

Syllabus

IN THE MATTER OF

ALFRED W. WILSON, TRADING AS
A. W. WILSON CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4131. Complaint, May 8, 1940—Decision, Nov. 26, 1941*

Where an individual engaged in interstate sale and distribution of coin-operated vending machines and candy; by letters, circulars and other advertising material, advertisements in newspapers and other periodicals, and by oral statements of his agents and salesmen—

- (a) Represented that purchasers of such machines would be given exclusive rights to operate them within certain designated territories, that locations for the machines had been or would be, obtained by him prior to the time of delivery to the purchaser, that the machines would be personally installed at the designated locations by his salesmen or agents, and that the amount which purchasers would be required to pay for locations would not exceed certain designated amounts or commissions; the facts being he did not grant such rights, but frequently sold his machines to different purchasers for operation within the same territory and, in view of outright sales thereof, could not control or determine the territories in which the machines would be operated in the future, and he did not obtain locations or make installation, while the amounts his purchasers were required to pay for locations frequently exceeded those represented;
- (b) Represented that such machines would be delivered within a specified time, and that a certain quantity of candy to be dispensed by said machines, would be supplied free by him, when in fact he frequently failed to make delivery within time agreed upon and supplied to purchasers without charge the neither designated, nor any other, amount, of candy;
- (c) Represented that his business was nation-wide in scope, when in fact it was confined principally to States in the western portion of the United States; and
- (d) Represented that net profits of not less than \$30 per week were usually and customarily derived by purchasers, and that said machines would be repurchased by him at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal to their original price, when in fact purchasers had not been able to earn any amount approximating aforesaid figure, such profits were not possible under usual conditions, and he did not repurchase such machines at the end of 90 days' operation or any other time, even though they might have failed to earn any profit;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and of inducing it because of said belief, to purchase substantial quantities of his products:

Complaint

34 F. T. C.

Held, That such acts and practices under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Morton Nesmith for the Commission.

Mr. Donald Kolts, of Los Angeles, Calif., for respondent.

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 Alfred W. Wilson, individually, and trading as the A. W. Wilson Co., hereinafter referred to as respondent, has violated the provisions of the 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. The respondent, Alfred W. Wilson, is an individual, trading and doing business as A. W. Wilson Co., with his office and principal place of business at 11015 Blix Street, North Hollywood, Calif. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of coin-operated vending machines and candy in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes such vending machines and candy, when sold, to be transported from his principal place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his products, the respondent has made many false and misleading representations with respect to his vending machines and the profits to be derived from the operation thereof, such representations being made by means of letters, circulars, and other advertising material distributed among prospective purchasers, by advertisements inserted in newspapers and other periodicals, and by oral statements and representations made by respondent's agents and salesmen to prospective purchasers. Among and typical of such false and misleading representations are the following:

1. That the purchasers of such machines would be given exclusive rights to operate the machines within certain designated territories.

2. That locations for the machines had been obtained or would be obtained by respondent prior to the time of delivery of the machine to the purchaser.

3. That the machines would be personally installed at the designated locations by respondent's salesmen or agents.

4. That the amount which purchasers of the machines would be required to pay for locations would not exceed certain designated amounts or commission.

5. That said machines would be delivered within a specified time.

6. That a certain quantity of candy, to be dispensed by said machines, would be supplied free by the respondent prior to or at the time of delivery of said machines.

7. That respondent's business is Nation-wide in its scope;

8. That net profits of not less than \$30 per week were usually and the time of delivery of said machines.

9. That said machines would be repurchased by the respondent at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal in amount to the original price of the machine.

PAR. 3. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent does not grant exclusive territorial rights to the purchasers of his machines, but in many instances has sold his machines to different purchasers for operation within the same territory. Respondent does not obtain locations for the operation of his machines, nor does respondent install such machines for operation. The amounts which purchasers of the machines have been required to pay for locations have in many instances exceeded the amounts or commissions represented by the respondent and his agents. In many instances the respondent has failed to make delivery of the machines within the time agreed upon by the purchaser and the respondent or his representatives.

The respondent has not supplied to the purchasers without charge the designated amount of candy or any other amount of candy. Respondent's business is not Nation-wide in its scope, but is confined principally to States in the western portion of the United States. The purchasers of respondent's machines have not been able, through the operation of such machines, to earn \$30 per week or any amount approximating such figure, nor are such profits possible under the usual and normal conditions under which such machines are customarily operated. The respondent does not repurchase such machines from the original purchasers at the end of ninety days' operation or at any other time, even though the machines may have failed to earn any profit for the purchaser.

