

Decision

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IN THE MATTER OF
HARSAM DISTRIBUTORS, INC., ET AL.

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

Docket 6687. Complaint, Dec. 11, 1956—Decision, Mar. 21, 1958

Order requiring jobber-sellers in New York City of their domestically blended "White Christmas" perfume which contained some imported ingredients, to cease representing falsely in advertising and on labels that the perfume sold at nationally advertised prices far in excess of the customary prices; and, through use of French words and otherwise, that the perfume was a French product.

Mr. William R. Tincher for the Commission.

Mr. Abraham B. Hertz, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding alleges that Harsam Distributors, Inc., Harry Wagonfeld and Louis Wagonfeld, individually and as officers of said corporation, violated the provisions of the Federal Trade Commission Act by indulging in false advertising practices in the sale and distribution of "White Christmas" perfume, defined as a "cosmetic" under the act.

Specifically, the complaint alleges that said corporation and named individuals, through advertisements, circulars and labels, represented that "White Christmas" perfume was compounded in France and had been nationally advertised and sold at certain retail prices, whereas, such statements are misleading and deceptive and constitute "false" advertising under the act for the reason that "White Christmas" perfume was not compounded in France but was manufactured or compounded in the United States and the prices set forth in the advertisements are fictitious and in excess of the prices at which "White Christmas" usually or customarily sold at retail and were not nationally advertised prices. The complaint further alleged that there is a preference on the part of the buying public for perfumes manufactured or compounded in foreign countries and imported into the United States, especially from France.

The respondents, through their attorney, answered the complaint, denied that Louis Wagonfeld is secretary-treasury of Harsam Distributors, Inc., that he directs or controls the policies, acts and practices

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of said corporate respondent, and denied the other material allegations set forth in the complaint.

Hearings were held in New York City. Proposed findings, conclusions, and order have been submitted by respective counsel. The examiner has considered the testimony and evidence received at the hearings, the proposed findings of fact, conclusions and order submitted by counsel. All proposed findings and conclusions not specifically found and concluded in this decision are rejected. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions, and issues the following order:

FINDINGS OF FACT

1. The respondent Harsam Distributors, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 14 E. 17th Street, New York, N.Y. The respondent Harry Wagonfeld is president of said corporation and directs the acts and practices of said corporation. The respondent Louis Wagonfeld is not the secretary-treasurer of said corporation and has no part in directing the acts and practices of said corporation, as alleged in the complaint. Therefore, the complaint will be dismissed as to Louis Wagonfeld.

2. Harsam Distributors, Inc., and Harry Wagonfeld, president of said corporation, hereinafter referred to as respondents, are now and have been for more than 2 years last past, engaged in the business of selling various perfumes which are "cosmetics" as that term is defined in the Federal Trade Commission Act. Among said perfumes is one designated as "White Christmas," which is involved in this proceeding. Respondents began selling "White Christmas" perfume in 1953. At that time, respondents purchased their supplies of "White Christmas" for resale from Saravel, Inc., who owned the formula for the perfume and compounded or manufactured the product, as understood in the trade. Respondents acted in the capacity as a jobber for the perfume, selling and shipping the perfume to their own wholesale department and retail store customers in various localities throughout the United States.

3. Perfume is made, compounded, or manufactured by mixing or blending perfume concentrate with denatured alcohol.¹ Although

¹ The formula for "White Christmas" perfume is a blend of aromatic chemicals or concentrate and denatured alcohol. After the alcohol is added to and blended with the concentrate, a certain amount of aging takes place. The temperature of the liquid is lowered to below 32 degrees, and the liquid is then filtered and bottled. The concentrate is oil, is not perfume, and is never sold to the public as perfume. In concentrated form the liquid would soil any article of clothing which it might touch. The concentrate must be mixed or blended with alcohol in order to make perfume.

