

Decision

IN THE MATTER OF
SYDNEÉ, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6681. Complaint, Nov. 27, 1956—Decision, July 27, 1957*

Consent order requiring a corporate seller in Chicago to cease representing falsely by statements and depictions in advertising and on labels and packaging, that its domestic perfumes and colognes were made in France, and that excessive fictitious prices were its customary retail prices; and by simulation of the script, packaging, shape of bottle, and trade name of certain nationally advertised and accepted products, that its perfumes and colognes were such preferred products;

Similar order entered by default against four individuals with places of business at Miami and Miami Beach, Fla., cooperating with the aforesaid concern.

INITIAL DECISION AS TO RESPONDENT SYDNEÉ, INC., AND AS TO
SIDNEY BELMONT AND MILDRED BELMONT

Mr. Everett F. Haycraft, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. Samuel Morgan, of Chicago, Ill., for respondents, Sydneé, Inc., Sidney Belmont and Mildred Belmont.

The Federal Trade Commission, on November 27, 1956, issued its complaint against the respondents named in the caption hereof, charging them with the dissemination in commerce of advertisements containing false and misleading representations with respect to their perfumes and colognes, and charging that the use of such advertisements constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Commission in its complaint alleged that respondents had been for some time last past engaged in the business of selling various perfumes and colognes which are cosmetics as defined in the Federal Trade Commission Act and that said respondents had caused such products to be shipped in interstate commerce to purchasers thereof located in various states of the United States. It was further alleged that in the course and conduct of their business respondents have disseminated advertisements concerning their said products by the United States mails and by various means in commerce such as newspapers, periodicals, and circulars wherein respondents made statements which were misleading in material respects and constituted false advertisements as that term is defined in the Federal

Trade Commission Act. It was alleged in this connection that the prices set out in said advertisements were fictitious and greatly in excess of the prices at which respondents said products were usually or customarily sold at retail and that said respondents represented that said products were compounded or imported from France when as a matter of fact they were manufactured or compounded in the United States. And it was further alleged that said products were sold in packages which simulated the packages and trade names of certain nationally advertised products when in truth and in fact said products were not the nationally advertised products as indicated.

On March 25, 1957, corporate respondent Sydneé, Inc., and individual respondents Sidney Belmont and Mildred Belmont, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Sydneé, Inc., as a corporation existing and doing business under and by virtue of the laws of the State of Illinois; respondent Sidney Belmont, as an individual and president of said corporate respondent; and respondent Mildred Belmont, as an individual and secretary of said corporate respondent. Said corporate and individual respondents have their offices and principal place of business located at 1414 South Wabash Avenue, Chicago, Illinois.

In the agreement, respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Said respondents in the agreement waived any and all 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 the agreement.

It was further agreed that the record on which the initial decision and the decision of the Commission shall be based, insofar as they relate to the respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont, shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the order to cease and desist, as contained in the agreement, shall have the same force and effect as if entered

after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by corporate respondent Sydneé, Inc., and individual respondents Sidney Belmont and Mildred Belmont, that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner concludes that such order constitutes a satisfactory disposition of this proceeding, insofar as it relates to respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont. Accordingly, in consonance with the terms of the aforesaid agreement and with sections 3.21 and 3.25 of the Rules of Practice, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont, and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Sydneé, Inc., a corporation, and its officers, and Sidney Belmont and Mildred Belmont, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, colognes and allied products, 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, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Contains or lists prices or amounts which purport to be, or may be accepted to be retail prices, when such prices or amounts are in excess of the prices at which the products referred to are usually and customarily sold at retail.

(b) Uses the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or any name, word, term or depiction, indicative of French origin, in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in im-

Order

54 F.T.C.

mediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

(c) Represents that products manufactured or compounded in the United States are manufactured in France.

(d) Contains depictions which simulate the script, wrapping, packaging, shape of bottle or trade names, or any other simulations, of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations or depictions prohibited by Paragraph 1 of this order.