Findings

, 34 F. T. C.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his products has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 8, 1940, issued, and on July 27, 1940, served, its complaint in this proceeding upon respondent Alfred W. Wilson, individually and trading as A. W. Wilson Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Alfred W. Wilson, is an individual, trading and doing business as A. W. Wilson Co., with his office and principal place of business at 11015 Blix Street, North Hollywood, Calif. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of coin-operated vending machines and candy in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes such vending machines and candy, when sold, to

be transported from his principal place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his products, the respondent has made many false and misleading representations with respect to his vending machines and the profits to be derived from the operation thereof, such representations being made by means of letters, circulars, and other advertising material distributed among prospective purchasers, by advertisements inserted in newspapers and other periodicals, and by oral statements and representations made by respondent's agents and salesmen to prospective purchasers. Among and typical of such false and misleading representations are the following:

1. That the purchasers of such machines would be given exclusive rights to operate the machines within certain designated territories.

2. That locations for the machines had been obtained, or would be obtained, by respondent prior to the time of delivery of the machine to the purchaser.

3. That the machines would be personally installed at the designated locations by respondent's salesmen or agents.

4. That the amount which purchasers of the machines would be required to pay for locations would not exceed certain designated amounts or commissions.

5. That said machines would be delivered within a specified time.

6. That a certain quantity of candy, to be dispensed by said machines, would be supplied free by the respondent prior to or at the time of delivery of said machines.

7. That respondent's business is Nation-wide in its scope.

8. That net profits of not less than \$30 per week were usually and customarily derived by purchasers.

9. That said machines would be repurchased by the respondent at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal in amount to the original price of the machine.

PAR. 3. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent does not grant exclusive territorial rights to the purchasers of his machines, but in many instances has sold his machines to different purchasers for opera-

tion within the same territory. Inasmuch as respondent has made, and makes, outright sales of the vending machines, the Commission concludes that it is impossible for him to control or determine the territories in which they will be operated in the future. Respondent does not obtain locations for the operation of his machines, nor does respondent install such machines for operation. The amounts which purchasers of the machines have been required to pay for locations have in many instances exceeded the amounts or commissions represented by the respondent and his agents. In many instances the respondent has failed to make delivery of the machines within the time agreed upon by the purchaser and the respondent or his representatives.

The respondent has not supplied to the purchasers without charge the designated amount of candy or any other amount of candy. Respondent's business is not Nation-wide in its scope, but is confined principally to States in the western portion of the United States. The purchasers of respondent's machines have not been able, through the operation of such machines, to earn \$30 per week, or any amount approximating such figure, nor are such profits possible under the usual and normal conditions under which such machines are customarily operated. The respondent does not repurchase such machines from the original purchasers at the end of 90 days' operation, or at any other time, even though the machines may have failed to earn any profit for the purchaser.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his products has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all of the material allega-

tions of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Alfred W. Wilson, individually and trading as A. W. Wilson Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of coin-operated vending machines and candies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That respondent grants to any purchaser an exclusive territory for the operation of vending machines purchased from him.

2. That locations for said vending machines have been obtained, or will be obtained, by respondent prior to delivery of said vending machines to the purchaser, unless said locations actually are obtained.

3. That said vending machines will be installed at designated locations by respondent's salesmen or agents, unless respondent or his agents actually effect such installation.

4. That the amount purchasers of vending machines will be required to pay for locations for such machines is less than is the fact.

5. That said vending machines will be delivered within a specified time, when such is not the fact.

6. That any candy to be dispensed by vending machines purchased from respondent will be furnished.

7. That respondent's business is Nation-wide, or that it is greater in scope or size than is the fact.

8. That each vending machine usually and customarily provides a net profit of not less than \$30 per week, or provides a net profit of any other amount in excess of the average, usual, and customary sum or amount actually earned under normal conditions in due course of business.

9. That respondent will, under any stated conditions, repurchase vending machines sold by him unless he does actually repurchase such machines in accordance with the representations made.

It is further ordered, That respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

34 F. T. C.

IN THE MATTER OF

LUCIAN V. SEGAL, TRADING AS SEGAL OPTICAL
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4181. Complaint, July 11, 1940—Decision, Nov. 26, 1941*

Where an individual engaged in the manufacture or assembly and interstate sale and distribution to wholesalers and large retailers such as chain stores, of "ready-to-wear" reading and sun glasses, which retailed at from 25 cents to \$1 a pair for the former and from 10 to 50 cents for the latter; purchasing the frames or parts from domestic manufacturers and importing from Japan 75 percent of the lenses and substantially all of the glasses, which, on importation, were completed products requiring only certain cutting and fitting operations by him, and original labels on each of which, bearing legend "Japan" or "Made in Japan" or other words showing country of origin, were removed either in processing or in final handling before packaging—

Offered and sold his said glasses with no marking thereon, as associated by a substantial portion of the purchasing public with imported articles, to indicate that lenses or glasses involved were imported from Japan or any foreign country;

With tendency and capacity to mislead and deceive purchasers and members of the purchasing public into the false belief that said glasses and all their parts were of domestic manufacture and origin, preferred by members of the purchasing public over products of Japanese or other foreign source, and into purchase thereof in reliance upon such belief, and with result of thereby placing in hands of resellers of his said products means by which to mislead and deceive members of the purchasing public into such belief:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission..

Mr. James W. Bevans, of New York City, for respondent.

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 Lucian V. Segal, an individual trading as Segal Optical Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof