

Decision

IN THE MATTER OF
BELL DIRECTORY PUBLISHERS, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 5986. Complaint, May 12, 1952—Decision, July 27, 1954*

Where a corporation and its responsible officers, engaged in the sale of advertising space in their business directories or buyers' guides, which contained names of manufacturers and dealers listed under headings denoting products handled, and which were distributed to purchasers of advertising space and prospective buyers of the products listed—

Pasted or otherwise attached to their own contract order forms, advertisements clipped from other directories, particularly classified telephone directories published by the Bell Telephone System, which they then mailed or presented by their sales agents to prospective purchasers whose names appeared in the clippings, thereby creating the impression that the contract represented nothing more than a renewal of the advertisement in the local telephone directory:

Held, That such practice constituted an unfair and deceptive act and practice and an unfair method of competition in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Perlmutter & Reich, of New York City, for respondents.

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 July 27, 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

1. The complaint in this matter charges respondents, who are engaged in the publishing of business directories and in the sale of advertising space therein, with the use of certain unfair and deceptive practices in connection with the sale of such advertising. After the filing of respondents' answer to the complaint, hearings were held at which evidence both in support of and in opposition to the charges in the complaint was received, such evidence being duly recorded and filed in the office of the Commission. Proposed findings and con-

clusions were submitted by counsel supporting the complaint (counsel for respondents having elected not to submit such proposals) and the matter argued orally. The case now comes on for final consideration on the merits.

2. Respondent Bell Directory Publishers, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1860 Broadway, New York, New York. Respondents Benjamin L. Hill and Michael M. Bell are officers of the corporation and formulate its policies and direct and control all of its acts and practices. While respondent Sydney Kopp has been Secretary of the corporation, he has had no active part in formulating the policies of the business nor in its management or control. It is therefore concluded that the complaint should be dismissed as to respondent Kopp in his individual capacity, although not in his capacity as an officer of the corporation, and the term "respondents," as used hereinafter, will not include this respondent in his individual capacity.

3. As indicated above, respondents' publications are business directories, one, for example, being entitled "Eastern Manufacturers and Industrial Directory" and carrying the subtitle "Buyers Guide and Classified Telephone Directory." The publications contain lists of manufacturers of and dealers in numerous and varied products, the names being listed under appropriate headings denoting the particular product handled by the manufacturer or dealer. The listings show, in addition to the name, the address and telephone number of the party listed. The directories are intended to serve as a guide to buyers, assisting them in locating sellers of products and services in which they are interested. The profits to respondents come from the sale of advertising space in the directories to manufacturers and dealers listed therein. While the directories themselves are occasionally sold by respondents, this constitutes only a very small part of their business. The business concerns purchasing the advertising space are located in various States of the United States, and the directories are distributed to such purchasers of advertising and to numerous prospective buyers of the various products listed in the directories, such buyers being likewise located in various States. Respondents are thus engaged in commerce as that term is defined in the Federal Trade Commission Act.

4. In the conduct of their business, respondents are in substantial competition in such commerce with other corporations and individuals engaged in the publishing of business directories and in the sale of advertising space therein.

5. One method which has been employed by respondents in the sale of advertising space in their directories involved the use of advertisements which had been physically clipped or removed by respondents from other directories, particularly classified telephone directories published by or for the Bell Telephone System. Such clippings were pasted or otherwise attached by respondents to their own contract or order forms, which were then either mailed to the prospective purchasers whose names appeared in the clippings or presented in person by respondents' sales agents. While close examination of the contract form would have been sufficient to put prospective purchasers on notice as to the identity of respondents and their publication, usually prospects gave the contract no more than a cursory examination, being misled by the attached clipping into the belief or impression that the contract represented nothing more than a renewal of their advertisement in the local telephone directory. This state of facts brings the case within the decisions of the Commission in the Independent Directory Corporation case, Docket No. 5486 and the Directory Publishing Corporation case, Docket No. 5920, both of which were affirmed by the United States Court of Appeals for the Second Circuit.

