

IN THE MATTER OF
FRANK P. BECKER, INC., ET AL.

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

Docket C-2. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring New York City distributors of perfumes and toilet waters, along with other kinds of merchandise, to cease representing falsely in advertising and labeling that their perfumes had been "Nationally advertised since 1940 Vogue, Mademoiselle, Harper's Bazaar"; that excessive amounts were usual retail selling prices; that products labeled with the corresponding initials were the same as those sold under the well-known brand names "Chanel", "Arpege", "Crepe de Chine", "White Shoulders", and "My Sin"; and through use of the picture of the Eiffel Tower, the words "Paris Inspired", "Ellyn Deleith, Inc. . . . Distributor", etc., that its "Blue Flame" perfume was manufactured in France.

Complaint

59 F.T.C.

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 Frank P. Becker, Inc., a corporation, and Frank P. Becker, 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. Frank P. Becker, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 209 West 38th Street, in the City of New York, State of New York.

Respondent Frank P. Becker is an individual and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

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

In addition respondents act as sales representatives and distributors for manufacturers and dealers in various kinds of merchandise including sporting goods. Respondents also design and prepare packaging, advertising and other kinds of sales promotional material for said firms.

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 New York 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. In the course and conduct of their business, and for the purpose of inducing the sale of their said products, respondents have made certain statements in advertising and in labeling with respect to the public acceptance, extent of advertising, price, origin, quality and other characteristics of said products. Typical and illustrative of the foregoing are the following:

On an advertising flyer or circular which features a picture of the Eiffel Tower appear the words: "Paris Inspired Ellyn Deleith Golden Ensemble Magnificent BLUE FLAME fragrance inspired in France . . . Complete 4 pc. set \$25.00 . . . ED Ellyn Deleith, Inc. Eau de toilette Distributor New York . . . Nationally advertised since 1940 Vogue, Mademoiselle, Harper's Bazaar . . . ED Ellyn Deleith Parfum".

Substantially similar advertisements are disseminated for respondents' one ounce package of Blue Flame perfume and respondents' Blue Flame perfume atomizer except that the price amounts are stated to be \$16.50. Said perfumes also carry pre-ticketed price amounts of \$16.50.

Certain of respondents' advertising literature for its "Spray Mist" perfume carries the statements "Paris Inspired 'Ellyn Deleith' Crystalier 'Spray Mist' perfume! . . . Five most popular fragrances: 'A' 'C' 'CC' 'MS' 'WS'".

The packages containing said "Spray Mist" perfume in addition to the said pre-ticketed price amount of \$16.50 (in some instances \$10.00) have imprinted thereon one of the aforesaid letters or groups of letters.

PAR. 5. Through the use of the aforesaid statements, and others of similar import but not specifically set forth herein, respondents have represented, directly or indirectly:

1. That said products have been frequently and continuously advertised from 1940 to the present time in Vogue, Mademoiselle and Bazaar magazines.

2. That the aforesaid price amounts are the usual and customary retail selling prices of said products in the trade areas in which they are offered for sale.

3. That said products labeled with the initial "C", "A", "CC", "WS" and "MS" are the same as the perfumes sold under the brand names of "Chanel" by Chanel, Inc., New York, N.Y., "Arpege" by Lanvin Parfums, Inc., New York, N.Y., "Crepe de Chine" by Millot, Inc., New York, N.Y., "White Shoulders" by Parfums Evyan, Inc., New York, N.Y. and "My Sin" by Lanvin Parfums, Inc., New York, N.Y. respectively.

4. Through the use of the picture of the Eiffel Tower, the words "Paris Inspired" and "inspired in France", particularly in the context of advertisements containing fictitiously high price amounts, representations of being nationally advertised, representations that Ellyn Deleith is the distributor and other representations contained in the above quoted advertisements of respondents' Blue Flame perfume, that said perfume was manufactured or compounded or originated in France.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact:

1. Said perfume has not been frequently and continuously advertised from 1940 to the present time in Vogue, Mademoiselle or Bazaar magazines.

2. The aforesaid price amounts are not the usual and customary retail selling prices of said products in the trade areas in which they are offered for sale. Said price amounts are fictitious and in excess of the usual and customary retail selling prices of said products in the trade areas in which they are offered for sale.

3. Said products are not the same as the perfumes sold under the brand names hereinabove stated in subparagraph 3 of Paragraph 5.

4. Said Blue Flame perfumes are not manufactured or compounded in France and did not originate in France.

PAR. 7. There is a preference on the part of a substantial number of purchasers of perfume for perfume manufactured in France.

There is also a preference by a substantial portion of the purchasing public for the perfumes and toilet waters of the said Chanel Inc., Lanvin Parfums, Inc., Millot, Inc., and Parfums Evyan, Inc. which said perfumes and toilet waters are nationally advertised and widely sold.

PAR. 8. By the aforesaid practices, respondents place in the hands of distributors, jobbers and retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the quality, identity, origin and usual and regular retail selling price of said perfumes and toilet waters.

PAR. 9. 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 toilet waters of the same general kind and nature as those sold by respondents.

PAR. 10. 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.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Frank P. Becker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 209 West 38th Street, in the City of New York, State of New York. Frank P. Becker is President of the corporate respondent.

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 Frank P. Becker, Inc., a corporation, and its officers, and Frank P. Becker, individually and as an officer of said corporation, 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, that said products have been frequently and continuously advertised from 1940 to the present time in *Vogue*, *Mademoiselle* or *Bazaar* magazines; or that said products have been advertised in any magazines or publications or in any other manner or for any period of time unless such is the fact.

2. Representing, directly or indirectly, by preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

3. Using the letters "C", "A", "CC", "WS" or "MS" or any other letters, numerals or symbols either singly or in combination in the advertising or labeling of said perfumes, toilet waters or cosmetics to designate or describe the kind or quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer of said products.

4. Using the words "Paris Inspired", "Inspired in France" or any other words indicating French origin or using pictures of the Eiffel Tower or of any other typically French scenes in advertising or labeling to describe perfumes, toilet waters or cosmetics which are not manufactured or compounded in France.

5. Using any words, terms or pictures in advertising or in labeling which represent, directly or indirectly, that said merchandise was manufactured or compounded or originated in a given country or geographical area unless such is the fact.

6. 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 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 this order.

IN THE MATTER OF

ROBERTS ELECTRIC COMPANY ET AL.