It is further ordered, That respondents Sydneé, Inc., a corporation, and its officers, and Sidney Belmont and Mildred Belmont, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or 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:

1. Setting out prices or amounts on the label or in the labeling of their products, which purport to be, or may be accepted to be, retail prices, when such prices or amounts are in excess of the prices at which such products are usually and customarily sold at retail.

2. Using the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or any name, word, term or depiction indicative of French origin in connection with products manufactured or compounded in the United States on the labels or in the labeling of their products unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured and compounded in the United States.

3. Representing on the labels or in the labeling that products manufactured or compounded in the United States are manufactured or compounded in France.

4. Simulating the trade name and script on the label or in the labeling or in any other manner, or simulating the wrapping, packaging, shape of bottle, or other characteristics of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 27th day of July, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Sydneé, Inc., a corporation; and Sidney Belmont and Mildred Belmont, individually and as officers of said corporation, 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.

INITIAL DECISION AS TO INDIVIDUAL RESPONDENTS HAROLD SHAPIRO, SHIRLEY SHAPIRO, BEN SHAPIRO AND MARY MAHEU

Mr. Everett F. Haycraft, hearing examiner.

Mr. William A. Somers for the Commission.

No appearance on behalf of respondents.

The Federal Trade Commission, on November 27, 1956, issued its complaint against the respondents named in the caption hereof, which was duly served upon them, charging them with the dissemination in commerce of advertisements containing false and misleading representations with respect to their perfumes and colognes, and alleging that the use of such advertisements constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

Respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu have been and are now active in a personal and financial way in respondent Sydneé, Inc., and cooperate and have cooperated with the officials thereof in the promotion and sale of its products. Further, at present and heretofore, said respondents have by various devices initiated and carried on the acts and practices hereinafter found, and other similar acts and practices. The last known address of respondents Harold Shapiro and Shirley Shapiro is 133 South Royal Poinciana Boulevard, Miami, Florida, and that of respondents Ben Shapiro and Mary Maheu is 5455 North Bay Road, Miami Beach, Florida.

After due notice, hearings were held in Washington, D.C., on March 5 and 15, 1957, to give respondents an opportunity to appear and show cause why an order to cease and desist should not be entered against them. The respondents under consideration herein neither answered nor appeared at any hearing; and at the second

Findings

54 F.T.C.

hearing the attorney in support of the complaint requested the hearing examiner to enter an order declaring respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu in default, which request was granted on the record as to said respondents. Accordingly, the following findings, conclusions and order are entered:

FINDINGS OF FACT

PARAGRAPH 1. Said respondents are now, and for some time last past, have been engaged in the business of selling various perfumes and colognes, which are cosmetics as "cosmetic" is defined in the Federal Trade Commission Act, and have caused and are causing said products when sold to be shipped to purchasers thereof located in various States of the United States other than the States in which such shipments originate. Said respondents maintain, and at all times in question have maintained, a substantial course of trade in said products, in commerce, among and between various States of the United States.

PAR. 2. Said respondents, in the course and conduct of their businesses, have disseminated, are disseminating, and have caused the dissemination of advertisements concerning their said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements were or 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.

By means of such statements and depictions, the said advertisements inserted in newspapers and periodicals, in circulars, and in other advertising media, disseminated as aforesaid, respondents have falsely represented, directly and by implication:

1. That certain of their products have been sold or are being sold at various prices, thereby representing that such prices were the usual and customary retail prices of their products;

2. Through the use of French names or words, such as "by Yvonne," "by Sydneé," "Yvonne's" and "Sydneé's," that said products were and are compounded in and imported from France; and

3. By simulation of the script, packaging, shape of bottle and trade names of certain nationally advertised, accepted and preferred products, and by depictions and words, that their products were and are actually such nationally advertised, accepted and preferred products.

PAR. 3. Said advertisements were and are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. The prices set out in the advertisements were and are fictitious and greatly in excess of the prices at which respondents' products were usually or customarily sold at retail.

