

PANAT JEWELRY CO., INC., ET AL.

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

Docket 8311. Complaint, Mar. 13, 1961—Decision, Mar. 7, 1963

Order requiring three corporations in New York City, Jersey City, N.J., and Stamford, Conn., respectively, distributors of cologne and toilet water which they purchased from drug and department stores and rebottled and sold, to cease their practice of offering and selling cologne and toilet water in purse-size flaconettes, primarily used as containers for perfume, without disclosing conspicuously on the bottles and packages that the contents were cologne and toilet water.

Complaint

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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 Panat Jewelry Co., Inc., a corporation, and Nathan Jachter, individually and as an officer of said corporation, and Spejac, Inc., a corporation, and Nathan Jachter and Nathan Spergel, individually and as officers of said corporation, and G & N Manufacturing Corporation, a corporation, and Ben Jachter, Lee Hirsch and Phillip Schneider, individually and as stockholders in 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 Panat Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office and principal place of business located at 135 Fifth Avenue, New York, New York.

Respondent Spejac, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its main office and principal place of business located at 135 Fifth Avenue, New York, New York.

G & N Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its main office and principal place of business located at 29 Cardinal Road, Stamford, Connecticut.

Individual respondent Nathan Jachter is an officer of both corporate respondents Panat Jewelry, Inc., and Spejac, Inc.

Individual respondent Nathan Spergel is an officer of the corporate respondent Spejac, Inc.

Individual respondents Ben Jachter, Lee Hirsch and Phillip Schneider are stockholders of the corporate respondent G & N Manufacturing Corporation.

Individual respondents, in their capacities as officers and stockholders of said corporate respondents, formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents in which they are officers or stockholders.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale or distribution of

rebottled cologne and toilet water at wholesale to wholesalers and distributors, who in turn resell at retail to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the States of New York and Connecticut 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. Respondents are now, and for some time last past have been, offering for sale, selling and distributing their said products consisting of toilet waters or colognes in bottles of the size and dimension that are known in the perfume, toilet water and cologne industry as "purse size flaconettes" which, because of their size and dimensions, have become associated in the minds of the purchasing public as containing perfume rather than cologne or toilet water.

PAR. 5. There is a well-recognized distinction between perfume and toilet water or cologne. Because toilet water or cologne is essentially a diluted perfume, toilet water or cologne is much less costly and does not retain its fragrance as long a time as does perfume.

PAR. 6. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they mislead the purchasing public into the erroneous and mistaken belief that their rebottled toilet water and cologne are perfume.

PAR. 7. In the conduct of their business, and at all times mentioned herein, respondents have been and are in substantial competition in commerce, with corporations, firms and individuals in the sale of perfume.

PAR. 8. The use by respondents of the aforesaid "purse size flaconettes" in the sale of toilet water or cologne has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said "purse size flaconettes" contain perfume and into the purchase of substantial quantities of respondents' products by reason of such mistaken and erroneous 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. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and

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of respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus supporting the complaint.

Mr. Matthew L. Salonger, of New York, N.Y., counsel for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JUNE 15, 1962

This proceeding was commenced by the issuance of a complaint on March 13, 1961, charging the aboved-named corporate respondents and the individual respondents, their officers and stockholders, with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act by selling rebottled toilet waters and colognes in purse-size flaconettes which because of their size are associated by the purchasing public with perfume and therefore have the capacity and tendency to mislead the purchasing public into the erroneous and mistaken belief that such flaconettes contain perfume.

Upon being served with the complaint, respondents appeared by counsel and filed a joint answer admitting the essential jurisdictional allegations of the complaint, but denied the specific charges contained therein. In due course, hearings were held at which testimony and other evidence were offered in support of the complaint and in opposition to the specific allegations set forth therein.

After both parties had concluded their cases, respondents made a motion to dismiss the complaint which was taken under advisement and will be disposed of in the order issued below. Proposed findings of fact and conclusions of law were timely submitted by counsel in support of the complaint. Respondents' proposed findings of fact and conclusions of law were filed 10 days late.

Consideration has been given to the proposed findings of fact and conclusions of law submitted, and all proposed findings of fact not hereinafter specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent, Panat Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office and principal place of business

located at 135 Fifth Avenue, New York, New York. Panat Jewelry Co., Inc., engages in the rebottling and selling of colognes, in purse-size flaconettes, but is not presently and for approximately the last 2 years has not been rebottling cologne in such flaconettes.

2. Respondent, Spejac, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its last known main office and principal place of business located at Jersey City, New Jersey. Spejac, Inc., engages in the rebottling and selling of colognes, in purse-size flaconettes, but is not presently and for approximately the last 2 years has not been in active operation. Although steps have been initiated by its officers to surrender its charter, no evidence of formal dissolution of the corporation was presented.

3. Respondent, G & N Manufacturing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its main office and principal place of business located at 29 Cardinal Road, Stamford, Connecticut. G & N Manufacturing Corporation engages in the rebottling and selling of colognes in purse-size flaconettes, but is not presently in active operation. Although steps also have been taken by its officers to surrender its charter, no evidence of formal dissolution of the corporation was presented.

4. Individual respondent Nathan Jachter is an officer of both corporate respondents Panat Jewelry Co., Inc., and Spejac, Inc.

Individual respondent Nathan Spergel is an officer of the corporate respondent Spejac, Inc., but is presently employed by Capital Trading Corporation, broker-dealers in securities.

Individual respondents Ben Jachter, Lee Hirsch and Phillip Schneider are stockholders of the corporate respondent G & N Manufacturing Corporation.

5. Individual respondents, in their capacities as officers and stockholders of said corporate respondents, formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents in which they are officers or stockholders.

6. Although respondents by their answer and in their proposed findings admit that they are now and for some time last past have been engaged in the advertising, offering for sale, sale or distribution of rebottled cologne and toilet water at wholesale to wholesalers and distributors, who in turn resell at retail to the purchasing public, the uncontradicted testimony of their officers as heretofore found shows that they have not engaged in these activities for approximately 2

years. However, in view of the ultimate disposition of this matter by the hearing examiner, it is not necessary to resolve this conflict of evidentiary fact in the record.

7. Similarly, in their answer and proposed findings, respondents admit that in the course and conduct of their business, they now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the States of New York, New Jersey and Connecticut 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. Again the uncontradicted testimony of their officers shows they have not engaged in these activities for approximately 2 years, but in view of the ultimate disposition of this matter by the hearing examiner it is unnecessary to resolve this conflict.

8. Respondents have been engaged in the practice of purchasing, from drug and department stores, cologne and toilet water manufactured by leading manufacturers of perfume and kindred products. These manufacturers were Chanel, Lanvin, Dana and Evyan. This toilet water and/or cologne were rebottled by respondents in small containers known as purse-size flaconettes, with a capacity of one dram or less.

9. Chanel, Lanvin, Dana and Evyan sell their colognes and toilet waters in 2-, 4-, 8-, 16- and 32-ounce containers. Faberge, Inc., and others sell a small percentage of their colognes and toilet waters in less than 2-ounce bottles; for example, several 1/2-ounce bottles of cologne and toilet water were placed in the record as exhibits by respondents. Chanel, Lanvin, Dana and Evyan commonly sell their perfumes in 1 dram (1/8 ounce), 1/4-, 1/2-, 1-, and 2-ounce bottles, but also package their perfumes in 4-, 8-, 16- and 32-ounce bottles.

10. There is a marked difference between cologne and toilet water on the one hand and perfume on the other. Perfume is much more expensive than cologne or toilet water.

The retail price of "Arpege" perfume and other perfumes of Lanvin-Parfums, Inc., are from \$4 for 1/8 ounce (1 dram) to \$500 for 32 ounces. The retail prices of "Arpege, Eau de Lanvin" and other colognes of Lanvin-Parfums, Inc., vary from \$3 for 2 ounces to \$32.50 for 32 ounces.

Chanel, Inc.'s perfume prices range from \$5 for the 1/8 ounce (1 dram) size to \$300 for the largest size. The prices for their colognes range from \$3.50 for 2 ounces to \$15.

Evyan Perfumes, Inc.'s prices for their "White Shoulders" perfume

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range from \$2.75 for 1 dram to \$35 for 2 ounces. The prices for their "White Shoulders" cologne range from \$2.75 for 2 ounces to \$9.50 for 8 ounces.

11. There is a valid basis for the substantial difference in price between perfume and toilet water or cologne. Perfume is an alcoholic solution of essential oils and aromatics in a high concentration. Toilet water or cologne is a very much diluted form of perfume, neither of which contains all of the expensive and valuable essential oils that are contained in perfume. In toilet water or cologne some of the expensive ingredients of perfume are replaced by less expensive ones.

12. Through the use of 1-dram size bottles or purse-size flaconettes exclusively in the sale of perfume by Lanvin-Parfums, Inc., Chanel, Inc., and Evyan Perfumes, Inc., and the limited use of such small containers by other manufacturers for toilet water and cologne; such purse-size flaconettes unless clearly and conspicuously marked otherwise have become associated in the minds of a substantial number of the purchasing public with containers for perfume.

