

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

Directory and Buyers Guide." 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.

3. (a) The principal charge in the complaint is that respondents, in soliciting the sale of advertising in their directories, have used advertisements which had previously been inserted by prospective purchasers in other directories, particularly local telephone directories, and which had been physically clipped or otherwise removed by respondents from such directories. The complaint further charges that such clipped advertisements were then pasted or otherwise attached by respondents to their own contract or order forms, which were then either mailed to prospective purchasers or were presented in person by respondents' sales agents. It is further charged in substance that prospective purchasers were misled by the attached clipping, and as a result they made only a cursory examination of the contract and executed it under the belief or impression that it represented nothing more than a renewal of their advertisement in the local telephone directory.

(b) There is no question as to the use by respondents of advertisements clipped by them from other directories, although the practice appears to have been discontinued some three or four years ago. The record, however, fails to establish the element of deception, that is, that purchasers or prospective purchasers were misled as a result of the practice. There appears to be testimony from only one witness that he was under the impression that in signing respondents' contract he was renewing his advertisement in the telephone directory. And the testimony of this witness is materially weakened by reason of the fact that he further testified that his chief objection to the advertisement published in respondents' directory was not that he was misled as to the identity of the directory, but that the advertisement was classified under an incorrect product heading. Moreover, the advertisement was renewed by him in respondents' directory for a second year, although at a reduced rate. Giving full

effect to the testimony, it shows only one instance of deception, which falls short of constituting substantial evidence supporting this charge in the complaint.

(c) This failure of proof requires dismissal of the charge unless it can be said that evidence of deception is unnecessary. The case appears to have been tried on the theory that the use by directory publishers of advertisements which have been physically removed from other directories is per se deceptive and illegal; that this was established by 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. The hearing examiner does not so understand those decisions. Rather, the decisions appear to have been based upon the factual situations there presented, and particularly upon evidence showing the misleading effect of the practice in question. There being no substantial evidence here on that point, it is concluded that this charge in the complaint has not been sustained.

4. Other charges in the complaint are that respondents' sales agents represented, contrary to fact, that the order form provided only for the insertion of a free advertisement; that prospects were led into the signing of binding contracts by statements of the sales agent that the contract was merely evidence that the prospect had been solicited by the agent; that respondents have inserted in their directories advertisements or renewals thereof without authorization and then sought to exact payment therefor, etc. While there is some testimony which tends to support these charges, 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 of 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 respondents' sales agents, no general pattern or practice being established.

In view of the conclusion reached that the charges in the complaint have not been sustained,

It is ordered that the complaint be, and it hereby is, dismissed, such dismissal, however, being without prejudice to the right of the Commission to institute such further proceeding in the future as may be warranted by the then existing circumstances.

Complaint

IN THE MATTER OF
FRANK F. TAYLOR COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A)
OF THE CLAYTON ACT AS AMENDED*Docket 6198. Complaint, Mar. 26, 1954—Decision, July 29, 1954*

Consent settlement order requiring a manufacturer of baby walker-strollers and children's three-wheel velocipedes to cease discriminating in price in the sale of its products through favoring mail order houses and chain automotive supply stores, for example, over other competing customers.

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

Mr. Peter J. Dias and *Mr. Rice E. Schrimsher* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Frank F. Taylor Company is violating and has violated the provisions of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Frank F. Taylor Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2801 Highland Avenue, Cincinnati, Ohio.

PAR. 2. Respondent is now and, since June 19, 1936 has been engaged in the manufacture of baby walker-strollers and children's three wheel velocipedes, and has sold and now sells such products to different purchasers located in the various States of the United States and the District of Columbia for use, consumption, or resale therein. In connection with such sales respondent transports said products, or causes the same to be transported, from Cincinnati, Ohio, to said purchasers so located, thereby creating a continuous current of commerce in said products.

PAR. 3. The respondent, in the course and conduct of its business, has been and is in competition with other corporations, individuals, partnerships and firms engaged in manufacturing, selling and distributing said products in commerce between, and among the various States of the United States and the District of Columbia.