

Complaint

IN THE MATTER OF
OLD EMPIRE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6401. Complaint, Aug. 24, 1955—Decision, Apr. 3, 1956*

Consent order requiring a perfume manufacturer in Newark, N. J., and its franchise distributor in New York City to cease representing falsely through statements in circulars, letters, and on containers and labels that \$25 per bottle was the customary retail price of its "Marche Nuptiale" perfume, that it was displayed and sold by named large and well-known department stores, was manufactured from essence imported from France, and that they maintained a branch office in Paris; and supplying to retail purchasers gummed labels bearing the figure "\$25.00" to affix to the "Marche Nuptiale" packages.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggart for the Commission.

Mr. Seth Harrison, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Old Empire, Inc., a corporation; Julio de Elorza, Raymond Barnett, John de Elorza and Pearl de Elorza, individually and as officers of Old Empire, Inc.; Pierre Marche, Inc., a corporation; Louis Manus, Mrs. Samuel B. Kline, also known as Bebe Aaron, and Ruth Robbins, individually and as officers of Pierre Marche, Inc., and Samuel B. Kline, individually and as General Manager of Pierre Marche, Inc., all 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Old Empire, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 865 Mount Prospect Avenue, Newark, New Jersey. Respondents Julio de Elorza, John de Elorza, Raymond Barnett and Pearl de Elorza are president, treasurer, vice-president and secretary, respectively of said corporate respondent. These individuals acting in cooperation with each other formulate, direct, and control the acts, practices and policies of said corporate re-

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spondent. Their address is the same as that of the said corporate respondent.

Respondent Pierre Marche, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at Room No. 720, 580 Fifth Avenue, New York, N. Y. Respondents Louis Manus, Mrs. Samuel B. Kline, also known as Bebe Aaron, Ruth Robbins and Samuel B. Kline are president, vice-president, secretary and general manager, respectively, of said corporate respondent. These individuals, acting in cooperation with each other, formulate, direct and control the acts, practices and policies of said corporate respondent. Their address is the same as that of the said corporate respondent.

PAR. 2. Respondent Old Empire, Inc., is now, and for more than one year last past has been, engaged in the manufacture, sale and distribution of perfumes, colognes, and allied products, including a perfume sold and distributed under the brand and trade name of "Marche Nuptiale." Respondent Pierre Marche, Inc., is now and for more than one year last past has been, the franchise distributor of the said perfume, Marche Nuptiale.

PAR. 3. Respondents cause their said products, when sold, to be transported from their places of business in the States of New Jersey and New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, among and between the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of their said businesses, respondents are now and have been at all times mentioned herein in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture, sale and distribution of perfumes, colognes and allied products, some of which products are compounded in the United States, others are compounded in France and imported into the United States.

PAR. 5. Respondents, in the course and conduct of their aforesaid businesses and for the purpose of inducing the purchase of their perfume described and sold under the brand and trade name of "Marche Nuptiale" have made numerous statements and representations, with reference to said product, in brochures, circulars, and letters, and upon packages, containers and labels of said product.

Among and typical but not all inclusive of said statements and representations are the following:

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(Appearing on cover of four-page circular:)

For over thirty years, women of fashion have chosen Marche Nuptiale as their own favorite scent. This fabulous perfume is the creation of the world-famous perfumer, Marques de Elorza.

Marche Nuptiale has been featured and sold in many famous department stores and women's specialty shops in this country, and throughout the world, at \$25.00 per bottle. Also advertised extensively in newspapers, magazines and trade publications; displayed in department store windows, etc. (See inside for reproductions of only a few of the countless ads.)

(Appearing on inside pages of said circular are purported reproductions of window displays of large and well known named department stores advertising Marche Nuptiale:)

MARCHE NUPTIALE as displayed in the windows and sold at the perfume counters of these fine stores at \$25.00 per bottle.

These are but a few of the ads which featured MARCHE NUPTIALE at \$25.00 per bottle in newspapers across the country, national magazines plus tremendous trade paper coverage.

MARCHE NUPTIALE

in its newly-designed spillproof bottle and modern package. Shaped for more sales.

1 Fluid Ounce

PARIS—NEW YORK

(Appearing on one window display:)

For the Supreme Moment
Parfum MARCHE NUPTIALE
(Wedding March)

MARQUES DE ELORZA

73 Avenue des Champs Elysees
Paris

37 West Thirty-seventh Street
New York

The package and container of Marche Nuptiale in addition to displaying the French national flag also contains the wording:

Fabrique Avec Essences Importees de France

MARCHE NUPTIALE

(Wedding March)

MARQUES DE ELORZA

Paris—New York * 1 fl. oz.

PAR. 6. Through the use of the aforesaid statements and representations and others of similar import but not specifically set out herein, respondents have represented and now represent that their said perfume designated as "Marche Nuptiale" has a retail price of \$25.00 per bottle at which price such perfume ordinarily and customarily is sold to consumers; that said perfume is now displayed and sold by named large and well known department stores; that said perfume is manufactured from essences imported from France;

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that respondents maintain a branch office or establishment in Paris, France.