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Saravel, Inc., appears to have been termed in the trade as the manufacturer of "White Christmas" perfume, the actual mixing or blending of the concentrate with denatured alcohol was performed by Roure-DuPont, Inc. of New York City, for and on behalf of Saravel, Inc. Roure-DuPont is a manufacturer of cosmetics, perfumes, soaps, etc. When Roure-DuPont first began blending "White Christmas" perfume for Saravel, Inc., in 1953, the concentrate was of domestic origin. Roure-DuPont did not bottle the perfume for Saravel, Inc. After blending, Roure-DuPont delivered the finished product (perfume) in drums or jugs to a company which specialized in bottling perfume and similar products. After bottling the perfume in 1 ounce bottles, each bottle of "White Christmas" perfume was placed in a small pasteboard box (respondents' exhibit No. 10). On the front of the box, near the top, were the printed words "WHITE CHRISTMAS." Near the bottom was the French word "PARFUM." Each box containing a 1 ounce bottle of "White Christmas" perfume was individually wrapped in white paper with silver stars imprinted thereon. Each end of the wrapped package, where the paper was folded, was sealed with a sticker. The sticker was glued to the folded edges of the wrapping paper at each end of the package, with the words "White Christmas by Saravel" printed thereon. Near the center of the package, at a fold of the paper wrapper, was another glued sticker, showing the tricolor of France. In the white (center) portion of the tricolor were the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE." A duplicate of this wrapped package containing a 1-ounce bottle of "White Christmas" perfume was received in evidence as Commission exhibit No. 2.

4. During the month of July or August 1953, Saravel, Inc., through its advertising agency, placed an advertisement with Vogue magazine advertising "White Christmas" perfume. The advertisement was approximately 4" x 5½", and appeared in September 15, 1953, issue of Vogue. A page from the September 15, 1953, issue of Vogue magazine which contained this advertisement was received in evidence as Commission exhibit No. 7. In the center of the advertisement is a reproduction of a bottle of "White Christmas" perfume with the name "White Christmas by Saravel," shown thereon. In the lower right hand corner of the advertisement there appears the legend "\$18.50 the ounce at better shops," and at the bottom of the advertisement, "Saravel, Inc., New York 1, N.Y." There is no evidence of any other magazine advertising of "White Christmas" perfume, either by Saravel, Inc., or respondents.

5. Saravel, Inc., had approximately 50,000 reprints made of the "White Christmas" advertisement which appeared in Vogue magazine (Commission exhibit No. 7), some of which reprints Saravel, Inc., delivered to its customers of "White Christmas" for their use in reselling the perfume. Reprints of the advertisement were also placed inside the one gross cartons of "White Christmas" perfume for use by purchasers to promote their reselling the perfume. One of the reprints was received in evidence and marked Commission exhibit No. 3.

6. In December 1953, Roure-DuPont began importing the concentrate from France for the use in compounding or making "White Christmas" perfume. Thereafter, beginning in 1954, this imported French concentrate was mixed with domestic denatured alcohol in compounding or manufacturing "White Christmas" perfume. There was no change in the formula. During the year 1954, Saravel, Inc., discontinued its former practice of placing copies of the reprints of the Vogue magazine advertisement (Commission exhibit No. 3) in each one gross carton of "White Christmas" perfume. Also, during the year 1954 or 1955, the evidence is not clear as to the exact date, Saravel, Inc., discontinued use of the sticker on the "White Christmas" wrapper which showed the figures "\$18.50." Saravel, Inc., also discontinued use of the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE" on the tricolor sticker attached to the outside of the wrapper containing the 1 ounce bottle of "White Christmas" perfume, described in paragraph 3 above, and substituted therefor the English words "PERFUME ESSENCE Compounded in FRANCE—Expressly for SARAVEL." (Commission exhibit No. 1.)

7. In the month of February 1956, the respondent Harsam Distributors, Inc., purchased the formula for "White Christmas" perfume, the trade-mark "White Christmas," and the registered trade name "Saravel" from Saravel, Inc., together with all materials, supplies, etc. which Saravel, Inc. had been using in the manufacture, bottling and distribution of "White Christmas" perfume, and also the reprints of the Vogue magazine advertisement which remained on hand. Thereafter, Harsam Distributors, Inc. became the manufacturer, sole owner, and distributor of "White Christmas" perfume. However, Harsam Distributors, Inc. continued to employ Roure-DuPont to actually blend the imported French concentrate with domestic denatured alcohol in compounding "White Christmas" perfume, using the same formula which Saravel, Inc. had formerly used and which Harsam Distributors, Inc. had purchased from Saravel, Inc. At the direction of respondents, Roure-DuPont delivered the finished

