

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1961, TO DECEMBER 31, 1961

IN THE MATTER OF

PIERRE MARCHE, INC., ET AL.

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

Docket 8162. Complaint, Nov. 4, 1960—Decision, July 7, 1961

Consent order requiring a corporate manufacturer of perfumes, toilet waters, cosmetics, and other items, in St. Louis, Mo., and its corporate successor at the same address, to cease representing falsely on packages, containers, and labels that certain of their perfumes were made in France; that an excessive price was the usual retail selling price; and that they operated places of business in Paris and New York.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Pierre Marche, Inc., a corporation, and Fred M. Malorrus, individually and as an officer of said corporation, and Hallmark Distributors, Inc., a corporation, and Jack Yawitz, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pierre Marche, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Fred M. Malorrus is an individual and is an officer of said respondent, Pierre Marche, Inc., and in this capacity formulates, directs and controls the acts and practices of the said corporate respondent.

Respondent Hallmark Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Missouri. Respondent Jack Yawitz is an individual and is an officer of said respondent, Hallmark Distributors, Inc., and in this capacity formulates, directs and controls the acts and practices of the said corporate respondent.

The principal office and place of business of each of the respondents is located at 16 North Ninth Street, in the City of St. Louis, State of Missouri.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and other articles of merchandise to distributors and jobbers and to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Pierre Marche, Inc., for several years last past has been engaged in the business operations herein described. Respondent Fred M. Malorrus, as an officer of the said respondent Pierre Marche, Inc., has actively participated in said business operations. Subsequent to the commencement of the Commission's investigation herein, respondent Hallmark Distributors, Inc. was organized and acquired the assets and stock in trade of the said respondent Pierre Marche, Inc. and occupied the premises theretofore used by respondent Pierre Marche, Inc. Respondent Fred M. Malorrus then became associated with respondent Hallmark Distributors, Inc. The business activities engaged in by respondent Pierre Marche, Inc. were substantially curtailed. The continuity of the said business practices thereby remained unbroken.

PAR. 5. The respondents, in the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their said products, have made numerous statements and representations with reference to said products on the packages, containers and labels of said products.

Among and typical, but not all inclusive, of said statements and representations are the following:

The perfume offered for sale and sold under the trade name of "Spring Madness" is packaged in a container on which appears numerous scenes of French and particularly Parisian life and of monuments such as the Eiffel

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Tower and the Arc de Triomphe. Imprinted on a sticker of the French Tri-Color are the words "Contains fine imported essential oils." Also on the package are the words "Spring Madness . . . French Masters . . . Parfums Chenier . . . Paris . . . New York . . ." The bottle of perfume is visible through a window in the package which is covered with a transparent material. The word "FRENCH" is prominently displayed on the base in which the perfume rests.

Other perfumes sold by respondents are labeled:

Famous Perfumes . . . \$10.00 . . . Paris . . . New York.

Famous Perfumes . . . \$10.00 . . . Pierre Marche, Incorporated St. Louis • Paris • New York.

PAR. 6. Through the use of the aforesaid statements and representations, and others of similar import and meaning, not specifically set out herein, respondents have represented and now represent that:

(a) The perfume described as "Spring Madness" was made in France.

(b) The perfumes described as "Famous Perfumes" have a usual and customary retail selling price of \$10.00.

(c) Places of business are operated by respondents in Paris and New York.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(a) The perfume described as "Spring Madness" is not made in France.

(b) The usual and customary retail selling price of the perfumes described as "Famous Perfumes" is not \$10.00, but is an amount substantially less than \$10.00.

(c) Places of business are not operated by respondents in Paris and New York.

PAR. 8. There is a preference on the part of a substantial number of purchasers of perfumes for perfume manufactured in France.

PAR. 9. By the aforesaid practices, respondents place in the hands of jobbers, dealers and retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the country of origin and the usual and customary retail selling price of perfumes.

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, toilet waters, cosmetics and other articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 11. 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 beliefs. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and to respondents' competitors and constituted, and now constitute, unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral Jordan for the Commission.

