

Order

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IN THE MATTER OF
SIDNEY LENET DOING BUSINESS AS M & M SPRING
COMPANY

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6029. Complaint, Aug. 14, 1952—Decision, Sept. 1, 1953

Where an individual engaged in the interstate sale and distribution to dealers, for resale, of automobile springs which were composed of some new and some old and previously used parts, and which had the appearance of having been made entirely from new and previously unused parts through the addition of new metal covers, in competition with concerns engaged in manufacturing and selling entirely new springs—

- (a) Offered and sold its said springs to dealers with no label, marking, or designation stamped thereon or attached thereto to indicate to the purchasing public or to dealers that said springs, which were resold to said public with no such disclosure, were made or assembled as aforesaid; and
- (b) In some instances sold to dealers as and for new springs, assembled and made entirely from new and previously unused parts, his said product:

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

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Halfpenny, Hahn & Cassedy, of Washington, D. C., for respondent.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 6029, September 1, 1953, follows:

This matter came on to be heard by the Commission upon respondent's appeal from the initial decision of the hearing examiner and upon briefs in support of and in opposition to said appeal, oral argument not having been requested.

In support of his appeal respondent contends that (1) the admissions contained in his answer to the complaint were made on the condition that no order would be issued herein by the Commission until final decision in another matter, Docket No. 5964, in which matter, at the time of the filing of the appeal herein, the Commission's decision was on appeal and was not final, (2) the Commission does not have the power to require respondent to affirmatively disclose that his automobile springs contain used parts, and (3) the order is unrea-

sonable in that it goes further than is necessary to correct the complained of unfair practice.

The entire record herein consists of the complaint and an answer by respondent admitting all of the allegations of the complaint except that respondent states that he went out of business for himself approximately 2 months prior to the issuance of the complaint and since that date has been engaged in the sale of automobile springs as a salesman for the Lenco Spring Company. This admission answer was filed on the condition that the Commission and the hearing examiner would not issue an order herein until final decision has been reached in the matter of Maurice J. Lenett and Leonard Stolzberg, individuals doing business as Lenco Spring Company, Docket No. 5964. This condition was expressly waived as to the filing of the hearing examiner's initial decision. At the time the appeal brief was filed herein, the Lenco Spring Company matter was before the United States Court for the District of Columbia Circuit for review of the Commission's decision. Said appeal was dismissed by the court on June 2, 1953, upon a stipulation of counsel. The Commission's decision therein is now final. Therefore, the condition contained in said answer has been met and the basis for respondent's said objection to the entry of a decision herein has been removed.

By his admission answer respondent admits that his automobile springs, which are made in part of previously used materials, are assembled in such a manner as to have an appearance of being made entirely of new parts, that they are sold in commerce to dealers and are resold by them to the consuming public without any marking or label to indicate they are made in part of previously used parts, that they are accepted by the purchasing public as made of new parts, and that by their sale without markings disclosing they are made of used parts respondent has placed in the hands of dealers instrumentalities which have the tendency and capacity to deceive a substantial portion of the purchasing public into the belief that respondent's automobile springs were made of new parts and to induce them to buy his springs rather than competitors as a direct result of this erroneous belief.

Upon this record it is clear that the provisions of the hearing examiner's order requiring respondent to clearly and conspicuously disclose the fact said automobile springs are made of previously used parts, not only on the containers in which they are sold but also by a permanent stamp on each spring, are required to remove the illegal deception created by respondent's practice of assembling its springs in such a manner as to resemble springs made entirely of new parts, and not disclosing their true construction. Such a requirement for affirmative disclosure by permanent markings when necessary to pre-

vent deception of the purchasing public is clearly within the power of the Commission.

The Commission, therefore, being of the opinion that respondent's grounds for appeal are of no merit and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That respondent's appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall, on the 1st day of September 1953, become the decision of the Commission.

It is further ordered, That respondent Sidney Lenet, an individual, shall, within sixty (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 the order to cease and desist contained in said initial decision * * *.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 14, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Sidney Lenet, an individual doing business as M & M Spring Company, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint, and on the 16th day of September 1952, respondent filed an admission answer by the terms of which he waived hearing on the allegations of fact set forth in the complaint, does not contest the facts as charged and specifically admits all of the material allegations of fact as set forth in the complaint to be true as charged except that respondent is not now engaged in the business activities described in the complaint, he having abandoned such on the 15th day of June 1952.

Thereafter the proceeding regularly came on for final consideration by said Hearing Examiner on the complaint and answer, proposed findings as to the facts and conclusion not having been requested nor filed; and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

Findings

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Sidney Lenet is an individual doing business as the M & M Spring Company with his office at 3842 Cambridge Street and shop at 884 North Budd Street, Philadelphia, Pennsylvania.