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perfume in bulk drums to B. H. Krueger & Co. for bottling. After bottling the bulk "White Christmas" perfume in 1-ounce bottles, packaging, wrapping, and labelling each bottle as described in paragraph 6 hereof, B. H. Krueger & Co. then delivered the perfume to respondents in one-gross cartons. Respondents then sold, shipped, and distributed the perfume to their wholesale, department and retail store customers in various localities throughout the United States. Respondents did not include in the one-gross cartons of "White Christmas" reprints of the Vogue magazine advertisement (Commission exhibit No. 3) for use by their customers in promoting the resale of "White Christmas," as Saravel, Inc. had done originally and later discontinued, but only shipped the reprints to customers upon their specific request. In such instances, the reprints were shipped in a separate package.

8. From this evidence it is found that respondents sold, distributed, and shipped "White Christmas" perfume from their place of business in New York, N.Y., to their wholesale, department, and retail store customers located in various cities throughout the United States, which perfume bore labels with the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," "PARFUM," and the figures "\$18.50" thereon. It is further found that respondents, to assist their customers in the resale of "White Christmas" perfume, have shipped and distributed to their wholesale, department, and retail store customers located in various states throughout the United States, reprints of the Vogue magazine advertisement (Commission exhibit No. 3).

9. Although it has been found in paragraph 6 hereof that, during the year 1954 or 1955, Saravel, Inc. discontinued use of the "\$18.50" sticker on the "White Christmas" wrapper, nevertheless, there is evidence in the record which shows that respondents have used the "\$18.50" sticker on the pasteboard box in which the 1-ounce bottles of "White Christmas" perfume are placed (respondents' exhibit No. 10), as recently as July 26, 1956. A picture of the front show window of a retail jewelry store customer of respondents taken on July 26, 1956 (Commission exhibit No. 9), shows, among other articles of merchandise displayed for sale, approximately 20 stacked bottles of "White Christmas" perfume in wrapped packages, with four bottles in each stack. The evidence shows that this jewelry store purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in July 1956, and it is found that the perfume shown in the picture (Commission exhibit No. 9) is a part of the perfume so purchased in July 1956. On top and at one end of the stacked and

wrapped 20 bottles of "White Christmas" perfume shown in the picture is one of the pasteboard boxes described in paragraph 3 above (respondents' exhibit No. 10), in which respondents customarily place each bottle of "White Christmas" perfume before it is wrapped. On the outside of the pasteboard box, in the center, between the printed words "WHITE CHRISTMAS" at the top and "PARFUM" at the bottom, is the sticker with the figures "\$18.50." Immediately to the left and adjacent to the pasteboard box, and also on top of the stacks of wrapped bottles of "White Christmas" perfume, is what appears to be a cardboard sign bearing the following inscription: "SALE—\$1.00—Adv. in VOGUE at \$18.50—SAVE 90%." Immediately below is a reprint of the Vogue magazine advertisement (Commission exhibit No. 3).

10. It is found that, by using and disseminating the "\$18.50" sticker on boxes and wrappers containing "White Christmas" perfume and disseminating and distributing reprints of the Vogue magazine advertisement, respondents induced the purchase of "White Christmas" perfume and thereby represented that "White Christmas" perfume is a nationally advertised product which customarily and regularly sells at \$18.50 per ounce.

11. The complaint alleges, in substance, that the representations as to the retail price of "White Christmas" perfume made by respondents are fictitious and in excess of the price at which "White Christmas" usually or customarily sold at retail, was not the nationally advertised price, and thereby constituted "false" advertising under the act. The respondent Harry Wagonfeld, president of respondent Harsam Distributors, Inc., testified that he did not inquire of Saravel, Inc. concerning the accuracy of the \$18.50 price representation in the Vogue magazine advertisement and on the stickers which were placed on "White Christmas" perfume wrappers and did not know of a retail store in the United States which is now selling "White Christmas" perfume at \$18.50 per ounce. In fact, Mr. Wagonfeld testified that he does not know just what the retail price of "White Christmas" perfume is at the present time.

