IN THE MATTER OF

DUBROWSKY & JOSEPH, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket C-1166. Complaint, Feb. 7, 1967—Decision, Feb. 7, 1967

Consent order requiring a New York City manufacturer of ladies' coats to cease misbranding the fiber content of interlinings of its wool coats, and failing to comply with other statutory requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Dubrowsky & Joseph, Inc., a corporation, and Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Dubrowsky & Joseph, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph are officers of said corporation. They are responsible for and formulate the acts, practices and politics of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (ladies coats) with their office and principal place of business located at 520 Eighth Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were ladies coats stamped, tagged, labeled, or otherwise identified as containing 100% wool interlining, whereas in truth and in fact, such interlining contained substantially different amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product, namely a ladies coat, with a label on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 percentage or more; (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated said Acts, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Dubrowsky & Joseph, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 520 Eighth Avenue, New York, New York.

Respondents Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph 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 Dubrowsky & Joseph, Inc., a corporation, and its officers, and Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of

information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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

PANAT JEWELRY CO., INC., ET AL.

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

Docket 8660. Complaint, April 30, 1965—Decision, Feb. 8, 1967

Order requiring New York City distributors of perfumes and costume jewelry to jobbers and retailers, to cease deceptively preticketing and misbranding its perfume and jewelry as to the regular selling price and composition, ambiguously using French words and symbols to falsely imply that its perfumes are imported, and furnishing retailers with means and materials to deceive the public in the above enumerated ways.

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 Nathan Jachter doing business and trading as Jáq de Paris, 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 principal office and place of business located at 162 Fifth Avenue, in the city of New York, State of New York.

Respondent Nathan Jachter is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

* Reported as amended by order of hearing examiner dated June 14, 1965, to reflect correct address of respondent.

tices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Nathan Jachter has registered the trade name "Jáq de Paris" under his own name and at the same address. The name "Jáq de Paris" is used in connection with the sale of certain of respondents' products as hereinafter mentioned.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and costume jewelry for men and women 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 New York, or from such other State in which said products are ultimately packaged, 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 sell their products through salesmen who call on the trade, through exhibits of their said products at various regional trade markets, through advertisements in newspapers, trade publications, other periodicals and circulars.

PAR. 5. Respondents for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious pricing and of misrepresenting the material of which their products are made or composed, the identity of the manufacturer and the country of origin or manufacture by the following methods and means:

(a) By using cardboard boxes or cartons, in which their bottled perfumes are packaged, on which are printed, or otherwise affixed, the figures "10.00," "15.00" or some other amount, and in advertisements and circulars, respondents thereby represented, directly or indirectly, that said amounts are the dollar prices that have been established in good faith as an honest estimate of the actual retail price and that they do not appreciably exceed the highest price at which substantial sales are or have been made at retail in respondents' trade area. In truth and in fact, said amounts are fictitious and are appreciably in excess of the highest

price at which substantial sales of said preticketed articles are made at retail in respondents' trade area.

(b) By using cardboard boxes or containers in which their bottled perfumes are packaged, on which are printed, or otherwise affixed on labels, in large print, the initial letters such as, but not limited to, "A," "C," "M" and "W" and, through salesmen calling on distributors, jobbers and retailers, respondents have thereby represented, directly or by implication, that the said perfumes so designated are those of or the same as those perfumes, sold under the brand names, "Arpege" by Lanvin Parfums, Inc., of New York, N.Y., "Chanel No. 5" by Chanel, Inc., of New York, N.Y., "My Sin" by Lanvin Parfums, Inc., of New York, N.Y., and "White Shoulders" by Parfums Evyan, Inc., of New York, N.Y. In truth and in fact, said perfumes sold by respondents are designated or labeled with the initial letters "A," "C," "M" and "W," are not the same as, nor those of, the said brand names "Arpege" by Lanvin Parfums, Inc., "Chanel No. 5" by Chanel, Inc., "My Sin" by Lanvin Parfums, Inc., or "White Shoulders" by Parfums Evyan, Inc.