13. Six typical packages of respondents' rebottled products were placed in evidence by counsel in support of the complaint. The exhibits, both on the outer package or box and on the flaconette, are clearly and conspicuously inscribed as follows:

CX-3: Box, $2\frac{1}{4} \times 3\frac{1}{2}$ inches with a look through window $\frac{3}{4} \times 1\frac{1}{4}$ inches, inscribed:

Top:	CHANEL
	NO. 5
Upper Half:	EAU de
	COLOGNE
Lower Half:	PURSE
	SIZE
	FLACONETTE

Bottom: Rebottled From The Genuine Product

(smaller print) Wholly Independent Of Chanel By Spejac, Inc., Jersey City, N.J. 1 Dram.

CX-4: Flaconette, $2\frac{1}{4} \times \frac{3}{4}$ inches contained and clearly visible in CX-3, inscribed:

Top:	CHANEL NO. 5
	Eau de Cologne (slightly smaller type)
Middle:	REBOTTLED
	FROM THE
	GENUINE PRODUCT
	by
	SPEJAC, INC.
	WHOLLY INDEPENDENT
	OF CHANEL
Bottom:	JERSEY CITY, N.J. 1 DRAM.

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CX-5: Box, $2\frac{1}{4} \times 3\frac{1}{2}$ inches with a look through window $\frac{3}{4} \times 1\frac{1}{4}$ inches, inscribed:

Top: LANVIN'S

Upper Half: MY SIN

Middle: EAU de

LANVIN

Lower Half: PURSE

SIZE

FLACONETTE

Bottom: Rebottled From The Genuine Product

(smaller print) Wholly Independent Of Lanvin By Spejac, Inc., Jersey City, N.J. 1 Dram.

CX-6: Flaconette, $2\frac{1}{4} \times \frac{3}{4}$ inches contained and clearly visible in CX-5, inscribed:

Top: LANVIN'S

MY SIN

Eau de Lanvin (slightly smaller type)

Middle: REBOTTLED

FROM THE

GENUINE PRODUCT

Lower Half: BY

SPEJAC, INC.

WHOLLY INDEPENDENT

OF LANVIN

Bottom: JERSEY CITY, N.J. 1 DRAM.

CX-7: Box, $2\frac{1}{4} \times 3\frac{1}{2}$ inches with a look through window $\frac{3}{4} \times 1\frac{1}{4}$ inches, inscribed:

Top: REBOTTLED

DANA'S

TABU

Middle: COLOGNE

Lower Half: PURSE

SIZE

FLACONETTE

Bottom: Rebottled From The Genuine Product

(smaller print) Wholly Independent Of Dana, Paris, New York By G. & N. MFG. Corp., Stamford, Conn. 1 Dram.

CX-8: Flaconette, $2\frac{1}{4} \times \frac{3}{4}$ inches contained and clearly visible in CX-7, inscribed:

Top: REBOTTLED

DANA'S

TABU

COLOGNE

Middle: REBOTTLED FROM THE

GENUINE PRODUCT BY

G. & N. MFG. CORP.

WHOLLY INDEPENDENT

OF DANA

Bottom: STAMFORD, CONN. 1 DRAM.

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CX-11: Box $2\frac{1}{4}$ x $3\frac{1}{2}$ inches with a look through window $\frac{3}{4}$ x $1\frac{3}{4}$ inches, inscribed:

Top: REBOTTLED
LANVIN'S
ARPEGE
Upper Half: Eau de
LANVIN
Lower Half: PURSE
SIZE

FLACONETTE

Bottom: Rebottled From The Genuine Product (smaller print) Wholly Independent Of Lanvin By G. & N. Mfg. Corp., Stamford, Conn. 1 Dram.

CX-12: Flaconette, $2\frac{1}{4}$ x $\frac{3}{4}$ inches contained and clearly visible in CX-11, inscribed:

Top: REBOTTLED
LANVIN'S
ARPEGE
EAU DE LANVIN
Middle: REBOTTLED FROM THE
GENUINE PRODUCT BY
G. & N. MFG. CORP.
WHOLLY INDEPENDENT
OF LANVIN

Bottom: STAMFORD, CONN. 1 DRAM.