12. The only evidence of sales of "White Christmas" perfume at a retail price of \$18.50 per ounce offered at the hearings were four sales made during the fall of 1953 by two New York City drug stores, the Bliss Drug Co., located at 341 Park Avenue, and Wade Chemists, Inc., located at 424 Madison Avenue. This evidence was offered by counsel supporting the complaint. The operators of these drug stores testified, in substance, as follows: In September 1953, a representative of Saravel, Inc. called on each drug store and

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solicited an order of three bottles of "White Christmas" perfume on a consignment basis. The salesman exhibited a copy of the "White Christmas" advertisement in the September 15, 1953, issue of Vogue magazine (Commission exhibit No. 7). Largely on the strength of the Vogue advertisement each drug store accepted three bottles of "White Christmas" on a consignment basis. The Bliss Drug Co. sold the three bottles of "White Christmas" perfume and Wade Chemists, Inc. sold one bottle. Since the time that these drug stores accepted the "White Christmas" perfume on consignment from the Saravel, Inc. salesman in September 1953, neither drug store has been solicited by a representative of Saravel, Inc. or respondents to reorder "White Christmas" perfume and neither drug store has restocked "White Christmas." Each druggist also testified that the purchasing public prefers a French perfume.

13. On the other hand, the undisputed evidence shows that retail department stores in Boston, Mass., and Chicago, Ill., and a retail jewelry store in New Orleans, La., during 1953, 1954, and 1956, sold "White Christmas" perfume at retail prices ranging from \$1 to \$1.15 per ounce. In October and November 1953, and during 1954, Filene's Department Store in Boston, Mass., sold "White Christmas" perfume which it had purchased from respondent Harsam Distributors, Inc. for \$1.15 per 1-ounce bottle. Reprints of the Vogue magazine advertisement were used in counter displays by Filene's to promote sales of the perfume. Goldblatt Brothers, Inc. of Chicago, Ill., a retail department store, purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in 1954 for 60 cents per ounce and resold the perfume at a retail price of \$1 per 1-ounce bottle. Manners Jewelry Store of New Orleans, La., purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in July 1956, for 50 cents per 1-ounce bottle and resold the perfume at \$1 per 1-ounce bottle. A reprint of the Vogue magazine advertisement (Commission exhibit No. 3) and the \$18.50 sticker were used by this jewelry store to promote the sale of the "White Christmas" perfume. It may be stated, in this connection, that it was stipulated by counsel that Manners Jewelry Store is not a leading or "better shop" as that term was used in the Vogue magazine advertisement (Commission exhibit No. 7).

14. The examiner finds that the four sales of "White Christmas" perfume by the two New York drugstores in the fall of 1953 at a retail price of \$18.50 per 1-ounce bottle were not representative of the usual and customary retail price for said perfume. The undisputed evidence shows that, at that very time, in the fall of 1953,

Filene's Department Store was selling "White Christmas" perfume at \$1.15 per ounce. Filene's had purchased this perfume from respondent Harsam Distributors, Inc. and was using reprints of the Vogue magazine advertisement to promote its resales of the perfume. From a preponderance of the reliable, probative, and substantial evidence the examiner finds that \$18.50 per ounce, or any price approaching that amount, is not now, and has never been at any time in the past, the usual and customary retail price of "White Christmas" perfume, notwithstanding the four sales made by the two New York drug-stores and the retail price representation made in the Vogue magazine advertisement (Commission exhibit No. 7). The examiner finds, from a preponderance of the evidence, that the \$18.50 per ounce retail price representation for "White Christmas" perfume made in the Vogue magazine advertisement, used and distributed by respondents to their customers to assist said customers in the resale of said perfume, was false and greatly in excess of the usual and customary retail price of "White Christmas" perfume.