2. Respondents' products were neither compounded nor imported from France, but were manufactured or compounded in the United States. While some imported ingredients may have been contained in the essence used in compounding or manufacturing some of respondents' products, the major portion of ingredients was of domestic origin.

3. Respondents' products were not the nationally advertised, accepted and preferred products that their script, wrapping, packaging, shape of bottle and trade names indicated them to be.

The dissemination of the advertisements containing the false, misleading, and deceptive statements and depictions hereinbefore set out and the use of the practices hereinbefore described have had, and now have, the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true; and that such practices and acts cause and have caused substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the products of respondent Sydneé, Inc. As a result of the practices hereinbefore stated, trade has been and is being unfairly diverted to the aforesaid respondents from their competitors, and substantial injury has been done and is being done to competition in commerce.

CONCLUSIONS

The aforesaid acts and practices, as herein found, were and are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act; and

Since respondents have presented neither answer nor appearance, under the default provisions of Rule 3.7(2)(b) of the Commission's Rules of Practice, the hearing examiner declares and finds that respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu are in default. Therefore,

It is ordered, That respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu, individually and as representatives and employees of respondent Sydneé, Inc., directly or through any corporate or other device, in connection with the offering for sale,

sale, or distribution of perfumes, colognes, and allied products, 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, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Contains or lists prices or amounts which purport to be, or may be accepted to be, retail prices, when such prices or amounts are in excess of the prices at which the products referred to are usually and customarily sold at retail.

(b) Uses the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or any name, word, term or depiction, indicative of French origin, in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

(c) Represents that products manufactured or compounded in the United States are manufactured in France.

(d) Contains depictions which simulate the script, wrapping, packaging, shape of bottle or trade names, or any other simulations, of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations or depictions prohibited by Paragraph 1 of this order.

It is further ordered. That respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu, individually and as representatives and employees of Sydneé, Inc., directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of perfumes, colognes, and allied products, do forthwith cease and desist from, directly or indirectly:

1. Setting out prices or amounts on the label or in the labeling of their products, which purport to be, or may be accepted to be, retail prices, when such prices or amounts are in excess of the prices at which such products are usually and customarily sold at retail.

2. Using the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or

any name, word, term or depiction indicative of French origin in connection with products manufactured or compounded in the United States on the labels or in the labeling of their products unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured and compounded in the United States.

3. Representing on the labels or in the labeling that products manufactured or compounded in the United States are manufactured or compounded in France.

4. Simulating the trade name and script on the label or in the labeling or in any other manner, or simulating the wrapping, packaging, shape of bottle, or other characteristics of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 27th day of July, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro and Mary Mahen, individually, 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.

IN THE MATTER OF
H. B. DAVIS CORPORATION ET AL.

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

Docket 6697. Complaint, Dec. 26, 1956—Decision, July 31, 1957

Consent order requiring a seller in New York City to cease labeling as "All new material consisting of wool batting," bed comforters which contained substantial amounts of fibers other than wool, and failing to conform to the labeling requirements of the Wool Products Labeling Act; including in the transparent containers of the comforters streamers bearing fictitious prices; and representing falsely in catalogs that said comforters were "100% All Wool Filled" and bore "Good Housekeeping Seal of Approval."

Mr. S. F. House for the Commission.

Mr. J. Wolfe Chassen, of Brooklyn, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on December 26, 1956, issued its complaint herein under the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939 against the above-named respondents H. B. Davis Corporation, a corporation, and Harry B. Davis and Charles J. Schwartz, individually and as officers of said corporation. The complaint charges respondents with having violated in certain particulars the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling Act. The respondents were duly served with process. Upon being advised that Commission's counsel and the respondents were negotiating an agreement for a consent cease and desist order pursuant to Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the times for answer and for initial hearing were postponed by appropriate order, pending the negotiation of such an agreement.

On June 11, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease and Desist," which had been entered into by and between each of the respondents, other than Harry B. Davis, and S. F. House, counsel supporting the complaint, under date of May 3, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been