(c) By use of the name "Jáq de Paris" and by a depiction of the Eiffel Tower with the tricolor French flag flying on top in connection with the name "Jáq de Paris" they have thereby represented, directly or by implication, that the same are French perfumes and are made, manufactured or compounded in Paris, France, and by a business entity or concern "Jáq de Paris." The representations are further accentuated by the wording "DISTRIBUTED BY JÁQ de PARIS, NEW YORK, N.Y.," or by words or markings of similar import or meaning used on containers in which the bottles of perfume are packaged and otherwise. In certain circulars used by respondents the words "Boudoir Ensemble" and "Paris Inspired Perfume" appear thereon. Respondents thereby add further support to the representation that their perfumes are made in France or are connected in some manner with Paris, France. In truth and in fact, Jáq de Paris is a trade name used by respondents and said perfumes are not French perfumes and are not made, manufactured or compounded in Paris nor in France; that same are not manufactured by a separate business entity or concern "Jáq de Paris" located in Paris nor in France. Respondents are not distributors for a business entity or concern under the name of Jáq de Paris located in Paris, France.

(d) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "STERLING SILVER" under the name "Panat," or under what appears to be

the depiction of a trademark, design or emblem, respondents represent directly or by implication that the costume jewelry so packaged is made up of at least 925/1000ths pure silver. In truth and in fact, said costume jewelry so packaged is not made of sterling silver of at least 925/1000ths pure silver.

(e) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "GOLD FILLED," under the name "Panat," or under what appears to be the depiction of a trademark, design or emblem, respondents represent that the costume jewelry so packaged is plated with a gold alloy of 24 karat fineness and of a substantial thickness of at least 1/20th of the weight of the metal in the entire article. In truth and in fact, said costume jewelry so packaged is not plated with a gold alloy of 24 karat fineness and is not of a substantial thickness of at least 1/20th of the weight of metal in the entire article of jewelry.

(f) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "14 KT. GOLD," and by attaching or affixing a tag or label to said article of jewelry on which tag or label appears the wording or legend "14 KT. GOLD," respondents represent, and have represented, that the article so packaged, marked, tagged or labeled is entirely composed and made of a gold alloy of 14 karat fineness for the metal portion of said article. In truth and in fact, the metal part of said articles so packaged, marked, tagged or labeled are composed or made of a gold alloy of less than 14 karat fineness.

(g) By placing tags or labels inside the boxes in which certain of respondents' articles of costume jewelry are packaged and on which tags or labels appear the words "CULTURED PEARL," respondents thereby represent, directly or by implication, that said jewelry contains a genuine cultured pearl. In truth and in fact, certain of said costume jewelry are not made with a genuine cultured pearl, but are imitations.

(h) By using labels or tags on which are printed "$24.95 plus tax" or some other amount, which are attached to or included with respondents' products, respondent thereby represented, directly or indirectly, that said amounts are the prices that have been established in good faith as an honest estimate of the actual retail price and that they do not appreciably exceed the highest price at which substantial sales have been made at retail in respondents' trade area. In truth and in fact, said amounts are fictitious and are appreciably in excess of the highest price at

which substantial sales of said preticketed articles are made at retail in respondents' trade area.

Therefore, the statements and representations set forth above were, and are, false, misleading and deceptive.

PAR. 6. There is a preference on the part of a substantial number of the purchasing public for perfumes manufactured in France, a fact of which the Commission takes official notice.

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have represented through advertisements, labeling, orally and otherwise, that certain of their products are perfume whereas the same are not perfume as the term "perfume" is understood and used in the trade. Perfume contains at least 16 ounces of perfume oil per gallon of mixture. In truth and in fact said products are toilet waters or colognes.

PAR. 8. In the course and conduct of their business, as aforesaid, respondents have represented that certain of their products are guaranteed, and have enclosed a printed folded circular in the package or box in which the respondents' said product is packaged. Typical, but not all inclusive of said representations are the following: On the outside front of the circular—

BRONZINI
PEARLS
LIFETIME
GUARANTEE

On the inside right page:

THE GIFT THAT LASTS

A seed of the ocean's treasure selected for perfection * * * then oysterized by Oriental master craftsmen.