15. It is found that the purchasing public prefers a French perfume and it is further found that, by use of the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE" imprinted on the French tricolor sticker and "PARFUM" on the pasteboard box container, respondents induced the purchase of "White Christmas" perfume, and, by the use of such words, represented that "White Christmas" is a French perfume. As a matter of fact, "White Christmas" perfume is not a French perfume. The concentrate used in the compounding or manufacture of "White Christmas," although imported from France, after its importation to the United States, must be mixed or blended with domestic denatured alcohol in order to make perfume. As found in paragraph 3, *supra*, the imported French concentrate is not a perfume. The concentrate must be blended or mixed with denatured alcohol in order to achieve a perfume. Previous Federal Trade Commission decisions have decided that, under such circumstances, the finished product is a domestic, not a French perfume. This is so even though, as here, the concentrate may have been imported from France. *Chanel, Inc.*, 29 F.T.C. 1022; *Fioret Sales Co. Inc., et al.*, 26 F.T.C. 806; *Les Parfums D'Isabey, Inc.*, 26 F.T.C. 799.

16. The respondents are responsible for the representations as to price and origin of "White Christmas" perfume as found herein, both during the time respondents were merely jobbers of "White Christmas" under Saravel, Inc., and subsequently, after respondent Harsam

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Distributors, Inc., became owner and sole distributor of "White Christmas" perfume.

17. The use by respondents of the false, misleading, and deceptive statements and representations as found herein, has, and has had 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 to cause substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' "White Christmas" perfume. As a result, trade has been unfairly diverted to respondents from their competitors and substantial injury has been done and is being done to competition in commerce.

CONCLUSION

The acts and practices of respondents as found herein were and are 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.

ORDER

It is ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "White Christmas" perfume, or any other cosmetic, do forthwith cease and desist from:

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, which advertisement:

(a) Represents that the usual or customary price of any such product is in excess of the price at which such product is regularly or customarily sold in the normal course of business, or that any price which is no lower than the price at which the same product has been regularly or customarily sold in the recent normal course of business is a reduced price;

(b) Represents that any particular figure is a nationally advertised price of such products, when such figure is in excess of the usual and customary selling price of said products;

(c) Includes the words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," or "PARFUM" or a replica of the

tricolor of France, or any other word, term, symbol or depiction indicative of foreign origin, as descriptive of or in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate conjunction therewith that such products are manufactured or compounded in the United States.

(d) Otherwise represents that products which are manufactured or compounded in the United States are manufactured or compounded in France, or in any other foreign country; provided, however, that in cases where certain of the ingredients of any products are imported into the United States such fact may be stated if accompanied by a clear and conspicuous statement that such ingredients were blended with domestic ingredients and that the resulting product was bottled and packaged in the United States.

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 of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Louis Wagonfeld.

OPINION OF THE COMMISSION

By Gwynne, Chairman:

The complaint, filed under the Federal Trade Commission Act, charged respondents with unfair and deceptive acts and practices and unfair methods of competition. Specifically it charged that respondents represented in advertisements that their "White Christmas" perfume was a nationally advertised product which customarily and regularly sells at \$18.50 per ounce and that "White Christmas" is a French perfume. Both statements were found by the hearing examiner to be false, misleading and deceptive. The initial decision dismissed the complaint as to Louis Wagonfeld and directed Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, to cease and desist from:

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, which advertisement represents directly, indirectly or by implication:

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(a) That the prices at which said products are offered for sale or sold are in excess of the prices customarily and usually charged for said products.

(b) That the prices at which said products are offered for sale or sold are nationally advertised prices.

(c) That products offered for sale or sold are compounded or manufactured in France, or in any other foreign country; provided, however, that if the concentrate of said products is prepared in France, or in any other foreign country, said fact may be indicated if it is accompanied by a clear and conspicuous statement that the concentrate was blended with domestic ingredients and that the resulting perfume was bottled and packed in the U.S.A.

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 respondents' cosmetic preparations or allied products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in paragraph 1 of this order.

The appeal of respondents was presented by written brief. A request for an oral argument was granted; however, on the date scheduled for the oral argument, there was no appearance on behalf of the respondents, and counsel in support of the complaint submitted the case to the Commission on the written briefs.

The respondent, Harsam Distributors, Inc., is a corporation organized in the State of New York with its office and principal place of business located at 14 E. 17th Street, New York, N.Y., and Harry Wagonfeld, as president, directs the acts and practices of said corporation.

