

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

Docket 8310. Complaint, Mar. 8, 1961—Decision, Oct. 23, 1961

Consent order requiring Rockville, Md., distributors of rebottled colognes, toilet waters, and perfumed sprays, to cease enclosing some of said products in

cardboard boxes on the end of which was printed the fictitious price of \$10.00 represented thereby as the usual retail price; and to cease representing falsely that their said products were perfumes through offering them for sale in the one dram bottles historically used in the sale of perfumes and in pasteboard cartons bearing brand names of well-known perfumes, for the price of one dollar per bottle.

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 Colognes, Inc., a corporation, and D'Henri, Inc., a corporation, and Herman I. Porten and Henry W. Porten, individually and as officers of said corporations, 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 Colognes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 5455 Randolph Road in the City of Rockville, State of Maryland.

PAR. 2. Respondent D'Henri, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 5455 Randolph Road in the City of Rockville, State of Maryland.

Respondents Herman I. Porten and Henry W. Porten are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rebottled colognes, toilet waters and perfumed sprays to distributors and retailers for resale to the public.

PAR. 4. 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 Maryland 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents in the course and conduct of their business and for the purpose of inducing the sale of their products, have

Complaint

59 F.T.C.

engaged in the practice of offering for sale and selling some of said products to distributors and retailers for resale to the public, enclosed in cardboard cartons on the ends of which was printed the price of \$10.00, thereby representing, directly or by implication, that such amount was the usual and customary retail price of the products in the trade areas where the representation was made.

PAR. 6. The aforesaid representation was false, misleading and deceptive. In truth and in fact, the amount set out on said cartons was fictitious and greatly in excess of the price which respondents' said products were actually or customarily sold at retail in the trade areas where the representation was made.

PAR. 7. By the aforesaid practice, the respondents placed in the hands of others means and instrumentalities by and through which the public may be misled as to the usual and regular retail price of said products.

PAR. 8. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of some of their products, respondents rebottled colognes or toilet waters in one dram bottles similar in appearance to the one dram bottles historically used in connection with the sale of perfumes, a more expensive and desirable product, and offered for sale and sold them in pasteboard cartons bearing brand names of well-known perfumes and the statement underneath the bottle "1 dram". Such products were offered for sale at retail for the price of one dollar per bottle.

PAR. 9. Through the use by respondents of the practices set out in Paragraph Eight, the respondents represented that their said products were perfume.

PAR. 10. By the aforesaid practice respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the purchasing public into the erroneous and mistaken belief that respondents' bottled colognes and toilet waters are perfume.

PAR. 11. 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 toilet waters and colognes of the same general kind and nature as those sold by respondents.

PAR. 12. 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' product by reason of said 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, and is being, done to competition in commerce.

PAR. 13. 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett for the Commission.

Messrs. Karl W. Flocks, Alvin Browdy and Stanley H. Kamerow, of Washington, D.C., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 8, 1961, the respondents, Colognes, Inc., a District of Columbia corporation, D'Henri, Inc., a Maryland corporation, Herman I. Porten and Henry W. Porten, individually and as officers thereof, all of 5455 Randolph Road, Rockville, Maryland, were charged with misrepresenting the contents and actual retail prices of bottles of colognes and toilet waters sold and distributed in commerce, all in violation of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint and the filing of respondents' appearance herein, counsel supporting the complaint moved for an amendment thereto so that Paragraph Eight thereof might be modified by a statement that the respondents' alleged deceptive bottling practice was accomplished by not stating "that the contents were colognes or toilet waters rather than perfume." Respondents not having objected thereto, an order was made granting the motion and the complaint is deemed amended accordingly. Whenever, herein or in the consent agreement, reference is made to the complaint, such reference shall be deemed to be to the complaint as amended.

The respondents (with the advice and agreement of their attorneys) and counsel supporting the complaint have entered into an agreement containing a consent order to cease and desist, which disposes of all the issues involved in this proceeding.

In the said agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as in the complaint alleged.

By the terms of the agreement, the respondents admit all the jurisdictional facts alleged in the complaint and agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

Order

59 F.T.C.

Respondents expressly waive any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondents agree further that the order to cease and desist, to be issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It is further provided that the agreement, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the terms of the order to be issued pursuant to the agreement; and that such order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same hereby is accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, applicable hereto.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents, Colognes, Inc., and D'Henri, Inc., corporations, and their officers, and Herman I. Porten and Henry W. Porten, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of colognes or toilet waters, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly from:

1. Representing that any amount is the retail price of a product in a trade area or areas, when such price is in excess of the price at which the product has been usually and customarily sold at retail in the trade area or areas where the representation is made.
2. Representing that cologne or toilet water is perfume.
3. Offering for sale or selling cologne or toilet water in bottles having the size and appearance of bottles commonly used for perfume, without clearly and conspicuously stating on said bottles or in im-

mediate connection and conjunction therewith that such products are cologne or toilet water.

4. Using the name of any brand of perfume to describe cologne or toilet water, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are cologne or toilet water.

5. Furnishing means or instrumentalities to others by and through which they may mislead the public as to any of the matters and things prohibited in paragraphs 1 through 4 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the Hearing Examiner shall, on the 23rd day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That 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.