Emulating the cultured pearl with regard to luster, color, beauty * * * further enhanced by gem-like quality skins surpassing the hardness, durability and elegance of the cultured pearl * * * warranting a lifetime guarantee.

JAQ DE PARIS
New York, N.Y.

On the inside right page:

LIFETIME GUARANTEE*

The same shell-base-seeds are used as in growing cultured pearls * * * given a superb coating on the surface of special essence forming the depth and mystery of the heirloom pearl.

*Will not pit or peel
*Will not fade or discolor

In the manner aforesaid respondents represent that respondents' BRONZINI Pearls have an unconditional lifetime guarantee.

In truth and in fact respondents' BRONZINI Pearls are not unconditionally guaranteed in any manner.

Therefore, the statements and representations set forth above were, and are, false, misleading and deceptive.

PAR. 9. By the aforesaid acts and practices, respondents place in the hands of jobbers, retailers, and dealers, means and instrumentalities by and through which they may mislead the public as to the usual and regular price of said perfumes or other products, the composition of same, and the country or place of origin or manufacture of same, and by whom made, manufactured or compounded.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. 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.

PAR. 12. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Charles S. Cox supporting the complaint.

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

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

DECEMBER 10, 1965

This proceeding seeks to prevent respondents from conducting their perfume and jewelry business in a misleading manner. In addition to numerous minor contested factual matters, the principal questions are: when the term "perfume," may be used in labeling a scent; and, what parts, if any, may be base metal in an assembled piece of jewelry when its container is marked: "Sterling," "Gold Filled," or "14 Karat."

The Commission complaint dated April 30, 1965, initiated this proceeding. A prehearing conference was held June 11, 1965, and hearings commenced June 28, 1965, and were concluded on August 24, 1965.[1] Decision was reserved on respondents' motion to dismiss that was made at the conclusion of the case of counsel supporting the complaint (Tr. 1018–1021 *et seq.*).[2] The motion, as renewed at the conclusion of the hearings, is denied insofar as it seeks dismissal of the complaint in its entirety. We shall dispose of particular deficiencies, pointed out in respondents' motion, in ensuing Findings of Fact and Conclusions. However, we will consider first the issues presented prior to trial.

Issues Presented Prior to Trial

The complaint identifies the respondents (C. Par. 1); describes their business (C. Par. 2); alleges interstate commerce (C. Par. 3); and states that respondents use salesmen, advertising, etc., in selling their products (C. Par. 4).

The answer raised no issue on these allegations, hence such allegations will be incorporated in ensuing findings in the language of the complaint.

The complaint also stated that respondents were in competition with others (C. Par. 10). While this allegation was denied in the answer, it was admitted at the prehearing conference (Tr. 2–3) and will appear in terms in findings. Counsel for respondents indicated that he would offer no evidence to rebut the Commission's taking official notice that there is a preference for French perfumes (C. Par. 6; Tr. 12) or to contest the stated percentage requirements for "Sterling," "Gold Filled," and "14 Karat Gold" (see C. Par. 5(d) (e) and (f), and Tr. 4–5).

Specifically at issue is the balance of the complaint. Because of respondents' claim of fatal variance between the complaint and proof, we describe these charges in some detail.

The first charge (C. Par. 5) is that to induce the purchase of their products the respondents have used fictitious prices and

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[1] A total of twelve (12) days of hearings were held at: Dallas, Texas; Kansas City, Missouri; Providence, Rhode Island; New York, New York. Deviations from the rule regarding continuous hearings were approved by the Commission upon certificates of the hearing examiner issued on the facts as stated in motions of counsel supporting complaint; and on November 18, 1965, the Commission extended the time of the hearing examiner to file his initial decision until December 23, 1965.

[2] The following abbreviations will sometimes be used: Tr. = Transcript; C. = Complaint; A. = Answer; CX = Commission Exhibit; RX = Respondents' Exhibit; CF = Complaint Counsel's Proposed Findings; RF = Respondents' Proposed Findings; Panat for Respondents Panat Jewelry Co., Inc. Reference to particular citations are illustrative only. This decision has been made on the basis of the record as a whole including the demeanor of the witnesses.

have misrepresented: the material, the manufacturer, and the country of origin of their products "by the following methods and means." Then follow eight lettered subparagraphs. These deal respectively with: printing of "10.00" and "15.00" on cartons and advertisements that indicate fictitious prices (C. Par. 5(a)); using initial letters on perfume packages representing directly or by implication that the perfumes are the same as those sold by other manufacturers who use brand names having the same initial letters (C. Par. 5(b)); using the name "Jáq de Paris," the Eiffel Tower, and the French flag on perfumes, thereby falsely claiming French origin for their perfumes (C. Par. 5(c)); using the legend "Sterling" on boxes for costume jewelry, when the jewelry is not entirely 925/1000ths pure silver (C. Par. 5(d)); using the legend "Gold Filled" on boxes for costume jewelry, when the jewelry is not entirely 1/20th of its weight of 24 karat fineness of gold (C. Par. 5(e)); using the legend "14 Kt. Gold" on labels and boxes of costume jewelry where the jewelry is not entirely of 14 karat fineness (C. Par. 5(f)); using the term "Cultured Pearl" on tags and labels attached to costume jewelry when imitation pearls are used (C. Par. 5 (g)); using labels or tags marked "$24.95 plus tax" which indicate fictitious prices (C. Par. 5(h)).

The second charge is that respondents have falsely advertised and labeled as "perfume" certain products that did not contain 16 oz. of perfume oil per gallon of mixture (C. Par. 7).

The third charge is that respondents have represented certain of their products as unconditionally guaranteed, when such is not the fact (C. Par. 8).

The fourth charge is that respondents have placed in the hands of jobbers, dealers, and retailers means and instrumentalities of deception through the acts previously alleged (C. Par. 9).

The complaint concludes that these practices have had the tendency to mislead and to divert purchasers to respondents (C. Par. 11) and that they are prejudicial to the public and are in violation of Section 5 of the Federal Trade Commission Act.

Counsel supporting complaint at the prehearing conference, unsuccessfully sought to reduce factual proof by disclosure of his documents and physical exhibits and by requesting an admission by respondents that they issued or produced the documents and exhibits. Hence, a large portion of the hearings was devoted to more or less successful efforts linking the exhibits produced at the hearings with the respondents.

At the prehearing conference, counsel for respondents amended

his answer to plead that some of the alleged practices occurred a long time ago and have since been discontinued by respondents (Tr. 3–4; Prehearing Order No. 1 dated June 14, 1965). This raised an issue of fact and of law, which also required proof at the hearings.

Basis of Decision

This decision is based on all of the evidence produced at the trial—oral, written, and physical. Consideration has been given, among other things, to the demeanor of the witnesses produced before the hearing examiner in determining their credibility. The proposed findings and conclusions submitted, but not incorporated in this decision in whole or part in terms or in effect, are denied as immaterial, irrelevant, erroneous, or argumentative. The following findings of fact, conclusions, and order are hereby adopted:

FINDINGS OF FACT

Uncontested Findings

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 principal office and place of business located at 162 Fifth Avenue [2a] in the city of New York, State of New York (C. Par. 1, A.).

2. Respondent Nathan Jachter is an officer of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent (C. Par. 1, A.).

3. Respondent Nathan Jachter has registered the trade name "Jáq de Paris" under his own name at the same address. The name "Jáq de Paris" is used in connection with the sale of certain of respondents' products as hereinafter mentioned (C. Par. 1, A.).

4. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and costume jewelry for men and women to distributors, jobbers and retailers for resale to the public (C. Par. 2, A.).