Mr. Henry G. Morris, of St. Louis, Mo., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued November 4, 1960, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On May 12, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The agreement further provides that the complaint insofar as it concerns respondent Jack Yawitz, in his individual capacity only,

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should be dismissed for the reasons set forth in affidavits attached thereto to the effect that said respondent did not in any way participate in the affairs and operation of the business of corporate respondent Hallmark Distributors, Inc.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Pierre Marche, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Fred M. Malorrus is an individual and is an officer of said respondent, Pierre Marche, Inc., and in this capacity formulates, directs and controls the acts and practices of the said corporate respondent.

Respondent Hallmark Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Jack Yawitz is a former officer of said respondent, Hallmark Distributors, Inc.

The principal office and place of business of each of the respondents is located at 16 North Ninth Street, in the city of St. Louis, State of Missouri.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Pierre Marche, Inc., a corporation, and its officers, and Fred M. Malorrus, individually and as an officer of said Pierre Marche, Inc., and Hallmark Distributors, Inc., a corporation, and its officers, and Jack Yawitz, as a former officer of said Hallmark Distributors, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, toilet waters, cosmetics, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by preticketing or by any other means, that a certain amount is the customary or usual retail

price of such merchandise, when said amount is in excess of the price at which such merchandise is customarily and usually sold at retail in the recent regular course of business in the trade area in which offered for sale.

2. Using pictorial depictions of a French character, or the expression "Contains fine imported essential oils" or the words "French", "French Masters", "Parfums Chernier", "Paris" or any other words, terms or pictures, either singly or in combination in any manner so as to represent, directly or indirectly, that said merchandise, manufactured or compounded in the United States or in any country other than France, was manufactured or compounded in France.

3. Using any words, terms or pictures either singly or in combination in any manner so as to represent, directly or indirectly, that said merchandise was manufactured, compounded or originated in a certain country or geographical region unless such is the fact.

4. Representing, directly or indirectly, that respondents operate places of business in Paris or New York; or that respondents operate places of business in any other locality or place unless such is the fact.

5. Furnishing or placing in the hands of retailers or dealers in said merchandise the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

It is further ordered, That the complaint be and the same hereby is dismissed as to Jack Yawitz in his individual capacity.

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 7th day of July 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Pierre Marche, Inc., a corporation, Fred M. Malorrus, individually and as an officer of said corporation, Hallmark Distributors, Inc., a corporation, and Jack Yawitz, as a former 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 to cease and desist.

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IN THE MATTER OF

THE C. F. SAUER COMPANY

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

Docket 8312. Complaint, Mar. 13, 1961—Decision, July 7, 1961

Order dismissing without prejudice complaint charging a Richmond, Va., manufacturer of spices, extracts, mayonnaise, and other items, with making discriminatory advertising allowances to customers in violation of Sec. 2(d) of the Clayton Act.

R. E. Cabell, Jr., Esq., of *Moncure & Cabell*, of Richmond, Va., for respondent.

Robert Cutler, Esq., supporting the complaint. *

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding issued on March 13, 1961. It charges respondent with violating § 2(d) of the Clayton Act as amended by the Robinson-Patman Act. Respondent, The C. F. Sauer Company, is a Virginia corporation with its principal place of business at 2000 West Broad Street, Richmond, Virginia. Respondent now is, and has been, engaged for many years last past in the manufacture, sale and distribution of spices, extracts, food colors, flavorings, mayonnaise, relish, sandwich spread, salad dressing, edible vegetable oils, cough syrup and liniment. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations. Respondent has been and is now engaged in a continuing course of trade in said products in commerce as "commerce" is defined in the Clayton Act as amended. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding.

At the time the instant complaint was issued, there was and now is in full force and effect a cease and desist order issued by this Commission against this identical respondent on July 31, 1941, and reported in Volume 33 *Federal Trade Commission Decisions*, pages 812; 828-829, inclusive. Counsel supporting the complaint has represented that said cease and desist order is substantially the same as he would seek in the event he should successfully go to hearing on the present complaint and win this case on the merits. It appears that the current complaint does not require an adjudication de novo.

It is ordered, That this complaint filed in this proceeding on March 13, 1961, against The C. F. Sauer Company of Richmond,