

Order

IN THE MATTER OF

VCA LABORATORIES, ET AL.

Docket 6071. Complaint, Dec. 12, 1952. Order, June 16, 1954

Charge: Advertising falsely as to ailments and symptoms, results of product, free goods, etc. in sale of "Rybutol" food and drug preparation.

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

Mr. Jesse D. Kash for the Commission.

Mr. Richard A. Mahar, of Washington, D. C., and *Rogers, Hoge & Hills*, of New York City, for respondents.

ORDER CLOSING CASE WITHOUT PREJUDICE

This matter has been certified to the Commission by the hearing examiner for consideration of a proposed stipulation and agreement to cease and desist of respondent VCA Laboratories offered in settlement of this proceeding.

Counsel supporting the complaint does not oppose this proposal stating that he believes the acceptance of the proposed stipulation would constitute an adequate settlement of the matter and that such a settlement would result in a great saving of time and expense.

The Commission having considered the proposed settlement and being of the opinion that its acceptance would result in the elimination of the complained of practices, and that, therefore, further proceedings herein are unnecessary:

It is ordered, That the proposed stipulation and agreement to cease and desist submitted by respondent VCA Laboratories be, and it hereby is, accepted.

It is further ordered, That the case growing out of the complaint herein, be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF
THE NIK-O-LOK COMPANY ET AL.

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

Docket 6124. Complaint, Oct. 5, 1953—Decision, June 18, 1954

Where five corporations, including two wholly owned subsidiaries, which were engaged in the production of coin toilet locks, and in the leasing, installation, and maintenance thereof in comfort stations and public restrooms, in hotels, railroad stations, bus stations, airport stations, and other public buildings; occupied a substantial and dominant position in the business of leasing such locks; were the sole members of an unincorporated association; and were in competition except as competition had been restricted as below set forth—

With intent and effect of restricting and injuring competition in commerce in the manufacture and production of said locks and in the leasing and maintenance thereof, and as part and parcel of a combination, conspiracy, cooperation, and planned common course of action; acting individually and through and by means of their said association—

- (a) Fixed prices and terms and conditions for the leasing, installation, and maintenance of their respective locks; refused to quote prices or other terms in the leasing of said locks where a member of their association had installations; and arranged and agreed as to the portion of the proceeds from the installation of said locks to be allocated between them and their said customers;
- (b) Engaged in collusive bidding; arranged for one respondent to receive a share or portion of the income which another respondent received from its installation; abstained from soliciting each other's customers and from the removal of each other's locks at the solicitation of lessees, except in accordance with previous understanding and agreement, and otherwise refused to compete with each other in leasing or maintaining said locks; and exchanged from time to time the locations of the installation of their locks as a means or method of assuring that there would be no competition between themselves;
- (c) Allocated customers among themselves; united their facilities, acting under and through the association, to eliminate competitors, and to prevent others from engaging therein; and agreed to and did refuse to sell, or otherwise supply their respective locks to others desiring to purchase the same, and agreed to and did prevent such others from securing sources of supply; and
- (d) Punished and penalized for violations of rules and practices established by respondents, through and by means of the association; arranged for each of respondents, as members of the association, to be kept fully informed as to the activities, rules, and practices of the association as a means and method whereby respondents effectuated the aforesaid acts and practices; and employed the association as an instrumentality and means of carrying out and making effective the aforesaid combination, conspiracy, cooperation, and planned common course of action:

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Held, That such acts and practices were all to the prejudice of their competitors and to the public; had a dangerous tendency to hinder and prevent competition and to create in respondents a monopoly in such business; and constituted unfair acts and practices and unfair methods of competition in commerce.

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

Mr. George W. Williams for the Commission.

Mantel & Doyle, of Indianapolis, Ind., for Nik-O-Lok Co. and Pacific Nik-O-Lok Co., Inc.

Mr. Lee Hervey and *Mr. Nelson C. Doland*, of Boonton, N. J., for General Service Co., Inc., and General Service Coin Lock Co., Inc.