5. 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 New York, or from such other State in which said prod-

[2a] Complaint amended by Order dated June 14, 1965, on consent of the parties to show correct address.

ucts are ultimately packaged, to purchasers thereof located in various other States of the United States and in the District of Columbia, and they 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 (C. Par. 3, A.).

6. Respondents sell their products through salesmen who call on the trade, through exhibits of their said products at various regional trade markets, through advertisements in newspapers, trade publications, other periodicals and circulars (C. Par. 4, A.).

7. There is a preference on the part of a substantial number of the purchasing public for perfumes manufactured in France, a fact of which the Commission takes official notice (C. Par. 6; Tr. 12).

8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents (C. Par. 10; Tr. 2–3).

Contested Findings

Respondents' Perfume Operations

9. From 1958 to 1959, the respondents rebottled and sold genuine perfumes in very small quantities, including Arpege, Chanel No. 5, White Shoulders, and My Sin (CX 147, 148; Tr. 1099).

10. Sometime during 1960 or 1961, the respondents went into the business of assembling and selling scents that were compounded to their order. Their business consisted of purchasing cartons, boxes, tubes, valves, and glass or metal containers, and engaging a "filler," Aero-Chem Fillers, Inc. Aero-Chem obtained the approval of the Alcohol Tax Unit, Internal Revenue Service, compounded the approved mixture and filled the containers with a mixture of perfume, oil and alcohol (Tr. 465–532; CX 107–118, 119–125). In some cases the "filler" completed the assembling by inserting the containers into boxes, which were then ready for shipment to wholesalers and retailers. In other cases the respondents completed the assembling and affixed labels or sleeves to the containers before boxing them (Tr. 626–632). Respondents made the shipments to distributors and retailers in both cases. In addition, respondents prepared advertisements for publication and display material, for use by retailers (CX 4, 51, 52, 55; Tr. 130–144).

Preticketing Perfumes

11. Respondents sold a "golden filigree" spray perfume. On the bottom of the carton in which this item was packaged appeared the number 15, followed by two small zeros (CX 49A, 103; Tr. 128–129, 632). Later runs of the carton left off the "15.00" (Tr. 129). Respondents also sold another spray perfume item on the carton of which appeared the number 10 followed by two small zeros (CX 50A, 69, 95A; Tr. 632, 633).

12. Respondents thereby represented that "15.00" and "10.00" are the dollar prices established in good faith as an honest estimate of the actual retail price and do not appreciably exceed the highest prices at which substantial sales of such products are, or have been, made at retail in respondents' trade area.

13. In retail operations in trade areas served by respondents, their spray perfume was advertised and sold at approximately $1 a bottle (CXs 70, 71 A and B, 75, 96, 97, 103, 104; Tr. 217, 226, 228, 332, 407, 421).

Using Initials of Well-Known Perfumes

14. In submitting respondents' labels to the Alcohol Tax Unit, Internal Revenue Service, Aero-Chem Fillers, Inc., in some instances, used the initials A, C, M, W, for labels. In other instances, the following names were used in connection with the initial letters: A, Appreciation; C, Chanteuse; M, Mystic Sands; W, White Sands (CX 109–118; Tr. 524). In distributing their product, respondents sometimes used the initial letters alone on the product and sometimes used the initial letters with the names just listed (RX 12 A, B, 13 A, B; CX 45, 46, 48, 56 A, 57 A, 59, 71, 95; Tr. 1096).

15. Irving Auerbach, a former salesman of respondents, testified that he represented to customers that the fragrance designated "A" was an imitation of the fragrance of Arpege; "C" an imitation of Chanel No. 5; "W" an imitation of White Shoulders, and, "M" an imitation of My Sin (Tr. 130–132). He denied that he told customers the perfumes were genuine perfumes which the scent imitated (*id.*). Respondent Jachter testified that he gave no instructions to salesmen concerning what the initials stood for; just told them it was a good product to go out and sell it (Jachter, Tr. 1124). The hearing examiner regards Jachter's testimony as incredible in this regard. Respondents' bookkeeper testified that she could not recall instructions given to salesmen by Jachter that the perfumes were to be sold as genuine