CX-9: Box $4\frac{1}{2}$ x 2 inches with clear plastic cover revealing three small boxes, inscribed:

ON PLASTIC COVER

At Left:	At Right in
WORLD'S MOST	Large Print:
FAMOUS	TRIO
COLOGNES	

Lower Left: Rebottled
Chanel No. 5

Lower Middle: Rebottled
Lanvin's
Arpege

Lower Right: Rebottled
Evyan's
White Shoulders
Satinglide

ON BASE OF BOX IMMEDIATELY BELOW EACH SMALLER BOX

Left Side: Chanel
No. 5
Eau de Cologne

Middle: Lanvin's
Arpege
Eau de Lanvin

Right Side: Evyan's
White Shoulders
Satinglide

Across Bottom: Rebottled From The Original By G. & N. Mfg. Corp., Stamford, Conn.

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ON BOTTOM OF BOX

Left Side	Middle	Right Side
Rebottled Chanel No. 5 Eau de Cologne	Rebottled Lanvin's Arpege Eau de Lanvin	Rebottled Evyan's White Shoulders Satinglide
Rebottled from the Genuine Product Wholly Independent of Chanel By: G. & N. Mfg. Corp. Stamford, Conn. ½ Dram	Rebottled from the Genuine Product Wholly Independent of Lanvin By: G. & N. Mfg. Corp. Stamford, Conn. ½ Dram	Rebottled from the Genuine Product Wholly Independent of Evyan By: G. & N. Mfg. Corp. Stamford, Conn. ½ Dram
CX-10: Box 4½ x 2 inches with clear plastic cover revealing three small boxes, inscribed:		
	ON PLASTIC COVER	
At Left:	CHANEL NO. 5	
	Eau de Cologne	
Middle:	Lanvin's	
	ARPEGE	
	Eau de Lanvin	
Right:	Evyan's	
	WHITE SHOULDERS	
	Satinglide	
Lower Right:	TRIO	
Lower Left: Rebottled From The Original Product (small print) G. & N. Mfg. Corp., Stamford, Conn.		

ON BASE OF BOX IMMEDIATELY BELOW EACH SMALLER BOX

Left Side	Middle	Right Side
Chanel No. 5 Eau de Cologne	Lanvin's Arpege Eau de Lanvin	Evyan's White Shoulders Satinglide
Across Bottom: Rebottled From The Original By G. & N. Mfg. Corp., Stamford, Conn.		

ON BOTTOM SIDE OF THE BOX

Left Side	Middle	Right Side
Rebottled Chanel No. 5 Eau de Cologne	Rebottled Lanvin's Arpege Eau de Lanvin	Rebottled Evyan's White Shoulders Satinglide
Rebottled from the Genuine Product Wholly Independent of Chanel By: G. & N. Mfg. Corp. Stamford, Conn. $\frac{1}{2}$ Dram	Rebottled from the Genuine Product Wholly Independent of Lanvin By: G. & N. Mfg. Corp. Stamford, Conn. $\frac{1}{2}$ Dram	Rebottled from the Genuine Product Wholly Independent of Evyan's By: G. & N. Mfg. Corp. Stamford, Conn. $\frac{1}{2}$ Dram

14. The size of the printed inscriptions set forth hereinabove when considered in relation to the size of the bottles or flaconettes are as large as the limited space will permit. Considered generally such inscriptions, particularly the words "Cologne", "Eau de Cologne" and "Eau de Lanvin", are clear, legible and distinct.

15. Respondents use the same precise nomenclature and terminology on their rebottled products to identify them as the original bottler inscribes on its product. The respondents as well as the original bottler's well-known nomenclature or brand labels are as follows:

- CX-3 and CX-4: Chanel No. 5, Eau de Cologne.
- CX-5 and CX-6: Lanvin's My Sin, Eau de Lanvin.
- CX-7 and CX-8: Dana's Tabu, Cologne.
- CX-9: Chanel No. 5, Eau de Cologne.
Lanvin's Arpege, Eau de Lanvin.
Evyvan's White Shoulders, Satinglide.
- CX-10: Chanel No. 5, Eau de Cologne.
Lanvin's Arpege, Eau de Lanvin.
Evyvan's White Shoulders, Satinglide.
- CX-11 and CX-12: Lanvin's Arpege, Eau de Lanvin.

16. As heretofore found, respondents use the same nomenclature on their products as employed by the original bottlers; respondents clearly and conspicuously state on both the outer package and the flaconette that such products are "Cologne", "Eau de Cologne" or "Eau de Lanvin";¹ and respondents state clearly and conspicuously on their products that they are rebottled from the genuine product. Therefore, the examiner finds that the respondents' flaconettes as inscribed do not have the capacity or tendency to mislead the purchasing public into the erroneous or mistaken belief that such purse-size flaconettes contain perfume.

17. In the conduct of their business, at the times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents. Their annual sales of purse-size flaconettes were in excess of \$50,000.

DISCUSSION

There is no dispute over the basic facts in this matter. Counsel supporting the complaint apparently attaches little or no significance to the inscriptions clearly and conspicuously printed on respondents' flaconettes and packages, since he proposed no findings in respect thereto and failed to comment thereon. Rather, counsel supporting the complaint in his proposed findings seems to place sole reliance on the fact that respondents use dram-size bottles or purse-size flaconettes

¹ Evyan's White Shoulders, Satinglide, although not employing these generic terms is boxed with two other products employing these terms and the cover of the box is clearly marked "World's Most Famous Colognes". See CX-9 and CX-10.

which are ordinarily associated in the minds of the purchasing public with containers for perfume and consequently concludes that the practices of respondents are misleading, deceptive, etc.

In strange contrast to the position taken in his proposed findings of fact, counsel supporting the complaint proposes an order which in pertinent part would require respondents to cease and desist from:

2. 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 immediate connection and conjunction therewith that such products are cologne or toilet water.* [Italic supplied]

3. 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.* [Italic supplied.]

The very order proposed by counsel supporting the complaint permits the use of dram-size bottles or flaconettes which are commonly used for perfume if they are clearly and conspicuously marked cologne or toilet water. The order as proposed is similar if not identical with recent Commission orders. See *Colognes, Inc., et al.*, Docket No. 8310 [59 F.T.C. 872], October 23, 1961; *Spencer Gifts, Inc., et al.*, Docket No. 8097 [59 F.T.C. 451], September 12, 1961.

The sole issue, therefore, in this proceeding is whether respondents clearly and conspicuously state on or in connection with their product that it is cologne or toilet water. Neither party addressed themselves to this issue, although specifically requested to do so at the close of the hearing by the examiner.

The very terminology used in this case was the subject of discussion in the opinion of the Commission in the *Spencer Gifts, Inc.*, case, *supra*. In this connection Commissioner Kern noted:

Also, the words "Eau de Lanvin" and "Eau de Cologne" were inserted on the pictures of the packages shown in the offer. However, the printing is so faint and small as to be practically indiscernible and thus cannot be considered adequate notice that the products were colognes.

It is reasonable to infer from the foregoing that had the printing been larger and more distinct, the words "Eau de Cologne" and "Eau de Lanvin" would have been considered adequate notice. An examination of respondents' products demonstrates that they are not only clearly and conspicuously marked "Cologne", "Eau de Cologne" or "Eau de Lanvin" on both the flaconette and outer box, but also contain the legend that they are "rebottled from the genuine product". Respondents' practices as found are not deceptive or misleading and would not even constitute a violation of the very order proposed by counsel in support of the complaint in this proceeding.

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CONCLUSION

The Hearing Examiner concludes that the allegations of the complaint have not been sustained.

ORDER

Accordingly, it is ordered that the complaint in this matter be, and hereby is, dismissed.

OPINION OF THE COMMISSION

JANUARY 7, 1963

By Dixon, *Commissioner*:

The complaint in this matter charges respondents with distributing rebottled cologne and toilet water in a manner that has the capacity and tendency to mislead members of the purchasing public into the mistaken belief that they are buying perfume. In his initial decision, the hearing examiner held that the allegations were not sustained by the evidence and ordered dismissal of the complaint. The matter is before the Commission upon exceptions to the initial decision filed by counsel supporting the complaint.

Respondents purchase the colognes and toilet water of leading perfume manufacturers from drug and department stores and rebottle and sell the same in small containers known in the trade as "purse-size flaconettes." These flaconettes have a capacity of one dram (one-eighth of an ounce) or less and have been primarily sold and used as containers for perfume. The hearing examiner, on the basis of the exclusive use of these small containers for perfume by certain manufacturers of perfume and colognes and the limited use of such containers for colognes by other manufacturers, properly found that such purse-size flaconettes, unless clearly and conspicuously marked otherwise, have become associated in the minds of a substantial number of the purchasing public with containers for perfume. However, on the issue of adequate marking, the hearing examiner, in dismissing the complaint, concluded that an examination of respondents' products "demonstrates that they are not only clearly and conspicuously marked 'Cologne,' 'Eau de Cologne' or 'Eau de Lanvin' on both the flaconette and outer box, but also contain the legend that they are 'rebottled from the genuine product.'"

We do not understand the relevance to the hearing examiner's ruling of the fact that the flaconette and outer box contain the legend "rebottled from the genuine product." This would not aid the purchaser in identifying the nature of the product. Furthermore, although we agree that respondents, in order to overcome the decep-

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tive appearance of the product, must clearly and conspicuously disclose that their product is cologne or toilet water, we cannot concur in his finding that respondents in all instances have done this. The hearing examiner's finding fails to take into account two exhibits in the record (Respondents' Exhibits 10 and 12), which are the boxes in which one type of toilet water is packaged for the consumer. Each box states only:

Rebottled
EVYAN'S
White Shoulders

Satinglide

Purse
Size
Flaconette

Rebottled from the genuine product
wholly independent of EVYAN by
G. & N. Mfg. Corp., Stamford, Conn. 1 dram

Moreover, the hearing examiner has erred in finding that both of the physical exhibits, Commission Exhibits 9 and 10, which are combination packages of three brands of cologne and toilet water, including Evyan's White Shoulders Satinglide, are marked "World's Most Famous Colognes." On the contrary, no such legend or its equivalent appears on Commission Exhibit 10.

The Commission is of the opinion that "Satinglide," Evyan's trade name for its toilet water, is not sufficient disclosure of the fact that the product is toilet water so as to counteract the tendency of the flaconettes to mislead the purchaser into thinking that he or she is purchasing perfume.¹

Other boxes and flaconettes in the record state the ingredients therein as being "Chanel No. 5, Eau de Cologne," "Lanvin's My Sin, Eau de Lanvin," "Lanvin's Arpege, Eau de Lanvin," and "Dana's Tabu, Cologne."² In passing upon the adequacy of the disclosures, the hearing examiner classifies the label "Eau de Lanvin" in the same category as "Cologne" or "Eau de Cologne." This treatment can be justified only on the assumption that the purchasing public is fully acquainted with the nomenclature of Lanvin's products or is fully aware that the words "eau de" are used to denote toilet water as opposed to perfume. The hearing examiner advances no grounds of record in support of such assumptions and, indeed, none exist. More-

¹ The tendency to deceive is increased if the purchaser, although not aware that "White Shoulders Satinglide" is the name for Evyan's toilet water, is familiar enough with Evyan's products to know that it has a perfume designated "White Shoulders."

² It was established during the hearing that the three corporate respondents each distributed flaconettes identical to those placed in record.

over, such assumptions are negated and the tendency of "Eau de Lanvin" flaconettes to deceive some purchasers is strengthened in those instances when they are sold in combination with "Chanel No. 5, Eau de Cologne." The juxtaposition of the term "Eau de Cologne" with "Eau de Lanvin" may well suggest to the uninformed purchasers that the latter is different from the former and is the Lanvin perfume which is usually bottled in such a manner.

The hearing examiner, in holding that the words "Eau de Lanvin" constitute adequate disclosure, infers from certain language of the Commission's opinion in *Spencer Gifts, Inc.*, Docket No. 8097 [59 F.T.C. 451, 448] (1961), that the Commission would have considered these words to constitute adequate disclosure. In the portion of the opinion relied upon, the Commission was passing on the issue of whether the labels on pictures of the products in advertising material were sufficiently legible to constitute adequate disclosure. The opinion did not answer the question of whether the words "Eau de Lanvin," if sufficiently legible, would in themselves constitute adequate disclosure that toilet water rather than perfume was contained in the flaconettes.

There is a statement in the initial decision that the evidence is conflicting as to whether the respondents have discontinued the practice of rebottling cologne and toilet water in purse-size flaconettes. Be that as it may, we wish to dispel any suggestion that the record unequivocally indicates that there is no likelihood of recurrence. Nathan Jachter, president of Panat Jewelry Company, in response to the question of whether the company intended to resume the practices in question, testified: "I don't know." Nor was evidence offered by any of the other respondents that the practices have been discontinued with no intent to resume. We therefore believe that an order to cease and desist is required in the public interest.

As charged in the complaint, the evidence clearly establishes the responsibility of respondents Nathan Jachter and Nathan Spergel in their official capacities for the practices described herein. Accordingly, both of these respondents will be named in our order as officers of their respective corporations. However, there is a lack of sufficient proof that respondents Ben Jachter, Lee Hirsch, and Phillip Schneider, in their capacities as stockholders in the G & N Manufacturing Corporation, formulated, directed and controlled the acts and practices of said corporation. The complaint will be dismissed as to these persons.

In view of the foregoing, the exceptions of counsel supporting the complaint are sustained. The initial decision is set aside and we are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

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FINDINGS AS TO THE FACTS, CONCLUSION AND PROPOSED FINAL ORDER

JANUARY 7, 1963

The Federal Trade Commission issued its complaint against the above-named respondents on March 13, 1961, charging them with violation of the Federal Trade Commission Act in connection with their sale of cologne and toilet water in containers which, because of their size, allegedly are associated by the purchasing public with perfume, thereby misleading the purchasing public into the erroneous and mistaken belief that such products are perfumes. In their answer, respondents deny the charges. Hearings were held before the hearing examiner and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed June 15, 1962, the hearing examiner found that the charges had not been sustained by the evidence and ordered that the complaint be dismissed.

