

Decision

IN THE MATTER OF
FRIEDA BAKER DOING BUSINESS AS
BONHEUR COMPANY ET AL.

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

Docket 7363. Complaint, Jan. 20, 1959—Decision, June 11, 1959

Order requiring Chicago distributors of domestically manufactured colognes and perfumes to cease representing falsely in advertising on labels and packaging of their products that fictitious prices were the usual retail prices, and, by use of French words and terms, that the products were compounded in France.

Mr. Harry E. Middleton, Jr., supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission on January 20, 1959, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair methods of competition, in violation of the Federal Trade Commission Act, by misrepresenting domestic perfumes sold and distributed by them to have been imported from France and by misrepresenting the usual and customary retail price thereof. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the notice served with said complaint. Thereafter, counsel supporting the complaint moved that the place of hearing be changed from New York, N.Y., to Washington, D.C. Although duly served with said motion, respondents filed no opposition thereto. In view of the default of respondents in answering and the apparent lack of probability of any appearance by them at the hearing scheduled in the notice portion of the complaint, the undersigned issued his order dated March 17, 1959, changing the place of hearing to Washington, D.C., and fixing the date of hearing for March 25, 1959, a copy of which order was duly served upon respondents.

Thereafter, a hearing was held on March 25, 1959, in Washington, D.C. before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. Upon the failure

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of respondents to appear and show cause at said hearing, counsel supporting the complaint moved that the case be closed for the taking of testimony in view of respondents' failure to answer and appear and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint, and that counsel be granted leave to submit a proposed order. Said motion was granted by the undersigned and thereafter a copy of a proposed order was filed by counsel supporting the complaint.

This proceeding having now come on for final consideration on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding except in certain respects as to which said order is hereinafter modified, the undersigned finds that this proceeding is in the interest of the public and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. Respondent Frieda Baker is an individual doing business as Bonheur Company. Edward Baker is an individual and manager of the business conducted as Bonheur Company. The respondents cooperate in carrying on the acts and practices hereinafter set forth. Their place of business is located at 928 West Irving Park Road in the city of Chicago, State of Illinois.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of colognes and perfumes which are "cosmetics" as that term is defined in the Federal Trade Commission Act to various firms and individuals who resell said products to the public. Among the cosmetics offered for sale and sold by respondents is a perfume stated to be "by Darcel" and designated as "C'est si Bon" and other perfumes and colognes.

In the course and conduct of their business, respondents cause their products, when sold, to be shipped from the State of Illinois to the purchasers thereof located in other States and have maintained a course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. 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 various means in commerce, including but not limited to circulars 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 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.

PAR. 4. In certain of their advertisements respondents:

(a) Set out certain amounts in connection with certain of their products, thereby representing, directly or by implication, that said amounts are the prices at which said products were usually and customarily sold at retail.

(b) Used the trade name "C'est si Bon" in connection with one of their Darcel perfumes, thereby representing that it was imported from France.

(c) Stated that "all essential oils in Darcel products are imported from France."

PAR. 5. The said advertisements were misleading in material respects and constituted "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(a) The prices set out in the advertisements were, and are, fictitious and greatly in excess of the prices at which the products advertised were usually and customarily sold at retail.

(b) The perfume designated as "C'est si Bon" was not imported from France but was compounded in the United States.

(c) While Darcel perfumes and colognes may contain some essential oils imported from France, the major portion of oils were of domestic origin.

PAR. 6. In the course and conduct of their business and for the purpose of inducing the sale of their products in commerce, respondents have:

1. Used amounts or prices on labels and in the labeling and packaging of their products, thereby representing, directly or by implication, that such amounts were the usual and customary retail prices therefor.

2. Used French words and terms such as "Concentre Fabrique—Avec de France," "Concentre Fabrique—Avec Essences de France" and the name "C'est si Bon" on the label or in the

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packaging of some of their products, thereby representing, directly or by implication, that said products were compounded in France.

PAR. 7. Said statements and representations set out in paragraph 6 were false, misleading and deceptive. In truth and in fact:

1. The amounts or prices set out on the labels or in the packaging were fictitious and greatly in excess of the prices at which said products were usually and customarily sold at retail.

2. Respondents' products 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 respondents' products, the major portion of ingredients was of domestic origin.

PAR. 8. There is a preference on the part of the buying public for cosmetics manufactured or compounded in foreign countries and imported into the United States. This is particularly true regarding said cosmetics which are manufactured or compounded in France.

PAR. 9. By the aforesaid practices respondents placed in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the usual and regular retail price of their products and the country of origin thereof.

PAR. 10. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of perfumes and colognes.

PAR. 11. The dissemination by the respondents of the false advertisements, referred to in paragraph 4 hereof, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act; and the use of the false, misleading and deceptive statements, representations and practices set out in paragraph 6 hereof has had and now has the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a consequence thereof, substantial trade, in commerce, has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

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Order

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were and are, all to the prejudice and injury of respondents' competitors, and constituted, and now constitute, unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Frieda Baker, individually and as sole proprietor trading as Bonheur Company, and Edward Baker, an individual, and 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 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 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 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 term "C'est si Bon" or any other French word, term or depiction in connection with any such product not imported from France, or represents in any other manner, directly or indirectly, that any such product compounded in the United States has been imported from France;

(c) Uses the words "all essential oils imported from France" or represents in any other manner that all essential oils or other ingredients are imported from France or from any other country when some or all of them are of domestic origin or are not so imported.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which was likely to induce directly or indirectly the purchase of respondents' 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 respondents Frieda Baker, individually and as sole proprietor trading as Bonheur Company, and Edward Baker, an individual, and 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, colognes or any other related product 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 or packaging of their products, or representing in any other manner that certain amounts are the regular and usual retail prices 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 the words or terms "Concentre Fabrique—Avec de France," "Concentre Fabrique—Avec Essences de France," "C'est si Bon" or any other French word, term or depiction on the label or in the labeling or packaging of any such products which are not compounded in France, or representing in any other manner, directly or indirectly, that any such products compounded in the United States, were compounded in France.

3. Placing in the hands of others any means or instrumentality by or through which they may mislead the public as to any of the matters set out in paragraphs 1 and 2 hereof.

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 11th day of June 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF
SEYMOUR GALTER ET AL.
DOING BUSINESS AS H & S ASSOCIATES

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

Docket 7364. Complaint, Jan. 20, 1959—Decision, June 11, 1959

Order requiring Chicago distributors of perfumes and colognes to cease representing falsely on labels and packaging of their products that fictitious excessive prices were the usual retail prices, and, by use of French words, that the products were compounded in France.

Mr. Harry E. Middleton, Jr., supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission on January 20, 1959, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair methods of competition, in violation of the Federal Trade Commission Act, by misrepresenting domestic perfumes sold and distributed by them to have been imported from France and by misrepresenting the usual and customary retail price thereof. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the notice served with said complaint. Thereafter, counsel supporting the complaint moved that the place of hearing be changed from Chicago, Ill., to Washington, D.C. Although duly served with said motion, respondents filed no opposition thereto. In view of the default of respondents in answering and the apparent lack of probability of any appearance by them at the hearing scheduled in the notice portion of the complaint, the undersigned issued his order dated March 17, 1959, changing the place of hearing to Washington, D.C., and fixing the date of hearing for March 25, 1959, a copy of which order was duly served upon respondents.

Thereafter, a hearing was held on March 25, 1959, in Washington, D.C. before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. Upon the failure