Respondents began selling "White Christmas" perfume in 1953. They purchased the perfume from Saravel, Inc. Respondents acted in the capacity as jobber for the perfume, selling and shipping the perfume to their wholesale, department and retail store customers throughout the United States. In February 1956 respondents purchased the formula for "White Christmas" perfume, the trade-mark "White Christmas" and the registered trade name "Saravel" from Saravel, Inc., along with all the materials and supplies; including reprints of a Vogue magazine advertisement from Saravel, Inc. Since February 1956, the corporate respondent has been the sole owner and distributor of "White Christmas" perfume.

Saravel, Inc. had the perfume blended for it by Roure-DuPont, Inc. of New York City. Blending is the process of mixing of the concentrate with denatured alcohol in making perfume. In 1953, the concentrate with which the denatured alcohol was blended was of domestic origin. In December 1953, Roure-DuPont, Inc. began importing the concentrate from France, and in 1954 began mixing the imported concentrate with a domestic denatured alcohol in making

"White Christmas" perfume. It is undisputed that this formula is the same formula which the corporate respondent purchased from Saravel, Inc., and which the respondents are now using.

In July or August 1953, Saravel, Inc., through its advertising agency, placed an advertisement with Vogue Magazine which advertised "White Christmas" perfume. This advertisement appeared in the September 15, 1953, issue of Vogue. The advertisement showed a reproduction of a bottle of perfume, the name of the perfume, "White Christmas by Saravel" and at the lower right corner, the words "\$18.50 the ounce at better shops."

Saravel, Inc., had a number of reprints made of the advertisement which appeared in Vogue, some of which were given to customers for use in reselling the perfume. Reprints also were placed inside the one gross cartons of "White Christmas" perfume. Some time during the year 1954, Saravel, Inc., discontinued its practice of placing the reprints in the gross cartons, and also discontinued the use of stickers on the "White Christmas" wrapper showing the figures \$18.50. However, there is evidence to show that respondents placed \$18.50 stickers on the pasteboard boxes in which the 1-ounce bottles of "White Christmas" are placed as late as July 1956.

When respondents purchased these names, formulas, and rights, they continued to use copies of the reprints. While the reprints of the Vogue advertisement were not included in the gross cartons, when requested by their customers, respondents sent copies of this reprint to their customers to aid them in the sale of the perfume. There is evidence in the record that such reprints of the Vogue advertisement were used by a customer of the respondents in July 1956.

While there is evidence that four sales of "White Christmas" perfume were made in 1953 by two New York City drug stores at \$18.50 per bottle, there is undisputed evidence in the record that retail department stores in Boston, Mass., and Chicago, Ill., and a retail jewelry store in New Orleans, Louisiana, sold "White Christmas" perfume in 1953, 1954 and 1956 at retail prices ranging from \$1 to \$1.15 per ounce. It was stipulated by counsel, however, that the jewelry store in New Orleans was not a "better shop" as that term was used in the Vogue magazine advertisement. But it is significant that sales were made at Filene's in Boston and Goldblatt's in Chicago at the same price it was sold in the jewelry store in New Orleans.

From an examination of the entire record, we must agree with the hearing examiner that the price representation of " * * * \$18.50 per ounce, or any price approaching that amount, is not now, and has never been at any time in the past, the usual and customary retail price of

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"White Christmas" perfume * * * and that the \$18.50 per ounce retail price representation for "White Christmas" perfume made in the Vogue magazine advertisement, used and distributed by respondents to their customers to assist said customers in the resale of said perfume, was false and greatly in excess of the usual and customary retail price of "White Christmas" perfume.

In 1953, "White Christmas" perfume was sold in boxes containing the French word "Parfum." The boxes were individually wrapped and on this wrapping was a sticker showing the tricolor of France. In the center portion of the tricolor appeared the French words "Concentre Fabrique Avec Essences de France." Some time during the year 1954 or 1955, Saravel, Inc., discontinued the use of the French words as shown above and substituted therefor the English words "PERFUME ESSENCE Compounded in FRANCE—Expressly for SARAVEL". After the respondents purchased the trade name, formula, etc., they continued to use the label as revised. There is evidence, however, that they continued to place bottles of perfume in boxes containing the word "Parfum" in July 1956.

Through the use of such words as "Concentre Fabrique Avec Essences de France" imprinted on the French tricolor and "Parfum" on the paper box container, respondents represented that "White Christmas" is a French perfume.

The use of French words and phrases indicates a foreign origin and creates a false impression with respect to the origin of the product. *Les Parfums D'Isabey, Inc.*, 26 F.T.C. 799; *Parfums Lengyel, Ltd.*, 29 F.T.C. 1015; *Fioret Sales Co., et al.*, 26 F.T.C. 806; *Chanel, Inc.*, 29 F.T.C. 1022.

The revised labeling in English does not correct the situation either. Even though the concentrate might be imported, it is not a perfume until it has been blended or mixed with an alcohol. As was stated in *Les Parfums D'Isabey, Inc.*, supra, "A perfume concentrate is not a perfume within the generally understood meaning of that term as used by the purchasing public. A perfume, as that term is used by the public generally and by the trade, is a compound of a perfume concentrate and an alcohol vehicle. A perfume is not made or compounded until the alcohol or other agent of application has been united with the concentrate." While the concentrate may be of French origin, the compounding or blending was done in the United States. The language of the revised label suggests that the perfume was compounded in France, which is a statement contrary to fact.

The principal contention of the respondents appears to be that the respondents are not responsible and are not chargeable for any acts

of conduct prior to their purchase in February 1956 of the formula, trade name, etc., from Saravel, Inc. With this contention, we cannot agree. The respondents, prior to February 1956, were jobbers who purchased their supplies from Saravel, Inc. They acted independently and are chargeable for their own acts and conduct. This included sending out advertising material representing that the customary and usual retail price of "White Christmas" perfume was \$18.50. In addition, they represented that the perfume was of French origin when, in reality, it is composed of a concentrate from France and domestic denatured alcohol. And after February 1956, they continued to provide such advertising materials to their customers.

The respondents next contend that the use of the Vogue advertisement "did not constitute unfair competition or unfair practices, for it is inconceivable that the buying public would be so naive as to believe that it is purchasing an \$18.50 item for \$1."

We cannot agree with respondents' contention. The very fact of continuation of distribution of the Vogue reprint is indicative of the effect such an advertisement had on the purchasing public. And the law does not support respondents' contentions. In *P. Lorillard Co. v. F.T.C.*, 186 F.2d 52, the Court stated:

In determining whether or not advertising is false or misleading within the meaning of the statute, regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which it might reasonably be expected to have upon the general public. "The important criterion is the net impression which the advertisement is likely to make upon the general populace." *Charles of the Ritz Dist. Corp. v. F.T.C.*, 2 Cir., 143 F.2d 676, 679-680 [39 F.T.C. 657; 4 S. & D. 226]. As was well said by Judge Coxe in *Florence Manufacturing Co. v. J. C. Dowd & Co.*, 2 Cir. 178 F. 73, 75, with reference to the law relating to trade-marks: "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions." See also *F.T.C. v. Standard Education Society*, 302 U.S. 112 [25 F.T.C. 1715, 2 S. & D. 429]; *Stanley Laboratories v. F.T.C.*, 9 Cir. 138 F.2d 388 [37 F.T.C. 801, 3 S. & D. 596]; *Aronberg v. F.T.C.* 7 Cir. 132 F.2d 165 [35 F.T.C. 979, 3 S. & D. 647]; *Ford Motor Co. v. F.T.C.*, 6 Cir. 120 F.2d 175 [33 F. T. C. 1781, 3 S. & D. 378].

Respondents further contend that the Commission must show that the practices complained of constitute an unfair method of competition as well as a showing that there is specific and substantial public interest. This contention fails to take into account the Wheeler-Lea Amendment to the Federal Trade Commission Act (52 Stat. 111). As the court said in *Parke, Austin, Lipscomb, Inc., et al. v. F.T.C.*, 142 F.2d 437, certiorari denied 323 U.S. 753: "Since the amendment

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of sec. 5 of the act in 1938, 52 Stat. 111, the Commission has had jurisdiction of all cases in commerce affecting the public interest whether or not competition is involved." Therefore, respondents' contention must fail.