Sherpick, Gilbert, Regan & Davis, of New York City, for American Coin Lock Co., Inc.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated June 18, 1954, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

STATEMENT OF THE CASE

The Federal Trade Commission on October 5, 1953, issued a complaint charging respondents, The Nik-O-Lok Company, a corporation; Pacific Nik-O-Lok Company, Inc., a corporation; General Service Company, Inc., a corporation; General Service Coin Lock Company, Inc., a corporation; and American Coin Lock Company, Inc., a corporation, with having violated the Federal Trade Commission Act by the use of unfair acts and practices and unfair methods of competition and by conspiring in divers particulars to hinder and restrict competition in the manufacture, production, leasing and maintenance of coin operated toilet door locks.

Thereafter respondents filed their respective answers by which they severally admitted all of the material allegations of the complaint and waived all intervening procedure and further hearing as to said facts.

Thereafter the proceeding regularly came on for final consideration by the above-named Hearing Examiner upon the complaint and answers thereto and said Hearing Examiner, having duly considered the record herein finds that this proceeding is in the interest of the public

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and makes the following findings as to the fact, conclusion drawn therefrom, and order.

FINDINGS OF FACT

I. *The Respondents*

(a) Respondent, The Nik-O-Lok Company, is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business in the Terminal Building, 110 North Illinois Street, Indianapolis, Indiana.

(b) Respondent, Pacific Nik-O-Lok Company, Inc., is a wholly owned subsidiary of respondent, The Nik-O-Lok Company, organized and doing business under the laws of the State of California, with its principal office and place of business in the Pacific Electric Building, 610 S. Main Street, Los Angeles, California.

(c) Respondent, General Service Company, Inc., is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at 518 Main Street, Boonton, New Jersey.

(d) Respondent, General Service Coin Lock Company, Inc., is a wholly owned subsidiary of General Service Company, Inc., organized and doing business under the laws of the State of Maryland, with its principal office and place of business at 518 Main Street, Boonton, New Jersey.

(e) Respondent, American Coin Lock Company, Inc., is a corporation organized and doing business under the laws of the State of Maine, with its principal office and place of business at 453 Cottage Street, Pawtucket, Rhode Island.

II. *Business Engaged In*

Respondent companies are now, and have been, during the time hereinafter mentioned, engaged in the production, either through manufacture or otherwise, of coin toilet locks, and in the leasing, installation and maintenance of said locks, which locks are placed either on the doors leading to comfort stations or on the doors leading to the toilet stalls in public restrooms located in hotels, railroad stations, bus stations, airport stations and other public buildings.

III. *Interstate Commerce*

Respondents are now and have been for more than five years last past, in the course of their aforesaid businesses, shipping or causing to be shipped said locks, in commerce, among or between the various

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States of the United States and the District of Columbia, and during all of said time have carried on a constant course of trade and commerce therein.

IV. The Coin Lock Industry

The coin lock industry consists of two distinct groups, namely, the "bought" lock manufacturers and the "lease" lock manufacturers. The former sell the coin locks outright, either to the owner or operator of public restrooms or to companies which are engaged in the business of leasing locks. The latter manufacturers rent their locks to the owners or operators of public restrooms and the income derived from such leasing is divided between the lessee and lessor according to the terms of the lease agreement. The respondents lease, and do not sell, said locks. There are but a few companies engaged solely in the business of selling locks outright. However, there are numerous companies who purchase such locks and who in turn lease them to owners or operators of public restrooms.

V. Respondents' Position in the Industry

Respondents occupy a substantial and dominant position in the business of leasing said locks and as such are able to and have, by combining and conspiring with each other, accomplished and are still accomplishing the illegal acts, practices and effects hereinafter set forth.

VI. Use of the Coin Lock Manufacturers Association as a Means of Carrying out the Acts and Practices Charged

Respondents are the sole members of an unincorporated association known as the Coin Lock Manufacturers Association, hereinafter referred to as the "Association." Said Association does not have permanent offices nor a permanent place of business, but representatives of respondents meet as such an association several times a year. At such meetings they discuss their mutual problems. Said Association acts and has acted as a means and method whereby the respondents have carried on the acts and practices hereinafter set forth.

VII. In Competition with Others

The respondents are now and have been for more than five years last past, engaged in competition in leasing, installing and maintaining said locks, with one another and with others who are engaged in one or more of such activities in commerce, as "commerce" is defined in the

Federal Trade Commission Act, except as such competition has been, and is now restricted, hindered, lessened or restrained by the acts and practices of the respondents, as hereinafter described.

VIII. *Specific Violations*

For more than five years last past, and continuing to the present time, the respondents, acting individually and through and by means of the aforesaid Association, for the purpose and with the effect of restricting and hindering competition in commerce, in the manufacture and production of coin toilet locks, and in the leasing and maintenance of same, have, through combination, conspiracy, cooperation and planned common course of action, and as part and parcel thereof, done and performed, and are still doing and performing, the following acts and practices:

1. Fixed prices and the terms and conditions for the leasing, installation and maintenance of their respective locks.
2. Refused to quote prices or other terms in the leasing of said locks where a member of respondent Association has installations.
3. Arranged and agreed as to the portions of the proceeds from the installation of said locks to be allocated to themselves and to their customers.
4. Engaged in collusive bidding.
5. Arranged for one respondent to receive a share or portion of the income which another respondent received from its installation.
6. Abstained from soliciting each other's customers and from the removal of each other's locks at the solicitation of lessees, except in accordance with previous understanding and agreement, and otherwise refused to compete with each other in leasing or maintaining said locks.
7. Exchanged from time to time the locations of the installation of their locks as a means or method of assuring that there would be no competition between themselves.
8. Allocated customers among themselves.
9. United their facilities, acting under and through the Association, to eliminate competitors, and to prevent others from engaging therein.
10. Agreed to refuse, and have refused to sell, or otherwise supply their respective locks to others desiring to purchase the same, and have agreed to prevent, and have prevented such others from securing sources of supply.
11. Punished and penalized for violations of rules and practices established by respondents, through and by means of the Association.
12. Arranged for each of respondents, as members of the Association, to be kept fully informed as to the activities, rules and practices

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of the Association as a means and method whereby respondents effectuated the aforesaid acts and practices.

13. Employed the Association as an instrumentality and means of carrying out and making effective the aforesaid combination, conspiracy, cooperative and planned common course of action.

IX. *Stipulation Affecting Respondent American Coin Lock Company Respecting Use and Payment for "Sterileseats".*

Respondent, American Coin Lock Company, Inc., as set forth in a stipulation between counsel and appearing of record herein, not only is engaged in the activities hereinabove set forth, but is also engaged in the installation of "Sterileseats," a toilet seat which, under agreement with location owners, this respondent places in toilet cubicles, rest rooms and the like. All such places where "Sterileseats" are installed are serviced with coin lock devices hereinabove referred to, and there is no practical method by which collections may be effected for use of the seats aside from a portion or percentage of the "take" from the use of such coin locks attached to the outside door of each compartment. Therefore, a provision in this behalf, saving to this respondent the privilege of securing payment for their "Sterileseats" will be incorporated in the order to follow, which proviso will not, however, affect the obligation of said respondent to fully observe and comply with the terms of said order as to all of the remaining provisions thereof.