PAR. 2. Respondent for more than 1 year prior to June 15, 1952, engaged in the business of selling automobile springs, composed of some new and some old and previously used parts, to dealers located in various parts of the United States who purchase for resale; that prior to June 15, 1952, respondent was engaged on his own account in the aforesaid business since which time he has abandoned same and is presently an employee of another who is engaged in the same line of endeavor.

PAR. 3. In the course and conduct of his business as aforesaid, respondent caused his said automobile springs, when sold by him, to be transported from his place of business in the State of Pennsylvania to purchasers located in States other than the State of Pennsylvania and in the District of Columbia.

Respondent at all times mentioned herein maintained a course of trade in said automobile springs in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business of respondent in said commerce is and has been substantial.

PAR. 4. In the course and conduct of his business the respondent bought automobile springs composed of some new and some old and previously used parts to which he added new metal covers in a manner which gave to such springs the appearance of having been assembled or manufactured entirely from new and previously unused parts.

PAR. 5. Respondent sold his automobile springs, as above described, to dealers who purchased for resale to the purchasing public, without any label, marking, or designation stamped thereon or otherwise attached thereto, to indicate to the purchasing public or to the dealers that said automobile springs were assembled in part from old and previously used parts, and such automobile springs were resold to the consuming public without any disclosure that they were assembled in part from old parts that have been previously used.

In some instances respondent sold such automobile springs to dealers as and for new automobile springs assembled or manufactured entirely from new and previously unused parts.

PAR. 6. When articles which are assembled or manufactured in whole or in part from previously used materials in such a manner that they have the appearance of being assembled or manufactured from new and previously unused materials, are offered to the pur-

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chasing public, and such articles are not clearly and conspicuously marked or labeled as having been assembled or manufactured from previously used materials, they are readily accepted by members of the purchasing public as having been assembled or manufactured entirely from new and previously unused materials.

PAR. 7. In the course and conduct of his business the respondent was at all times mentioned herein in substantial competition with individuals, corporations and firms engaged in the business of manufacturing and selling automobile springs manufactured entirely from new and previously unused parts in commerce among and between the various States of the United States.

PAR. 8. By the aforesaid acts and practices, the respondent placed in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they were purchasing automobile springs manufactured entirely from new and previously unused parts, when in fact said springs were composed in part of old and previously used parts.

PAR. 9. The failure of the respondent to mark his said springs showing that they contained old and previously used parts had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the automobile springs sold by him were new springs assembled or manufactured entirely from new and previously unused parts, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's automobile springs because of such erroneous and mistaken belief. As a direct result of the respondent's practices, as aforesaid, substantial trade in commerce has been diverted to the respondent from his said competitors and injury has been done to competition in commerce between and among the various States of the United States and the District of Columbia.

CONCLUSION

The acts and practices of the respondent, as herein found, were all to the prejudice and injury of the public and of the competitors of the respondent, and constituted unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Sidney Lenet, individually and doing business as the M & M Spring Company or doing business under

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any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of automobile springs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or delivering to others for sale to the public any automobile spring which is composed in whole or in part of previously used parts unless a disclosure that said automobile spring is composed, in whole or in part as the case may be of previously used parts, is permanently stamped or fixed on each said automobile spring in a clear and conspicuous manner and in such location as to be clearly legible to the purchaser thereof, and unless there is plainly printed or marked on the box, carton, wrapper, or other container in which such automobile spring is sold or offered for sale, a notice that said automobile spring is composed, in whole or in part as the case may be, of previously used parts.

2. Representing, by failure to reveal or otherwise, that an automobile spring composed in whole or in part of previously used parts is composed entirely of new and previously unused parts.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That respondent Sidney Lenet, an individual, shall, within sixty (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 the order to cease and desist * * * [as required by aforesaid order and decision of the Commission].

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IN THE MATTER OF
THE KROGER CO.

Docket 5991. Complaint, May 14, 1952. Decision, Sept. 8, 1953

Charge: Knowingly receiving lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward S. Ragsdale, Mr. Rice E. Schrimsher and *Mr. Brockman Horne* for the Commission.

Arnold, Fortas & Porter, of Washington, D. C., for respondent.

DECISION OF THE COMMISSION

This matter coming on to be heard by the Commission upon its review of the hearing examiner's initial decision herein; and

The Commission having duly considered the entire record and being of the opinion that, although the hearing examiner in his initial decision did not accurately construe the admissions made by counsel supporting the complaint in their answer to respondent's motion to dismiss, the conclusion reached by him is correct, and that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the attached initial decision of the hearing examiner shall, on the 8th day of September, 1953, become the decision of the Commission.

Commissioner Howrey not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

The Federal Trade Commission on the 14th day of May 1952 issued its complaint in this proceeding charging respondent, The Kroger Co., with having violated the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., Title 15, Sec. 13). Service being made, respondent answered and the case was, by order of the Commission, assigned to the undersigned duly appointed Hearing Examiner.

Respondent is engaged in the retail grocery business and maintains a large number of retail stores located in 19 States through which it