Although not directly involved in the appeal, the form of order contained in the initial decision has also been considered. In subparagraphs (a) and (b) of paragraph 1 thereof, the order directs respondents to cease and desist disseminating advertisements which represent that the prices at which their products are sold are in excess of the prices customarily and usually charged for said products, or that such prices are nationally advertised prices. We believe the order does not conform to the findings. The complaint alleges and the hearing examiner's findings clearly show that what the respondents have falsely represented is the price at which their products are usually and customarily sold (\$18.50 per ounce), thus implying an opportunity for purchasers to effect substantial savings under such price by purchasing at the advertised special or "sale" prices (\$1 to \$1.15 per ounce), and this, of course, is the kind of representation which should be prohibited. The order is deficient also in that while it would prohibit generally a representation that the respondents' products are compounded or manufactured in France, it should additionally inform the respondents specifically that a continuation or resumption of the unqualified use of such French terms and depictions as they have heretofore employed to create the impression of French manufacture of their products ("CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," "PARFUM" and a replica of the tricolor of France) will not be permitted. The order contained in the initial decision is accordingly being modified in these respects.

Respondents' appeal will be denied, and the initial decision of the hearing examiner, as modified in the accompanying order, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that respondents' appeal should be denied and that the order contained in the initial decision should be modified:

It is ordered, That the appeal of respondents be, and it hereby is, denied.

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Order

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "White Christmas" perfume, or any other cosmetic, do forthwith cease and desist from:

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, which advertisement:

(a) Represents that the usual or customary price of any such product is in excess of the price at which such product is regularly or customarily sold in the normal course of business, or that any price which is no lower than the price at which the same product has been regularly or customarily sold in the recent normal course of business is a reduced price;

(b) Represents that any particular figure is a nationally advertised price of such products, when such figure is in excess of the usual and customary selling price of said products;

(c) Includes the words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," or "PARFUM" or a replica of the tricolor of France, or any other word, term, symbol or depiction indicative of foreign origin, as descriptive of or in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate conjunction therewith that such products are manufactured or compounded in the United States;

(d) Otherwise represents that products which are manufactured or compounded in the United States are manufactured or compounded in France, or in any other foreign country; provided, however, that in cases where certain of the ingredients of any products are imported into the United States such fact may be stated if accompanied by a clear and conspicuous statement that such ingredients were blended with domestic ingredients and that the resulting product was bottled and packaged in the United States.

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 of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Louis Wagonfeld.

It is further ordered, That the hearing examiner's initial decision, as modified hereby, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer 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 contained in the initial decision, as modified.

Complaint

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IN THE MATTER OF
COYNER-EVANS CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c)
OF THE CLAYTON ACT

Docket 6969. Complaint, Dec. 4, 1957—Decision, Mar. 26, 1958

Consent order requiring a produce jobber in Miami, Fla., to cease violating section 2(c) of the Clayton Act by receiving illegal brokerage on purchases of celery and other fresh produce made for its own account through its controlled intermediary which accepted fees as an independent broker although it was acting for said jobber.

Mr. Fredric T. Suss supporting the complaint.

Respondents, pro se.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U.S.C. Title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Coyner-Evans Co., Inc., is a corporation organized and existing under the laws of the State of Florida with its principal office and place of business located at 2147 N.W. 12th Avenue, Miami, Fla. It is directed and controlled by the respondents Ed Coyner and Clyde B. Coyner, who are responsible for its acts and practices and who own and control 66 percent of its outstanding shares of stock. Respondent Coyner-Evans Co., Inc. is engaged in business as a broker in connection with the sale of celery and other fresh produce, and as a retailer of seeds, fertilizer, insecticides and crate materials. The respondent corporation is a substantial factor in the produce business in Miami. Respondent corporation had a volume of sales of approximately \$200,000 for the year 1956.

Respondent Ed Coyner is an individual residing at 349 N.E. 93d Street, Miami, Fla., and is president-treasurer of respondent Coyner-Evans Co., Inc., owning 54 percent of its shares of stock and is an equal partner in Brice & Johnson.

Respondent Clyde B. Coyner is an individual residing at 1481 N.E. 104th Street, Miami, Fla., and is vice president and assistant