having been requested), and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, George Altstadter, is an individual trading as Argentum Laboratories, with his office and principal place of business located at 1742 Sansom Street, Philadelphia, Pennsylvania. Respondent is engaged in the compounding, sale and distribution of perfumes and toilet waters.

PAR. 2. Respondent causes his products, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers

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located in various other States of the United States. Respondent maintains and has maintained a course of trade in his products in commerce between and among the various States of the United States.

PAR. 3. In the sale and distribution of his products, respondent is and has been in substantial competition with other individuals and with firms engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

PAR. 4. Respondent advertises his products by means of circular letters and postal cards which are mailed to prospective purchasers and also by means of advertisements inserted in newspapers. In a number of the advertisements there have been prominently displayed the words "Greetings from Paris," together with a picture of the Eiffel Tower. Such advertisements were captioned "Courtesy—Coupon" and read as follows:

One large 8 grs. bottle
of high class French style perfume
absolutely FREE

This Coupon entitles YOU to our TREASURE CHEST containing three different, large 8 grs bottles of your choice of high class French style perfume "OR de FRANCE" with 24 Kt. GOLD, for the publicity price of \$1.00. Simply fill out COUPON Enclose ONE DOLLAR in bill. M. O., check or stamps to help cover Advertising, Handling, Tax etc. and we will mail promptly post-paid our TREASURE CHEST, if not thrilled with what you get, or if you can get a similar value for LESS THAN \$10.00, keep one of the three bottles; return the rest, and YOUR DOLLAR WILL BE IMMEDIATELY REFUNDED! * * *

VALID 10 DAYS!

The coupon included in the advertisement read as follows:

COUPON

Mark your choice of three:

- 1—Parfum de Soir
- 2—My First Kiss
- 3—Danse Apache
- 4—Bois de Rose
- 5—Gardenia
- 6—Jasmin Fleurance
- 7—Feuille de Violette
- 8—Carnation
- 9—Lily of the Valley

Name: _____

Address: _____

These names also appear on the labels affixed to the bottles in which the perfumes are packaged and sold to the public. A typical label reads as follows:

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LES PARFUMS
OR de FRANCE
with
24 Kt. GOLD
No. 1
Parfum du Soir

Another advertisement read as follows:

24 KARAT GOLD GIVEN AWAY FREE

Every bottle of "The Old French Glory" our latest creation of French Style perfume contains pure 24 Karat Gold. This unique feature—no other perfume in the world has it—makes its lovely fragrance last on and on * * * at the pre-introductory price of \$1.00 we honestly believe this is the greatest bargain ever offered * * * Number of introductory price bottles limited, if exhausted, your Dollar will be returned.

French words are also used by respondent as names or brands for his toilet waters. Among those used are the following: "Eau D'Or," "Gloire de France," "Baiser Defendu," "Danse Apache," "Bois de Rose," "Cyclamen des Alpes," "Jasmin Fleurance," "Feuille de Violette," "Oeillet," and "Muguet de Mai."

PAR. 5. In the manner and through the means set forth above, respondent has represented, directly or by implication, that his perfumes and toilet waters were compounded in France and imported into the United States; that the price at which certain of his products were offered for sale was a special price applicable for a limited time only; that his perfumes contained a substantial amount of gold which caused the fragrance of the perfumes to last longer than would otherwise be the case; that a bottle of perfume was given free to purchasers of respondent's "Treasure Chest" assortment of perfumes; and that the purported gold content in respondent's perfumes was also given free to purchasers of such perfumes.

PAR. 6. The record establishes that these representations were erroneous and misleading. Actually, none of respondent's products is compounded in or imported from France, all of them being compounded in the United States. While certain oils used in some of the perfumes are imported from France, all other materials are obtained in the United States. Even those perfumes which contain French oils contain domestic oils as well. The purported special price on certain of the products was not in fact limited as to time but was the usual price at which such products were customarily and regularly sold by respondent in the normal course of business. None of respondent's perfumes was given to the public free, because in order to obtain the so-called free perfumes it was necessary that the recipient

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purchase other perfumes, the price of which included a charge for the "free" perfumes.

