

Complaint

73 F.T.C.

IN THE MATTER OF

SELLERS BROS., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1307. Complaint, Mar. 6, 1968—Decision, Mar. 6, 1968.*

Consent order requiring a Chicago, Ill., distributor of perfumes, colognes, and toilet preparations to cease misrepresenting the quality, identity and manufacture of its products.

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 Sellers Bros., Inc., a corporation; also doing business as Renard, Dist. Renard Chicago, and as Mfr. Renard Chicago; and Bernard Temkin and Harry Temkin, individually and as officers 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 Sellers Bros., Inc., is a close corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1422 South Halsted Street, in the city of Chicago, State of Illinois.

Respondent Bernard Temkin and his uncle Harry Temkin are respectively president, and sales manager of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their 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 or distribution of perfumes to the general public, to peddlers, and to wholesalers, jobbers, distributors 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 Illinois 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 in advertising, offering for sale, sale or distribution of their said products, respondents have engaged in the following practices:

(a) By using bottles, boxes and other containers on which various letters such as "A," "I," "J," "MS," "N," "S," "ST," "T," and "X" are imprinted or otherwise labeled; through the use of advertising circulars depicting their said products so labeled or imprinted; and through oral or written statements to wholesalers, distributors, jobbers, retailers and others, respondents have represented directly and indirectly (through their salesmen or otherwise), that said products so labeled or imprinted are, respectively the following well-known perfumes, or imitations or simulations thereof: "Arpege" perfume by Lanvin Parfums, Inc.; any of a number of well-known perfumes beginning with the letter I, as "Indiscrete" by Parfums Lucien Lelong Corporation, Inc., "Intimate" by Revlon, Inc.; or "Intoxication" by Parfums D'Orsay, Inc.; "Joy" perfume by Jean Patou, Inc.; "My Sin" perfume by Lanvin Parfums Inc., "Chanel" or "Chanel No. 5" perfume by Chanel Industries, Inc.; "Shalimar" perfume by Guerlain, Inc.; "Sortilege" perfume by Le Galion Parfums, Inc.; "Tabu" perfume by Dana Perfumes Corp.; and "X-Mas Night" ("La Nuit De Noel") perfume by Caron Corporation. In truth and in fact respondents' products are not any of the well-known perfumes mentioned and such use of initial letters and such unauthorized representations constitute unfair methods of competition and unfair and deceptive acts and practices in commerce.

(b) Through order-invoice forms printed with the statement "Sellers Bros. Manufacturers—Aerosol Perfume—Colognes—Toilet Preparations," and through using bottles, boxes and other containers labeled "perfume (specific name) Mfr. RENARD Chicago," respondents have represented that they, under their corporate and trade names, are manufacturers of the perfumes, colognes and toilet preparations which they sell and distribute. In truth and in fact respondents do not manufacture any perfumes, colognes or other toilet preparations.

Therefore, respondents' practices and representations described in Paragraph Four hereinabove, were and are, unfair, false, misleading and deceptive.

PAR. 5. By the aforesaid practices, respondents mislead and deceive the public as to the identity and manufacture of respondents' said products as well as the quality and quantity of said products and the containers therefor, and place in the hands of wholesalers, re-

Decision and Order

73 F.T.C.

tailers and others the means and instrumentalities by and through which they may likewise mislead and deceive the public.

PAR. 6. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with the companies named in Paragraph Four (a) hereinabove, and with corporations, firms and individuals in the sale of toilet preparations of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid unfair, 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. 8. 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and which agreement further provides, among other things, that issuance of the complaint aforesaid and entry of decision containing the order to cease and desist contemplated thereunder in disposition of this proceeding shall be stayed until issuance by the Commission of its decision in disposition of the proceedings *In The Matter of L'Argene Products Company, Inc., et al.*, Docket No. 8717,

474

Order

which proceeding was then pending before the Commission on appeal by counsel supporting the complaint from the initial decision of the hearing examiner; and

The Commission having thereafter on January 5, 1968, issued its final order in disposition of the proceeding in Docket No. 8717 [p. 16] wherein the proscriptions of the order to cease and desist are identical to those contained in the above-mentioned initial decision, and the Commission having duly considered the aforesaid executed agreement and having accepted same and such agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days; and

It appearing that the provisions of the agreement are now met whereby the Commission may issue its complaint and enter its decision in disposition of this proceeding containing order to cease and desist in the form set forth in the aforesaid agreement, now in conformity with the procedure prescribed in its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Sellers Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1422 South Halsted Street, in the city of Chicago, State of Illinois.

Respondents Bernard Temkin and Harry Temkin are officers of said corporation and their 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 Sellers Bros., Inc., a corporation, and its officers, and Bernard Temkin and Harry Temkin, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfume or other toilet preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the letters "A," "I," "J," "MS," "N," "S," "ST," "T," and "X," 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

Complaint

73 F.T.C.

quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer, compounder or distributor of said products.

2. Representing, directly or by implication that any of respondents' toilet preparations is, or is the same as, or a copy, or reproduction, or chemical reproduction of, products sold under the brand names "Arpege" or "My Sin" by Lanvin Parfums, Inc.; "Indiscrete" by Parfums Lucien Lelong Corporation, Inc.; "Chanel" or "Chanel No. 5" by Chanel Industries, Inc.; "Shalimar" by Guerlain, Inc.; "Tabu" by Dana Perfumes Corporation; "Intimate" by Revlon, Inc.; "Joy" by Jean Patou, Inc.; "Intoxication" by Parfums D'Orsay, Inc.; "La Nuit De Noel" ("X-Mas Night") by Caron Corporation; or any other well-known or nationally advertised perfume or other toilet preparation.

3. Representing, directly or by implication, under their corporate name or trade name, that they are manufacturers of perfumes, colognes or other toilet preparations.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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