

IN THE MATTER OF
MAXWELL DISTRIBUTING COMPANY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6745. Complaint, Mar. 22, 1957—Decision, Sept. 5, 1957

Order requiring sellers in Newark, N.J., of perfumes, toilet waters, and colognes to cease representing falsely in advertisements on the labeling of their products that fictitious and excessive "list prices" were the usual retail prices and that their products were compounded in France.

Mr. Harry E. Middleton, Jr., for the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of the Federal Trade Commission Act, as amended, it being charged, in substance, that the respondents have committed unfair and deceptive acts and practices and unfair methods of competition in commerce by misrepresenting the origin and prices of cosmetics, such as perfumes, colognes, and toilet waters which it sells directly or indirectly to the purchasing public. This decision is rendered against all respondents upon the default of all such respondents.

From the record it appears that each of the respondents, other than Hyman Greenglass, was duly served with a copy of the complaint, either on March 29, 1957, or on March 30, 1957, and that the respondent Hyman Greenglass was duly served therewith on April 29, 1957. Although each of such respondents, other than Hyman Greenglass, were in default of answer, other pleading or other appearance, either in person or by counsel, because of delay in obtaining service on said respondent Hyman Greenglass, the initial hearing as set in the "Notice" portion of the complaint for May 28, 1957, in Newark, New Jersey, was indefinitely postponed on May 14, 1957, by an order providing for a subsequent resetting of such hearing on at least ten days' notice to the parties, as provided by Section 3.16(e) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, with the precise time and place thereof to be designated therein. On June 3, 1957, each and all of the respondents then being in default of answer, other pleading or other appearance, either in person or by counsel, the hearing examiner issued an order setting a hearing for June 21, 1957, at ten o'clock a.m. (local time), in Room 358, Federal Trade Commission Building, Sixth and Pennsylvania Avenue, N.W., Washington, D.C., for the purpose of

conducting a hearing to hear the evidence to be presented by the attorney for the Commission, to find whether the facts are as alleged in the complaint, to make proper findings on the evidence presented, and to determine the form of order to be issued under said complaint and evidence in the initial decision thereafter to be entered. Each of the foregoing orders was duly and timely served upon each of the respondents. On June 21, 1957, at the time and place designated therefor, the hearing examiner conducted such a hearing. No appearance was entered or made at or prior to such hearing by any of the respondents, either in person or by counsel, and on motion of counsel for the Commission, their respective defaults were each taken and entered of record by the hearing examiner. Hearing then proceeded upon the evidence presented by the attorney for the Commission, who also presented a proposed form of order to the hearing examiner, and the proceeding was then taken under advisement.

Upon due consideration of the whole record herein and the hearing examiner being fully advised in the premises, it is found as follows:

The Federal Trade Commission has jurisdiction of the person of each of the respondents Maxwell Distributing Company, Inc., a corporation, and Morris Siegel, Abe Goldberg, Selma Siegel, Hyman Greenglass, and Max Greenglass, individually and as officers and directors of said corporation, and each of them are found and adjudged to be in default of answer, other pleading, or other appearance, either in person or by counsel; and the material facts set forth in the complaint are true as hereinafter specifically found.

Respondent Maxwell Distributing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal place of business located at 161 Washington Street, Newark, New Jersey. Individual respondents, Morris Siegel, Abe Goldberg and Selma Siegel, are president, vice-president and secretary-treasurer, respectively, of the corporate respondent, with their office and principal place of business at the same address as the corporate respondent. In addition to being officers, individual respondents Morris Siegel and Abe Goldberg, together with respondents Hyman Greenglass and Max Greenglass are the directors of the corporate respondent. All five of the individual respondents formulate, direct and control the policies, acts and practices of said corporate respondent.

Respondents are now, and have been for more than two years last past, engaged in the business of selling various perfumes, toilet waters and colognes, which are "cosmetics" as that term is defined and used

in the Federal Trade Commission Act, as amended. The cosmetics offered for sale and sold by respondents, among others, are designated as: Discovery, Caprichio, Sables and Pearls, Pagoda, White Christmas Perfume, White Christmas Toilet Water, La Vie en Rose and Scheme.

Respondents cause their said products when sold to be transported from their place of business in the State of New Jersey 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 the District of Columbia.

In the course and conduct of the aforesaid business, respondents have disseminated, and caused the dissemination of, advertisements concerning their aforesaid products by the United States mails and by various means in commerce, including but not limited to circulars, catalogs, and order blanks, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products; and respondents have disseminated and caused the dissemination of their advertisements by various means, including but not limited to the means aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

In certain of their advertisements, respondents represented that certain of their cosmetics were sold or had been sold at various list prices; thereby representing that such prices were the usual and customary retail prices, and further represented, through the use of such statements as "The fragrance created in France," "blended in the French Tradition," "Paris-New York," "Perfume essence compounded in France expressly for Saravel" and through the use of brand names such as "La Vie en Rose" and "Le Couturier," that said cosmetics were compounded in France. The said advertisements, statements, and representations were misleading in material respects and constituted "false advertisements" as that term is defined and used in the Federal Trade Commission Act, as amended. In truth and in fact, the list prices as set out in the advertisements were and are fictitious and greatly in excess of the prices at which respondents' products usually or customarily sold at retail, and further, respondents' products were not compounded in France but were manufactured or compounded in the United States. While some imported ingredients may have been contained in the essence used in compounding some of the respondents' products, the major portion of the ingredients thereof was of domestic origin.

In addition to the foregoing, and for the purpose of inducing the sale of their products in commerce, respondents have set forth on the labels or in the labeling of their products certain amounts or prices, thereby representing, directly or by implication, that such amounts or prices were the usual and customary retail prices of said products; and they have also used on the labels or in the labeling of some of their products French names or words, such as "La Vie en Rose" and "Le Courturier" and the word "Paris" and the Tricolor of France, thereby representing, directly or by implication, that said products were compounded in France.

Like the statements and representations made in the advertisements above referred to, these statements and representations were false, misleading and deceptive. In fact, the amounts or prices set out on the labels or in the labeling were fictitious and greatly in excess of the prices at which said products were usually and customarily sold at retail; and, further, the products in connection with which the representations were made were not compounded in France, but were compounded in the United States. While some imported ingredients may have been contained in the essence used in compounding some of the said products, the major portion of the ingredients thereof was of a domestic origin.

There is a preference on the part of the purchasing public for perfumes, colognes, and toilet waters manufactured or compounded in foreign countries and imported into the United States. This is particularly true regarding cosmetics which are manufactured or compounded in France.

In the course and conduct of their said business, 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 sale and distribution of like products.

By means of the said labeling practices of respondents they have furnished means and instrumentalities to dealers and others through and by which they may mislead and deceive the public with respect to the origin and retail prices of their products.

The dissemination by respondents of the advertisements containing the said false, misleading and deceptive statements and representations, and their use of the said labeling practices have had and now have the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representations were true and such public has thereby been induced to purchase substantial quantities of the respondents' products. As a result of the said practices, trade has been and is being unfairly diverted to respondents from their competitors and

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

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices hereinbefore found to be unlawful.

2. The public interest in this proceeding is clear, specific, and substantial.

3. The aforesaid acts and practices of respondents, as hereinbefore found, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now 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, as amended.

On the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That the respondents, Maxwell Distributing Company, Inc., a corporation, Morris Siegel, Abe Goldberg, Selma Siegel, Hyman Greenglass and Max Greenglass, individually and as officers and directors, or as officers, or as directors, of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, toilet waters, colognes, or any other cosmetic, as "cosmetic" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement 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 when such prices or amounts are in excess of the prices at which the products are usually and customarily sold at retail;

(b) Uses the statements or words "The fragrance created in France," "blended in the French tradition," "Paris-New York," "Perfume essence compounded in France expressly for Saravel" in connection with any product not manufactured or compounded in France; or which otherwise represents, directly or by implication, that any such product was manufactured or compounded in France;

(c) Uses any French name or word as a trade or brand name, or as a part thereof, or any name, word, term, or depiction indicative

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of French origin in connection with any product manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such product was manufactured or compounded in the United States.

2. Disseminating or causing to be disseminated, 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, any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That said respondents and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, toilet waters, colognes or any other cosmetic 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 labels or in the labeling of their products when such amounts are in excess of the prices at which such products are usually and customarily sold at retail.

2. Using any French name or word as a trade or brand name, or as a part thereof, or the word "Paris," or the Tricolor of France, or any other name, word, term, or depiction indicative of French origin on the label or in the labeling of any product manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such product was manufactured or compounded in the United States.

ORDER MODIFYING INITIAL DECISION AND DIRECTING
REPORT OF COMPLIANCE

The hearing examiner having filed an initial decision in this proceeding on June 27, 1957, containing his findings of fact, conclusions drawn therefrom, and order to cease and desist, and this case having been placed on the Commission's own docket for review and having come on for final consideration by the Commission; and

It appearing that whereas the complaint charges the respondents with having misrepresented the retail prices and the place of compounding of their cosmetic products, in part, through the dissemination of false advertisements, in violation of Section 12 of the Federal Trade Commission Act, and, in part, through the use of statements and representations on labels and in labeling, in violation of Section 5 of said Act, the initial decision deals with the case as though all of the charges had arisen under Section 5; and

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The Commission being of the opinion that in this respect the initial decision is deficient and should be modified:

It is ordered, That the initial decision be, and it hereby is, modified as follows:

1. By striking the words "and labels," appearing in the first line, and the words "and the words 'Paris' and a portrayal of the Tricolor of France," appearing in the tenth and eleventh lines, of the first full paragraph on page 4;

2. By inserting the following two paragraphs between the first and second full paragraphs on page 4:

"In addition to the foregoing, and for the purpose of inducing the sale of their products in commerce, respondents have set forth on the labels or in the labeling of their products certain amounts or prices, thereby representing, directly or by implication, that such amounts or prices were the usual and customary retail prices of said products; and they have also used on the labels or in the labeling of some of their products French names or words, such as 'La Vie en Rose' and 'Le Couturier' and the word 'Paris' and the Tricolor of France, thereby representing, directly or by implication, that said products were compounded in France.