With respect to the gold content in respondent's perfumes, an analysis made by the National Bureau of Standards of representative samples of the perfumes establishes that they contain no more than a faint trace of gold, the amount being so small as to be infinitesimal. In fact, the record indicates that the amount is much smaller than that found in ordinary sea water. While respondent insists that the presence of gold in perfume, even though it be only a very small amount, prolongs the fragrance of the perfume and has other beneficial effects, no scientific basis for the opinion is shown. Whatever may be the correct answer to the abstract question of the effect of gold in perfume, it is concluded, in view of the fact that here the gold content is infinitesimal, that such content is incapable of exerting any substantial or appreciable effect upon the perfumes here under consideration. Nor is any gold which may be in the perfume given free, as the amount charged for the perfume includes the price of the gold.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for perfumes and toilet waters compounded in France over those compounded in the United States.

PAR. 8. The record indicates that much of the advertising referred to above has already been discontinued by respondent.

PAR. 9. The use by respondent of the erroneous and misleading representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such portion of the public to purchase such products as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondent from his competitors.

CONCLUSION

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

ORDER

It is ordered, That the respondent, George Altstadter, individually and trading as Argentum Laboratories or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering

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for sale, sale and distribution of perfumes and toilet waters in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Greetings from Paris," or a picture of the Eiffel Tower or any picturization indicative of France, in advertising products not compounded in France; or otherwise representing, directly or by implication, that such products are compounded in or imported from France.

2. Using the words "Parfum du Soir," "Danse Apache," "Bois de Rose," "Jasmin Fleurance," "Feuille de Violette," "Eau D'Or," "Baiser Defendu," "Cyclamen des Alpes," "Oeillet," "Muguet de Mai" or "The Old French Glory," or any other words indicating French origin, as brand or trade names for perfumes or toilet waters compounded in the United States, without clearly and conspicuously stating, in immediate connection and conjunction therewith, that such products are compounded in the United States.

3. Representing that any offer of products at a stated price must be accepted within a certain time, unless such offer is in fact so limited.

4. Using the word "free" or any other word of similar import to designate, describe or refer to any product or to any ingredient contained therein which is not in fact a gift or gratuity, or the receipt of which is conditioned on the purchase of other products.

5. Representing that products contain gold, unless substantial amounts of gold are in fact contained therein.

6. Representing that the gold content in respondent's products prolongs the fragrance thereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent George Altstadter, an individual trading as Argentum Laboratories, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist contained in said initial decision * * * [as required by aforesaid order and decision of the Commission].

IN THE MATTER OF
BENRUS WATCH COMPANY, INC.

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE
ALLEGED VIOLATION OF SEC. 2 (A) OF AN ACT OF CONGRESS APPROVED
OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5969. Complaint, Mar. 17, 1952—Decision, Nov. 6, 1952

In the resale at retail of brand-name watches, competitive brands, and other merchandise by competing purchasers, any appreciable difference between the prices they pay gives a material competitive advantage to purchasers paying the lower prices and, conversely, imposes a material competitive disadvantage upon purchasers paying the higher prices, and may result in substantial injury to the state of competition between and among such purchasers.

When such lower prices are lower by amounts determined by volume of purchase over a period of time, they tend substantially to divert business to the seller so granting them and away from his competitors, for purchasers have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its men's and women's watches in substantial volume to a substantial number of purchasers, most of them engaged in the competitive resale of such watches and competitive brands at retail, and including single unit and chain jewelry stores and mail order houses;

In selling its said watches pursuant to a plan under which it (1) classified annual purchases into groups which began with those under \$2,000, and included six other progressively larger groups ranging from \$2,000 to \$4,000, \$4,000 to \$8,000, etc. and granted rebates from its list prices ranging from 1% for those whose purchases fell within the second group, to 8% for those whose purchases exceeded the \$50,000 to \$75,000 group; and (2) accorded to its largest volume purchaser a rebate of 14½% below its regular list prices—

Discriminated in price substantially through the granting of such annual rebates both as between the purchasers in each volume bracket and the purchasers in each other volume bracket, many of whom were in competition with each other in the resale of its products, and as between the purchasers in the volume brackets and the purchaser sold at special list prices, who in some instances also competed in resale;

Effects of which discriminations might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and its said purchasers, respectively, were engaged, or to injure, destroy, and prevent competition with it, with the purchasers who received the benefits of such discriminations, and with the customers of both: