

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

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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. Respondents Seymour Galter, Mitchell Handelman and Max D. Handelman, are copartners doing business as H & S Associates. Their place of business is located at 928 West Irving Park Road in the city of Chicago, State of Illinois. The business of respondents was formerly carried on as Chicago H & S Associates, Ltd., a corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of perfumes and colognes which are "cosmetics" as that term is defined in the Federal Trade Commission Act, to various firms and individuals who resell to the public. Among the cosmetics offered for sale and sold by respondents is a perfume sold under the name of "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 maintain 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 their business and for the purpose of inducing the sale of their products in commerce respondents have:

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(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 and prices were the usual and customary retail prices therefor;

(2) Used such French words 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 packaging of some of their products, thereby representing, directly or by implication that said products were compounded in France.

PAR. 4. The statements and representations were false, misleading and deceptive. In truth and in fact:

(1) The amounts or prices set out on the labels and in the labeling and 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 respondents' products, the major portion of ingredients was of domestic origin.

PAR. 5. There is a preference on the part of the buying public for cosmetics manufactured and compounded in foreign countries and imported into the United States. This is particularly true regarding cosmetics which are manufactured and compounded in France.

PAR. 6. By the aforesaid practices respondents place 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. 7. In the conduct of their business and 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. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency 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 by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been,

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and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been done, and is being done, to competition in commerce.

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 Seymour Galter, Mitchell S. Handelman and Max D. Handelman, individually and as copartners doing business as H & S Associates, 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 related 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 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

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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.

IN THE MATTER OF
GREENWICH BOOK PUBLISHERS, INC., ET AL.

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

Docket 7223. Complaint, Aug. 5, 1958—Decision, June 12, 1959

Consent order requiring two affiliated New York City publishers to cease representing falsely that they operated a publishing plan under which they shared expenses with authors, their misrepresentations including such matters as so-called "royalties," the nature, size and operation of the business, and the effectiveness of the publicity and promotional aid purportedly rendered author-customers.

Mr. Charles S. Cox for the Commission.

Mr. J. David Delman, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act in the solicitation of contracts for the publication of books. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the