"Like the statements and representations made in the advertisements above referred to, these statements and representations were false, misleading and deceptive. In fact, the amounts or prices set out on the labels or in the labeling were fictitious and greatly in excess of the prices at which said products were usually and customarily sold at retail; and, further, the products in connection with which the representations were made were not compounded in France, but were compounded in the United States. While some imported ingredients may have been contained in the essence used in compounding some of the said products, the major portion of the ingredients thereof was of a domestic origin."

3. By striking the six lines of the second paragraph on page 5, beginning with the words "There being jurisdiction" and ending with the words "conclusions of law:," and inserting in lieu of said lines the subheading "Conclusions of Law."

4. By substituting the following order for the order contained on pages 5 and 6:

"It is ordered, That the respondents, Maxwell Distributing Company, Inc., a corporation, Morris Siegel, Abe Goldberg, Selma Siegel, Hyman Greenglass and Max Greenglass, individually and as officers and directors, or as officers, or as directors, of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offer-

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ing for sale, sale or distribution of perfumes, toilet waters, colognes, or any other cosmetic, as 'cosmetic' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

"1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce as 'commerce' is defined in the Federal Trade Commission Act, any advertisement 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 when such prices or amounts are in excess of the prices at which the products are usually and customarily sold at retail;

"(b) Uses the statements or words 'The fragrance created in France,' 'blended in the French tradition,' 'Paris-New York,' 'Perfume essence compounded in France expressly for Saravel' in connection with any product not manufactured or compounded in France; or which otherwise represents, directly or by implication, that any such product was manufactured or compounded in France;

"(c) Uses any French name or word as a trade or brand name, or as a part thereof, or any name, word, term, or depiction indicative of French origin in connection with any product manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such product was manufactured or compounded in the United States.

"2. Disseminating or causing to be disseminated, 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, any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

"It is further ordered, That said respondents and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, toilet waters, colognes or any other cosmetic 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 labels or in the labeling of their products when such amounts are in excess of the prices at which such products are usually and customarily sold at retail.

"2. Using any French name or word as a trade or brand name, or as a part thereof, or the word 'Paris,' or the Tricolor of France, or any other name, word, term, or depiction indicative of French origin on the label or in the labeling of any product manufactured

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or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such product was manufactured or compounded in the United States."

It is further ordered, That the initial decision of the hearing examiner, as modified herein, did on the 5th day of September become the decision of the Commission.

It is further ordered, That the respondents, Maxwell Distributing Company, Inc., Morris Siegel, Abe Goldberg, Selma Siegel, Hyman Greenglass and Max Greenglass, 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 terms of said order.

Findings

IN THE MATTER OF
AZOME UTAH MINING COMPANY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6475. Complaint, Dec. 6, 1955—Decision, Sept. 6, 1957

Order requiring sellers in Sterling, Utah, to cease disseminating in commerce false advertising concerning the value and effectiveness of their "Azomite" product, a natural rock-like substance mined or collected from the surface of the land in central Utah and processed and sold by them for use in the feeding of poultry and other animals and also as a soil conditioner.

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

Mr. George E. Steinmetz and *Mr. Terral A. Jordan* for the Commission.

Mr. Dilworth Woolley, of Manti, Utah, for respondents.

FINDINGS OF FACT, CONCLUSION AND ORDER

The complaint in this matter, issued December 6, 1955, and subsequently served on all the respondents named therein, charged said respondents with the dissemination of false advertisements, as that term is defined in the Federal Trade Commission Act, and with otherwise misrepresenting the value and effectiveness of a product sold by them known as "Azomite," all in violation of said Federal Trade Commission Act. After the filing of respondents' answer admitting in part and denying in part the various allegations in the complaint, hearings were held at which testimony and other evidence, both in support of and in opposition to the complaint, were received. Proposed findings and conclusions having been submitted by the parties, the hearing examiner, on May 23, 1957, filed his initial decision in which he found that certain of the respondents' representations were erroneous and misleading and included an order to cease and desist.

No appeal from said initial decision having been filed, the Commission, by order issued July 3, 1957, placed the case on its own docket for review, and having subsequently vacated and set aside the initial decision, makes the following findings of fact, conclusion and order in lieu of those contained in said initial decision:

FINDINGS OF FACT

1. Respondent Azome Utah Mining Company, Inc., is a corporation organized and doing business under the laws of the State of Utah, with its principal office and place of business located in Sterling,