Counsel supporting the complaint filed exceptions to said initial decision and the Commission, after considering said exceptions and the entire record, has determined that the exceptions should be sustained and that the initial decision should be vacated and set aside. The Commission further finds that the proceeding is in the public interest and now makes its findings as to the facts, conclusion drawn therefrom and order to cease and desist which, together with the accompanying opinion, shall be in lieu of the findings, conclusion and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent, Panat Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office and principal place of business located at 135 Fifth Avenue, New York, New York.

Respondent, Spejac, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its last known main office and principal place of business located at Jersey City, New Jersey.

Respondent, G & N Manufacturing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its main office and principal place of business located at 29 Cardinal Road, Stamford, Connecticut.

2. Individual respondent Nathan Jachter is an officer of both corporate respondents, Panat Jewelry Co., Inc., and Spejac, Inc.

Individual respondent Ben Jachter, brother of Nathan Jachter,

is a stockholder and past president of corporate respondent G & N Manufacturing Corporation.

Individual respondent Nathan Spergel is an officer of corporate respondent Spejac, Inc., and has served as manager of corporate respondent Panat Jewelry Co., Inc.

Individual respondents Lee Hirsch and Phillip Schneider are stockholders of the corporate respondent G & N Manufacturing Corporation. Lee Hirsch is currently employed by Panat Jewelry Co., Inc.

3. Individual respondents Nathan Jachter and Nathan Spergel, in their official capacities, formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. Their addresses are the same as those of the corporate respondents in which they are officers. The proof fails to establish that Ben Jachter, Lee Hirsch, and Phillip Schneider formulate, direct and control the acts and practices of the corporate respondent in which they are stockholders. As used hereinafter, the word "respondents" will be deemed to include only the corporate respondents and Nathan Jachter and Nathan Spergel in their official capacities.

4. Respondents have engaged in the practice of purchasing, from drug and department stores, cologne and toilet water manufactured by leading manufacturers of perfume and kindred products. These colognes and toilet waters were rebottled by respondents in small containers known in the trade as purse-size flaconettes, with a capacity of one dram or less.

5. Respondents have engaged in the advertising, offering for sale, sale or distribution of rebottled cologne and toilet water at wholesale to wholesalers and distributors, who in turn resell at retail to the purchasing public.

6. Respondents for some time last past have caused their said products, when sold, to be shipped from their places of business in the States of New York, New Jersey, and Connecticut 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.

7. Although officers of the corporate respondents testified that they have not engaged in the above activities for approximately 2 years, there is no evidence indicating that said practices have been discontinued with no likelihood of resumption.

8. In the conduct of their businesses, at the times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms, and individuals in the sale of merchandise of the

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same general kind and nature as that sold by respondents. Respondents' annual sales of purse-size flaconettes were in excess of \$50,000.

9. Lanvin-Parfums, Inc., Chanel, Inc., Evyan Perfumes, Inc., and Dana Perfumes Corp., sell their colognes and toilet waters in 2-, 4-, 8-, 16- and 32-ounce containers. Faberge, Inc., and others sell a small percentage of their colognes and toilet waters in less than 2-ounce bottles. Chanel, Lanvin, Dana, and Evyan commonly sell their perfumes in 1-dram ($\frac{1}{8}$ -ounce), $\frac{1}{4}$ -, $\frac{1}{2}$ -, 1-, and 2-ounce bottles, but also package their perfumes in 4-, 8-, 16-, and 32-ounce bottles.

10. There is a marked difference between cologne and toilet water on the one hand and perfume on the other. Perfume is an alcoholic solution of essential oils and aromatics in a high concentration. Perfume is compounded to last longer than cologne or toilet water. Toilet water and cologne are highly diluted forms of perfume, and some of the expensive ingredients of perfume are replaced by less expensive ones.

11. Perfume is much more expensive than cologne or toilet water.

The retail prices of "Arpege" perfume and other perfumes of Lanvin-Parfums, Inc., are from \$4 for $\frac{1}{8}$ ounce (1-dram) to \$500 for 32 ounces. The retail prices for its colognes vary from \$3 for 2 ounces to \$32.50 for 32 ounces.

Chanel, Inc.'s perfume prices range from \$5 for the $\frac{1}{8}$ -ounce (1-dram) size to \$300 for the largest size. The prices for its colognes range from \$3.50 for 2 ounces to \$15.