6. The record indicates that the use of advertisements clipped from other directories was discontinued by respondents some three or four years ago. There appears to be no assurance, however, that the practice will not be resumed in the future, and it is therefore concluded that the public interest requires the issuance of an order directing that respondents cease and desist from the practice.

7. While the complaint contains other charges against respondents, it is concluded that such charges are not supported by the record. One of these involves the use of the word "Bell" in the name of the corporate respondent, the complaint charging that the use of the word causes prospective advertisers to confuse respondents with the Bell Telephone System. There appears to be no evidence supporting this charge. As to the other charges, while there is some testimony which tends to support them, such testimony falls short of constituting substantial evidence. On the whole, the testimony was not impressive. In some instances it appears highly improbable in the light of the attendant circumstances, and in the face of express provisions in the contracts executed by the witnesses. In others, the testimony was materially weakened by cross-examination. In still other instances, the testimony was contradicted by that of the salesman who was alleged to have made the misrepresentation. At best, the testimony shows only a few isolated instances of misrepresentation on the part of re-

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spondents' sales agents, no general pattern or practice being established.

CONCLUSIONS

It is concluded:

1. The proceeding is in the public interest.
2. Respondents' practice of soliciting advertising through the use of advertisements which have been clipped or otherwise removed from other publications has the tendency and capacity to confuse and mislead prospective purchasers with respect to the identity of respondents and their publications, and the tendency and capacity to cause such persons to purchase advertising space in respondents' publications when they would not otherwise have done so. In consequence, substantial trade has been diverted unfairly to respondents from their competitors. Respondents' practice is to the prejudice of both the public and respondents' competitors, and constitutes an unfair and deceptive act and practice and an unfair method of competition in commerce within the intent and meaning of the Federal Trade Commission Act.
3. The other charges in the complaint have not been sustained.
4. The complaint should be dismissed as to respondent Sydney Kopp in his individual capacity, but not in his capacity as an officer of the corporate respondent.

ORDER

It is ordered that respondent Bell Directory Publishers, Inc., a corporation, and its officers, and respondents Benjamin L. Hill and Michael M. Bell, individually and as officers of said corporation, and respondent Sydney Kopp, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of advertising in respondents' publications, do forthwith cease and desist from:

Using in the solicitation of such advertising, by mail or through agents by personal solicitation, advertisements which have been physically clipped or removed by or for respondents from any publication issued by others than respondents.

Is is further ordered that the complaint be, and it hereby is, dismissed as to respondent Sydney Kopp in his individual capacity.

Order

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of July 27, 1954].

Commissioner Carretta not participating.

IN THE MATTER OF

BENJAMIN L. HILL, MICHAEL M. BELL AND ELIZABETH
HILL DOING BUSINESS AS INDUSTRIAL DIRECTORY
PUBLISHERS

Docket 5987. Complaint, May 12, 1952—Decision, July 27, 1954

Order dismissing for lack of proof complaint charging a manufacturer of business directories with using in the solicitation of advertising therein, advertisements of prospective purchasers clipped from other directories and attached to its own contract or order forms, implying thereby that they represented a renewal of the prospects' advertisements in the local telephone directory, among other things.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Perlmutter & Reich, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner shall, on July 27, 1954, become the decision of the Commission.

Commissioner Carretta not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter (which is a companion case to Docket No. 5986, Bell Directory Publishers, Inc., et al.) charges respondents, who are engaged in the publishing of business directories and in the sale of advertising space therein, with the use of certain unfair and deceptive practices in connection with the sale of such advertising. After the filing of respondents' answer to the complaint, hearings were held at which evidence both in support of and in opposition to the charges in the complaint was received, such evidence being duly recorded and filed in the office of the Commission. Proposed findings and conclusions were submitted by counsel supporting the complaint (counsel for respondents having elected not to submit such proposals) and the matter argued orally. The case now comes on for final consideration on the merits.

2. As indicated above, respondents' publications are business directories, one, for example, being titled "Midwest Manufacturers and Industrial Directory" and carrying the subtitle "Classified Telephone