

any other manner seeking to exact payment for any such advertisement, without a prior authorization, order or agreement to purchase said advertisement.

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
COSMETICS MANUFACTURING COMPANY ET AL.

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

Docket C-987. Complaint, Sept. 9, 1965—Decision, Sept. 9, 1965

Consent order requiring Long Beach, Calif., distributors of toilet preparations to jobbers and retailers, to cease preticketing perfumes and toilet preparations with prices higher than regular retail selling prices, representing falsely on labels affixed thereto and on cartons that said merchandise was manufactured in a foreign country, and from using foreign words and terms in product names and depictions indicative of foreign origin unless such designations and depictions disclose the fact that said merchandise was manufactured in the United States.

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 Cosmetics Manufacturing Company, a corporation, and Sanford Barth, 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 Cosmetics Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2830 Temple Avenue, in the city of Long Beach, State of California.

Respondent Sanford Barth is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of

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the corporate respondent, including the acts and practices hereinafter set forth. 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 toilet preparations to distributors, jobbers and 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 California to purchasers thereof located in various other States of the United States, 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 purchase of their products, respondents have engaged in the practices of:

(a) Imprinting, or causing to be imprinted upon cartons in which their said toilet preparations are intended to be sold, and are sold, to the purchasing public, and upon labels affixed to the immediate containers of said products, what purports to be the retail price thereof.

(b) Imprinting, or causing to be imprinted, upon bottles and cartons in which their toilet preparations are intended to be, and are, sold to the purchasing public, and upon labels affixed thereto, designations of and referring to said products, including "Paris au Printemps Parfum Chateau Rouge Dist." and "Chateau Rouge Parfum," depictions of the fleur-de-lis and of the Eiffel Tower, and the statement "Concentre Fabrique Avec Essences de France."

PAR. 5. By and through the use of the aforementioned representations, and others of similar import not specifically set out herein, respondents represented directly or by implication:

(a) That said amounts appearing on said products constitute respondents' good faith honest estimate of the actual retail selling prices of said toilet preparations and are not in excess of the highest price at which substantial sales of said preticketed articles are made in respondents' trade area.

(b) That said toilet preparations are manufactured in France. The use of the designations "Paris au Printemps Parfum," and "Chateau Rouge Parfum," the statement "Concentre Fabrique Avec Essences de France," and the depictions of the fleur-de-lis and

of the Eiffel Tower have the capacity and tendency, separately and collectively, to suggest to the purchasing public that toilet preparations so designated or referred to were manufactured in France, of which the Commission takes official notice.

PAR. 6. In truth and in fact:

(a) Said amounts do not constitute respondents' good faith honest estimate of the actual retail selling prices of said toilet preparations and are appreciably in excess of the highest price at which substantial sales of said preticketed articles are made in respondents' trade area, or in the trade area of any distributor or dealer in said toilet preparations.

(b) Said toilet preparations are manufactured in the United States.

Therefore, the statements and representations set forth in Paragraph Four hereof are false, misleading and deceptive.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for toilet preparations manufactured or compounded in France, of which fact the Commission takes official notice.

The use of designations for toilet preparations in the French language, and depictions particularly associated with France, have the capacity and tendency to suggest, and do suggest, to the purchasing public, that toilet preparations so designated were manufactured in France, of which fact the Commission also takes official notice.

PAR. 8. By the aforesaid practices respondents place in the hands of jobbers, retailers and dealers the means and instrumentalities by and through which they may mislead and deceive the public as to the regular retail selling price and the country of origin of their aforementioned products.

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 toilet preparations of the same general kind and nature as that 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 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 and deceptive acts and practices in commerce in violation of Section 5 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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. Respondent Cosmetics Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2830 Temple Avenue, in the city of Long Beach, State of California.

Respondent Sanford Barth is an officer of said corporation and his address is the same as that of said corporation.

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 Cosmetics Manufacturing Company, a corporation, and its officers, and Sanford Barth, 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 and distribution of perfume or other toilet preparations, in commerce,

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as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) The act or practice of pre-ticketing merchandise at an indicated retail price or otherwise disseminating or advertising a list, suggested or other indicated retail price for respondents' merchandise: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such indicated retail price was disseminated or advertised in good faith and has not appreciably exceeded the highest price at which substantial sales of such articles were being made in respondents' trade area.

(b) In connection with perfume or other toilet preparations not wholly made in a foreign country,

1. Representing directly that such products are made in a foreign country, or

2. Using any foreign word, term or phrase in any brand or product name, or using any depiction or other device, word, term or phrase indicative of foreign origin, unless clear and conspicuous disclosure is made in close connection and conjunction therewith of the fact that such products were made in the United States.

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

S. SCHWARTZ & B. KLEIN, INC., ET AL.