PAR. 7. The aforesaid representations are false, misleading and deceptive. In truth and in fact, respondents' perfume designated as "Marche Nuptiale" does not have a retail price of \$25.00 per bottle and is not ordinarily and customarily sold at that price; said perfume is actually sold to consumers at \$3.00 per bottle or less; said perfume is not displayed and sold by any of the named large and well known department stores and has not been so displayed and sold at said stores for as long as fifteen years; said perfume is not manufactured entirely from essences imported from France but is manufactured in Newark, New Jersey from essences purchased by respondents within the United States, which contain only a small fraction of ingredients which come from France; respondents do not maintain a branch office or establishment in Paris, France.

PAR. 8. Respondent Pierre Marche, Inc., acting under the direction of its general manager, respondent Samuel B. Kline, in addition to supplying brochures and circulars to prospective and actual retail purchasers also supplies to such retail purchasers small gummed, sticker-type, labels bearing the figure "\$25.00" for the purpose of enabling the said purchasers to affix said labels or stickers to the "Marche Nuptiale" packages. The practice of supplying such labels or stickers, in addition to the brochures and circulars, containing the fictitious retail prices for said Marche Nuptiale places in the hands of retailers buying such products from respondents, an instrumentality and means whereby such retailers may mislead and deceive and do mislead and deceive the purchasing public as to the quality and origin of said product and enables such retailers to represent and offer for sale and sell said product at a price greatly in excess of the usual and regular retail price thereof.

PAR. 9. There is a preference on the part of substantial numbers of the purchasing public for perfumes and similar products manufactured and compounded in France over those manufactured and compounded in the United States.

PAR. 10. The use by respondents of the foregoing false, misleading and deceptive statements and representations has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements are true and to cause substantial members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products. As a result, trade has been diverted to respondents from their com-

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petitors and substantial injury has been done and is being done to competition in commerce.

PAR. 11. 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 24, 1955, charging them with the use of unfair methods of competition and unfair acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act. After being duly served with said complaint, the respondents appeared by counsel and subsequently entered into an agreement containing consent order to cease and desist dated January 12, 1956. Said agreement, which has been signed by counsel supporting the complaint, counsel for respondents, and all respondents, and approved by the Director of the Commission's Bureau of Litigation, has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice and Procedure.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has been agreed that the order to cease and desist provided for in said agreement may be entered without further notice, that when so entered it shall have the same force and effect as if entered after a full hearing, and that the complaint herein may be used in construing the terms of said order. Said agreement purports to dispose of all of this proceeding as to all parties and has been entered into by respondents for settlement purposes only and without admitting that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent

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order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of the proceeding as to all parties, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision pursuant to Section 3.21 and 3.25 of the Rules of Practice and Procedure, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Old Empire, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 865 Mt. Prospect Avenue, Newark, New Jersey. Respondents Julio de Elorza, Raymond Barnett, John de Elorza and Pearl de Elorza are president, treasurer, vice-president, and secretary, respectively, of said corporate respondent. Their address is the same as that of said corporate respondent.

Respondent Pierre Marche, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Room 720, 580 Fifth Avenue, New York, New York. Respondents Louis Manus, Mrs. Samuel B. Kline, also known as Bebe Aaron, and Ruth Robbins and Samuel B. Kline, are president, vice-president, secretary and general manager, respectively, of Pierre Marche, Inc. Their address is the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Old Empire, Inc., a corporation, its officers, and respondents Julio de Elorza, Raymond Barnett, John de Elorza and Pearl de Elorza, individually and as officers of Old Empire, Inc., and respondent Pierre Marche, Inc., a corporation, its officers, and respondents Louis Manus, Mrs. Samuel B. Kline, also known as Bebe Aaron, and Ruth Robbins, individually and as officers of Pierre Marche, Inc., and Samuel B. Kline, individually and as General Manager of Pierre Marche, Inc., their agents, representatives, and employees, directly or through any corporate or other device in connection with the sale and distribution of perfumes, colognes, and allied products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Supplying customers or purchasers of said products or any of them with price tags, labels, stickers or other advertising material bearing amounts which are, in fact, in excess of the prices at which said products are usually and customarily sold.

2. Representing directly or by implication:

(a) That the retail price of any of said products is in excess of the price at which said product is usually and customarily sold.

(b) That said products or any of them are currently being displayed or sold by any specified store or any class of stores, when such is not the fact.

(c) That said perfumes are made from essence imported from France unless it is clearly and conspicuously disclosed in immediate conjunction therewith, that part of the essences are not so imported, when such is the fact.

(d) That any of respondents maintain an office or establishment in France unless such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3rd day of April, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (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 the order to cease and desist.

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IN THE MATTER OF
FELLER'S, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6429. Complaint, Oct. 19, 1955—Decision, Apr. 4, 1956

Consent order requiring a furrier in Harrisburg, Pa., to cease violating the Fur Products Labeling Act through failing to comply with the labeling, advertising, and invoicing requirements.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Philip R. Melangton, Jr. for the Commission.

Mr. David E. Feller, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Feller's, Inc., a corporation, and Charles Feller and Oscar Feller, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Feller's, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business at Third & Market Streets, Harrisburg, Pennsylvania. Respondents Charles Feller and Oscar Feller are president and secretary-treasurer, respectively, of said corporate respondent. These individuals, acting in cooperation with each other, formulate, direct and control the acts, policies, and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act, August 9, 1952, respondents have been and now are, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold,