

IN THE MATTER OF  
HARSAM DISTRIBUTORS, INC., ET AL.

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

*Docket 6687. Complaint, Dec. 11, 1956—Decision, Mar. 21, 1958*

Order requiring jobber-sellers in New York City of their domestically blended "White Christmas" perfume which contained some imported ingredients, to cease representing falsely in advertising and on labels that the perfume sold at nationally advertised prices far in excess of the customary prices; and, through use of French words and otherwise, that the perfume was a French product.

*Mr. William R. Tincher* for the Commission.

*Mr. Abraham B. Hertz*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding alleges that Harsam Distributors, Inc., Harry Wagonfeld and Louis Wagonfeld, individually and as officers of said corporation, violated the provisions of the Federal Trade Commission Act by indulging in false advertising practices in the sale and distribution of "White Christmas" perfume, defined as a "cosmetic" under the act.

Specifically, the complaint alleges that said corporation and named individuals, through advertisements, circulars and labels, represented that "White Christmas" perfume was compounded in France and had been nationally advertised and sold at certain retail prices, whereas, such statements are misleading and deceptive and constitute "false" advertising under the act for the reason that "White Christmas" perfume was not compounded in France but was manufactured or compounded in the United States and the prices set forth in the advertisements are fictitious and in excess of the prices at which "White Christmas" usually or customarily sold at retail and were not nationally advertised prices. The complaint further alleged that there is a preference on the part of the buying public for perfumes manufactured or compounded in foreign countries and imported into the United States, especially from France.

The respondents, through their attorney, answered the complaint, denied that Louis Wagonfeld is secretary-treasury of Harsam Distributors, Inc., that he directs or controls the policies, acts and practices

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of said corporate respondent, and denied the other material allegations set forth in the complaint.

Hearings were held in New York City. Proposed findings, conclusions, and order have been submitted by respective counsel. The examiner has considered the testimony and evidence received at the hearings, the proposed findings of fact, conclusions and order submitted by counsel. All proposed findings and conclusions not specifically found and concluded in this decision are rejected. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions, and issues the following order:

## FINDINGS OF FACT

1. The respondent Harsam Distributors, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 14 E. 17th Street, New York, N.Y. The respondent Harry Wagonfeld is president of said corporation and directs the acts and practices of said corporation. The respondent Louis Wagonfeld is not the secretary-treasurer of said corporation and has no part in directing the acts and practices of said corporation, as alleged in the complaint. Therefore, the complaint will be dismissed as to Louis Wagonfeld.

2. Harsam Distributors, Inc., and Harry Wagonfeld, president of said corporation, hereinafter referred to as respondents, are now and have been for more than 2 years last past, engaged in the business of selling various perfumes which are "cosmetics" as that term is defined in the Federal Trade Commission Act. Among said perfumes is one designated as "White Christmas," which is involved in this proceeding. Respondents began selling "White Christmas" perfume in 1953. At that time, respondents purchased their supplies of "White Christmas" for resale from Saravel, Inc., who owned the formula for the perfume and compounded or manufactured the product, as understood in the trade. Respondents acted in the capacity as a jobber for the perfume, selling and shipping the perfume to their own wholesale department and retail store customers in various localities throughout the United States.

3. Perfume is made, compounded, or manufactured by mixing or blending perfume concentrate with denatured alcohol.<sup>1</sup> Although

<sup>1</sup> The formula for "White Christmas" perfume is a blend of aromatic chemicals or concentrate and denatured alcohol. After the alcohol is added to and blended with the concentrate, a certain amount of aging takes place. The temperature of the liquid is lowered to below 32 degrees, and the liquid is then filtered and bottled. The concentrate is oil, is not perfume, and is never sold to the public as perfume. In concentrated form the liquid would soil any article of clothing which it might touch. The concentrate must be mixed or blended with alcohol in order to make perfume.

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Saravel, Inc., appears to have been termed in the trade as the manufacturer of "White Christmas" perfume, the actual mixing or blending of the concentrate with denatured alcohol was performed by Roure-DuPont, Inc. of New York City, for and on behalf of Saravel, Inc. Roure-DuPont is a manufacturer of cosmetics, perfumes, soaps, etc. When Roure-DuPont first began blending "White Christmas" perfume for Saravel, Inc., in 1953, the concentrate was of domestic origin. Roure-DuPont did not bottle the perfume for Saravel, Inc. After blending, Roure-DuPont delivered the finished product (perfume) in drums or jugs to a company which specialized in bottling perfume and similar products. After bottling the perfume in 1 ounce bottles, each bottle of "White Christmas" perfume was placed in a small pasteboard box (respondents' exhibit No. 10). On the front of the box, near the top, were the printed words "WHITE CHRISTMAS." Near the bottom was the French word "PARFUM." Each box containing a 1 ounce bottle of "White Christmas" perfume was individually wrapped in white paper with silver stars imprinted thereon. Each end of the wrapped package, where the paper was folded, was sealed with a sticker. The sticker was glued to the folded edges of the wrapping paper at each end of the package, with the words "White Christmas by Saravel" printed thereon. Near the center of the package, at a fold of the paper wrapper, was another glued sticker, showing the tricolor of France. In the white (center) portion of the tricolor were the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE." A duplicate of this wrapped package containing a 1-ounce bottle of "White Christmas" perfume was received in evidence as Commission exhibit No. 2.

4. During the month of July or August 1953, Saravel, Inc., through its advertising agency, placed an advertisement with Vogue magazine advertising "White Christmas" perfume. The advertisement was approximately 4" x 5½", and appeared in September 15, 1953, issue of Vogue. A page from the September 15, 1953, issue of Vogue magazine which contained this advertisement was received in evidence as Commission exhibit No. 7. In the center of the advertisement is a reproduction of a bottle of "White Christmas" perfume with the name "White Christmas by Saravel," shown thereon. In the lower right hand corner of the advertisement there appears the legend "\$18.50 the ounce at better shops," and at the bottom of the advertisement, "Saravel, Inc., New York 1, N.Y." There is no evidence of any other magazine advertising of "White Christmas" perfume, either by Saravel, Inc., or respondents.

5. Saravel, Inc., had approximately 50,000 reprints made of the "White Christmas" advertisement which appeared in Vogue magazine (Commission exhibit No. 7), some of which reprints Saravel, Inc., delivered to its customers of "White Christmas" for their use in reselling the perfume. Reprints of the advertisement were also placed inside the one gross cartons of "White Christmas" perfume for use by purchasers to promote their reselling the perfume. One of the reprints was received in evidence and marked Commission exhibit No. 3.

6. In December 1953, Roure-DuPont began importing the concentrate from France for the use in compounding or making "White Christmas" perfume. Thereafter, beginning in 1954, this imported French concentrate was mixed with domestic denatured alcohol in compounding or manufacturing "White Christmas" perfume. There was no change in the formula. During the year 1954, Saravel, Inc., discontinued its former practice of placing copies of the reprints of the Vogue magazine advertisement (Commission exhibit No. 3) in each one gross carton of "White Christmas" perfume. Also, during the year 1954 or 1955, the evidence is not clear as to the exact date, Saravel, Inc., discontinued use of the sticker on the "White Christmas" wrapper which showed the figures "\$18.50." Saravel, Inc., also discontinued use of the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE" on the tricolor sticker attached to the outside of the wrapper containing the 1 ounce bottle of "White Christmas" perfume, described in paragraph 3 above, and substituted therefor the English words "PERFUME ESSENCE Compounded in FRANCE—Expressly for SARAVEL." (Commission exhibit No. 1.)

7. In the month of February 1956, the respondent Harsam Distributors, Inc., purchased the formula for "White Christmas" perfume, the trade-mark "White Christmas," and the registered trade name "Saravel" from Saravel, Inc., together with all materials, supplies, etc. which Saravel, Inc. had been using in the manufacture, bottling and distribution of "White Christmas" perfume, and also the reprints of the Vogue magazine advertisement which remained on hand. Thereafter, Harsam Distributors, Inc. became the manufacturer, sole owner, and distributor of "White Christmas" perfume. However, Harsam Distributors, Inc. continued to employ Roure-DuPont to actually blend the imported French concentrate with domestic denatured alcohol in compounding "White Christmas" perfume, using the same formula which Saravel, Inc. had formerly used and which Harsam Distributors, Inc. had purchased from Saravel, Inc. At the direction of respondents, Roure-DuPont delivered the finished

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perfume in bulk drums to B. H. Krueger & Co. for bottling. After bottling the bulk "White Christmas" perfume in 1-ounce bottles, packaging, wrapping, and labelling each bottle as described in paragraph 6 hereof, B. H. Krueger & Co. then delivered the perfume to respondents in one-gross cartons. Respondents then sold, shipped, and distributed the perfume to their wholesale, department and retail store customers in various localities throughout the United States. Respondents did not include in the one-gross cartons of "White Christmas" reprints of the Vogue magazine advertisement (Commission exhibit No. 3) for use by their customers in promoting the resale of "White Christmas," as Saravel, Inc. had done originally and later discontinued, but only shipped the reprints to customers upon their specific request. In such instances, the reprints were shipped in a separate package.

8. From this evidence it is found that respondents sold, distributed, and shipped "White Christmas" perfume from their place of business in New York, N.Y., to their wholesale, department, and retail store customers located in various cities throughout the United States, which perfume bore labels with the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," "PARFUM," and the figures "\$18.50" thereon. It is further found that respondents, to assist their customers in the resale of "White Christmas" perfume, have shipped and distributed to their wholesale, department, and retail store customers located in various states throughout the United States, reprints of the Vogue magazine advertisement (Commission exhibit No. 3).

9. Although it has been found in paragraph 6 hereof that, during the year 1954 or 1955, Saravel, Inc. discontinued use of the "\$18.50" sticker on the "White Christmas" wrapper, nevertheless, there is evidence in the record which shows that respondents have used the "\$18.50" sticker on the pasteboard box in which the 1-ounce bottles of "White Christmas" perfume are placed (respondents' exhibit No. 10), as recently as July 26, 1956. A picture of the front show window of a retail jewelry store customer of respondents taken on July 26, 1956 (Commission exhibit No. 9), shows, among other articles of merchandise displayed for sale, approximately 20 stacked bottles of "White Christmas" perfume in wrapped packages, with four bottles in each stack. The evidence shows that this jewelry store purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in July 1956, and it is found that the perfume shown in the picture (Commission exhibit No. 9) is a part of the perfume so purchased in July 1956. On top and at one end of the stacked and

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wrapped 20 bottles of "White Christmas" perfume shown in the picture is one of the pasteboard boxes described in paragraph 3 above (respondents' exhibit No. 10), in which respondents customarily place each bottle of "White Christmas" perfume before it is wrapped. On the outside of the pasteboard box, in the center, between the printed words "WHITE CHRISTMAS" at the top and "PARFUM" at the bottom, is the sticker with the figures "\$18.50." Immediately to the left and adjacent to the pasteboard box, and also on top of the stacks of wrapped bottles of "White Christmas" perfume, is what appears to be a cardboard sign bearing the following inscription: "SALE—\$1.00—Adv. in VOGUE at \$18.50—SAVE 90%." Immediately below is a reprint of the Vogue magazine advertisement (Commission exhibit No. 3).

10. It is found that, by using and disseminating the "\$18.50" sticker on boxes and wrappers containing "White Christmas" perfume and disseminating and distributing reprints of the Vogue magazine advertisement, respondents induced the purchase of "White Christmas" perfume and thereby represented that "White Christmas" perfume is a nationally advertised product which customarily and regularly sells at \$18.50 per ounce.

11. The complaint alleges, in substance, that the representations as to the retail price of "White Christmas" perfume made by respondents are fictitious and in excess of the price at which "White Christmas" usually or customarily sold at retail, was not the nationally advertised price, and thereby constituted "false" advertising under the act. The respondent Harry Wagonfeld, president of respondent Harsam Distributors, Inc., testified that he did not inquire of Saravel, Inc. concerning the accuracy of the \$18.50 price representation in the Vogue magazine advertisement and on the stickers which were placed on "White Christmas" perfume wrappers and did not know of a retail store in the United States which is now selling "White Christmas" perfume at \$18.50 per ounce. In fact, Mr. Wagonfeld testified that he does not know just what the retail price of "White Christmas" perfume is at the present time.

12. The only evidence of sales of "White Christmas" perfume at a retail price of \$18.50 per ounce offered at the hearings were four sales made during the fall of 1953 by two New York City drug stores, the Bliss Drug Co., located at 341 Park Avenue, and Wade Chemists, Inc., located at 424 Madison Avenue. This evidence was offered by counsel supporting the complaint. The operators of these drug stores testified, in substance, as follows: In September 1953, a representative of Saravel, Inc. called on each drug store and