CONCLUSIONS

The acts and practices hereinabove found are all to the prejudice of competitors of respondents and to the public, have a dangerous tendency to hinder and prevent competition in the sale, distribution, leasing, installation and maintenance of coin toilet locks in "commerce," within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to create in respondents a monopoly in the sale, distribution, leasing, installation and maintenance of coin toilet locks in said commerce, and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

ORDER

It is ordered, That the respondents, the Nik-O-Lok Company, Pacific Nik-O-Lok Company, Inc., General Service Company, Inc., General Service Coin Lock Company, Inc., and American Coin Lock Company, Inc., their officers, directors, agents and employees, directly

or indirectly, in or in connection with, the selling, leasing, installing or maintaining, in commerce, between and among the several states of the United States, and the District of Columbia, coin toilet locks, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing in any combination, conspiracy, agreement, understanding, or planned common course of action between any two or more of said respondents, or between one or more of said respondents and any person or persons so engaged in any line of commerce as to ordinarily compete with any of said respondents, to do or perform any of the following acts or things, namely:

1. Fixing the prices, terms or conditions for leasing, installing and maintaining of their respective locks.

2. Refusing to quote prices or other terms in the leasing of said locks where a member of the Association has installations.

3. Entering into or carrying out any arrangement as to, or pertaining to, the portion of the proceeds from the installation of said locks to be allocated to the lessees or customers thereof.

4. Engaging in collusive bidding.

5. Entering into any arrangement whereby one manufacturer or lessor of said machines is to receive any portion or share of the income which another manufacturer or lessor receives from the installation of its machines.

6. Abstaining from soliciting each other's customers, and from displacing each other's installations at the solicitation of lessees except in accordance with the agreement or understanding between them.

7. Exchanging with each other locations of their installations.

8. Allocating customers.

9. Uniting their facilities or acting, by or through the Association, or by any other means or method, for the purpose, or with the effect of, eliminating competitors or of preventing or attempting to prevent new competition.

10. Agreeing to refuse, or refusing, to sell or otherwise supply their said locks to others desiring to purchase the same.

11. Agreeing to prevent or preventing others from securing said locks from any sources of supply other than the respondents.

12. Punishing or penalizing, by any means or methods, for any violation of any rules or practices established or promulgated by the Association, or any similar Association to which the respondents belong or are affiliated.

13. Keeping each other informed as to the activities, rules, or practices of the Association, or any similar group or association to which the respondents belong, or to which they are affiliated, for the purpose of effectuating, or attempting to effectuate, any of the prohibitions or injunctions contained in this order.

14. Using or employing the Association, or any other association or group to which the respondents belong, or with which they are affiliated, or through any other means or method, for the purpose or with the effect of carrying out or attempting to carry out any of the prohibitions or injunctions of this order.

Provided, however, That nothing contained in subparagraphs 3 and 5 of this order shall be construed to prohibit any lawful license arrangement or lawful lease arrangement by respondent American Coin Lock Company, Inc., whereby the use of Sterileseats are licensed or leased in return for a percentage or share of the income received by another from the installation of locks.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of June 18, 1954].

IN THE MATTER OF

LAMAR J. GORE DOING BUSINESS AS LAMARR
PORTRAIT COMPANY

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

Docket 6169. Complaint, Feb. 10, 1954—Decision, June 20, 1954

Where an individual engaged in the interstate sale and distribution of photographic enlargements and frames therefor through field representatives whom he supplied with sample enlargement, frames, and other supplies, including suggested sales talks, and who solicited prospective purchasers under a practice in accordance with which the first representative advised the purchaser of an enlargement that another would call upon him at a later date, show proofs, and exhibit suitable frames but with no obligation to purchase, and collected at that time all or a part of the purchase price of the enlargement—

- (a) Falsely represented, in soliciting for the sale of said enlargements, that the product would be finished or painted by hand in oil by some famous named artist, would be equal in appearance, quality, and workmanship to the samples exhibited, and that the price of \$5.95 or \$9.90 charged therefor was a special and reduced price;
- (b) Neglected to advise the purchaser of the enlargement, at the time of purchase, that the finished product would be of a special shape requiring a special frame which the representative stated to the purchaser, when exhibiting the proofs along with the frame, could be purchased only from respondent:

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. William L. Pack*, hearing examiner.

Mr. William J. Tompkins for the Commission.

Wingo & Finch, of Hattiesburg, Miss., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated June 20, 1954, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondent with the use of unfair and deceptive acts and practices in commerce in violation of