Evyan Perfumes, Inc.'s prices for its "White Shoulders" perfume range from \$2.75 for 1 dram to \$35 for 2 ounces. The prices for its "White Shoulders" cologne range from \$2.75 for 2 ounces to \$9.50 for 8 ounces. The price for "White Shoulders Satinglide" toilet water is \$5 for 16 ounces.

12. Lanvin-Parfums, Inc., Chanel, Inc., and Evyan Perfumes, Inc., use purse-size flaconettes with a capacity of one dram or less, only for perfume. Through such use, these flaconettes have become associated in the minds of a substantial number of the purchasing public with containers for the perfume of these manufacturers.

13. Although various examples of respondent's products which are in the record as physical exhibits are labeled so as to disclose the fact that the product is cologne, e.g., those marked "Chanel No. 5, Eau de Cologne" and "Dana's Tabu, Cologne," other examples in the record do not adequately disclose the nature of the product. The designations "Lanvin's My Sin, Eau de Lanvin," "Lanvin's Arpege, Eau de Lanvin," and "Evyan's White Shoulders Satinglide," without further identification, on respondents' purse-size flaconettes and the boxes used to package them, do not constitute adequate notice that said products are cologne or toilet water. The use by respondents of purse-size flac-

onettes in the sale of said products has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said purse-size flaconettes contain perfume.

14. By offering for sale, selling and distributing certain of their colognes and toilet waters in purse-size flaconettes without clearly and conspicuously disclosing thereon the true nature of their products, 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 their rebottled colognes and toilet waters are perfume.

CONCLUSION

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents. The aforesaid acts and practices of respondents, as herein found, are to the prejudice and injury of the public and of respondents' competitors and 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.

PROPOSED FINAL ORDER

It is ordered, That respondents, Panat Jewelry Co., Inc., a corporation, and its officers, and Nathan Jachter, as an officer of said corporation, and Spejac, Inc., a corporation, and its officers, and Nathan Jachter and Nathan Spergel, as officers of said corporation, and G & N Manufacturing Corporation, a corporation, and its officers, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cologne or toilet water in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, or selling, cologne or toilet water in bottles having the size and appearance of bottles customarily and usually used for perfume, without disclosing that such products are cologne or toilet water on the bottles and on the front or face of the box or other container in which such bottles are packaged, with such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the bottles or containers.

2. Furnishing or otherwise placing in the hands of retailers or dealers in such products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

Final Order

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ORDER PROVIDING FOR THE FILING OF OBJECTIONS TO PROPOSED ORDER
AND REPLY

JANUARY 7, 1963

The Commission having rendered its decision in this proceeding, granting complaint counsel's appeal, vacating and setting aside the initial decision and making its own findings as to the facts, conclusion and proposed order in lieu of findings as to the facts, conclusion and order contained in the initial decision; and

The Commission having determined that the aforesaid proposed order is subject to § 4.22(c) of the Commission's Rules of Practice:

It is ordered, That respondents may, within twenty (20) days after service upon them of this order, file with the Commission their objections to the provisions of the aforesaid proposed order, a statement of their reasons in support thereof, and a proposed alternative form of order appropriate to the Commission's decision.

It is further ordered, That counsel supporting the complaint may, within ten (10) days after service of such objections upon him, file a statement in reply thereto, supporting the proposed order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Ben Jachter, Lee Hirsch, and Phillip Schneider.

FINAL ORDER

MARCH 7, 1963

The Commission on January 7, 1963, having issued its order providing for the filing of objections by respondents to the proposed order of the Commission; and

Respondents having been served with the aforementioned proposed order and not having filed objections within the time granted in the Commission's order of January 7, 1963; and

The Commission having determined that its proposed order to cease and desist should be entered as the final order of the Commission:

It is ordered, That respondents, Panat Jewelry Co., Inc., a corporation, and its officers, and Nathan Jachter, as an officer of said corporation, and Spejac, Inc., a corporation, and its officers, and Nathan Jachter and Nathan Spergel, as officers of said corporation, and G & N Manufacturing Corporation, a corporation, and its officers, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cologne or toilet water in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Complaint

1. Offering for sale, or selling, cologne or toilet water in bottles having the size and appearance of bottles customarily and usually used for perfume, without disclosing that such products are cologne or toilet water on the bottles and on the front or face of the box or other container in which such bottles are packaged, with such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the bottles or containers.

2. Furnishing or otherwise placing in the hands of retailers or dealers in such products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

It is further ordered, That respondents 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 set forth herein.