

Order

IN THE MATTER OF

BLUE RIBBON HATCHERIES CORPORATION TRADING AS
BOCKENSTETTE'S BLUE RIBBON FARMS

MODIFIED CEASE AND DESIST ORDER

Docket 4537. Order, March 27, 1946

Modified order in proceeding in question—in which original order issued on May 11, 1942, 34 F. T. C. 1193—*making the prohibitions of said order* requiring respondents, in connection with offering of chicks or chickens, to cease representing that they are R. O. P. poultry breeders or that they operate a poultry plant under the supervision of an official from the agency supervising U. S. Record of Performance Work, etc., as below set forth, subject to the provision that the order shall not be construed as prohibiting representations that respondents' baby chicks are R. O. P. sired when such chicks have actually been sired by males officially banded with U. S. R. O. P. sealed and numbered official leg bands and duly registered as such; or representations that the flocks supplying the eggs from which the baby chicks are hatched are headed by R. O. P. males when such flocks are segregated and headed by officially banded R. O. P. males: *Provided, however*, That such representations are not so made as to represent directly or by implication that the baby chicks so offered for sale are U. S. R. O. P. chicks, or that the respondents are participants in the National Poultry Improvement Plan.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Wheeler, Brewster, Hunt & Goodell, of Topeka, Kans., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on May 11, 1942, the Commission made its findings as to the facts herein and concluded therefrom that the substituted respondents J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, had violated the provisions of the Federal Trade Commission Act, and on May 11, 1942, issued and subsequently served its order to cease and desist upon said substituted respondents, J. A. Bockenstette and Rose M. Bockenstette.

Thereafter, on July 10, 1942, respondents filed their petition to review and set aside the order to cease and desist in the United States Court of Appeals for the Tenth Circuit. On March 30, 1943, said court entered its final decree affirming and enforcing the said order to cease and desist.

Thereafter, on October 25, 1945, the Commission and respondents filed with said court a joint motion to modify said decree in certain particulars. On November 7, 1945, the court entered its decree granting said motion and commanding respondents to comply with said modified decree.

The time within which a petition for a writ of certiorari might have been filed in the Supreme Court of the United States by the respondents having expired on February 7, 1946, without such petition having been filed, the said court's decree of November 7, 1945, thereupon became final on February 7, 1946.

In conformity with such final decree of the United States Circuit Court of Appeals for the Tenth Circuit dated November 7, 1945, and pursuant to the provisions of the Federal Trade Commission Act, the Commission hereby issues this, its modified order to cease and desist.

It is ordered, That the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, or trading under any other name or designation, their representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of chicks or chickens, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement, by means of the United States mails, or by any other means, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication—

(a) That respondents are R. O. P. poultry breeders, or that they operate a poultry plant under the supervision of an official from the agency supervising U. S. Record of Performance work;

(b) That the average egg production of hens grown from chicks sold by respondents exceeds the average egg production from an equal number of hens generally, by 94 eggs each, per annum, or by any other appreciable amount;

(c) That hens in respondents' flocks lay an egg daily;

(d) That purchasers of respondents' products are enabled to produce eggs at from one-third to one-half the cost of producing them with birds of ordinary breeding;

(e) That respondents protect purchasers of their chicks against losses, up to 4 weeks.

2. Disseminating or causing to be disseminated any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, of respondents' product, which advertisement contains any of the representations prohibited in paragraph (1) hereof.

It is further ordered, That this order shall not be construed as prohibiting representations that respondents' baby chicks are R. O. P. sired when such chicks have actually been sired by males which have been officially banded with U. S. R. O. P. sealed and numbered official leg bands and duly registered as such; or representations that the flocks supplying the eggs from which the baby chicks are hatched are headed by R. O. P. males when the flocks concerning which such representations are made are segregated and headed by such officially banded R. O. P. males: *Provided, however*, That such representations are not made in such a manner as to represent directly, or by implication, that the baby chicks so offered for sale are U. S. R. O. P. chicks, or that the respondents are participants in the National Poultry Improvement Plan.

It is further ordered, That the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, shall, within 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

LEWIS & CONGER, AND CONRAD W. WOEHLER, TRADING
AS C. W. PRODUCTS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5191. Complaint, July 17, 1944—Decision, Apr. 2, 1946

Where a corporation which operated a retail store specializing in house furnishings, including an item designated as "foxhole pillow," and an individual engaged in sale at wholesale to retailer customers of said article manufactured of materials furnished by him—

- (a) Represented through statements in advertisements in circulars, radio continuities and other advertising media, including pictorial representations—directed to relatives and friends of the men in the armed forces—that said pillows might be easily and satisfactorily carried beneath the webbing of a military helmet without coming in contact with the head or affecting the circulation of air;

The facts being that, after being so placed, said pillow would rest upon the head and cause the helmet to be so elevated as to fail to give the important and planned protection to the neck of the wearer, and its bulk would completely fill the space in the top of the helmet above the webbing and interfere with the circulation of air; and

- (b) Represented, as aforesaid, that their "foxhole pillows" were suitable for use by soldiers to rest their heads in foxholes when engaged in active combat; The facts being that Army regulations require that the steel helmet be worn day and night in active combat and in foxholes so that, due to such requirement and to the formation of the foxhole, the pillow could serve no useful purpose as a headrest and could not be used for the comfort of the soldier in combat; and,

- (c) Represented deceptively and misleadingly, through designation "foxhole pillow," that their product was suitable for use by soldiers engaged in active combat in foxholes;

With effect of misleading and deceiving a substantial portion of the purchasing public and of causing members thereof, concerned for the comfort of relatives and friends in the armed services and in an effort to lighten the burden of men engaged in combat, to buy substantial quantities of their said "foxhole pillows" in the erroneous belief that they were satisfactory for use as represented by them:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Pencke for the Commission.

Haggerty, Myles & Wormser, of New York City, for Lewis & Conger, and along with *Mr. F. A. McKenzie*, of New York City, for Conrad W. Woehler.