

IN THE MATTER OF

I. SPIEWAK & SONS, INC., ET AL.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6220. Complaint, June 24, 1954—Decision, Oct. 19, 1954*

Consent order requiring manufacturers of Armed Service type jackets, in New York City to cease representing falsely, by use of colors and styles and of affixed markings, insignia, labels, etc., that said outer garments were manufactured for the U. S. Armed Forces and in accordance with the Armed Forces specifications.

Before *Mr. John Lewis*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Chambers & Chambers, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that I. Spiewak & Sons, Inc., a corporation, and Philip Spiewak, Gerald Spiewak, and Robert Spiewak, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent I. Spiewak & Sons, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 1186 Broadway, New York, New York. Respondents Philip Spiewak, Gerald Spiewak and Robert Spiewak are respectively President, Vice President and Treasurer of said corporate respondent. These individuals acting in cooperation with each other formulate, direct and control all of the policies, acts and practices of said corporation. The address of said individual respondents is the same as that of corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the manufacture, sale and distribution of heavy outerwear, including imitation Armed Service type jackets, in commerce, among and between the various States of the United States

400

Complaint

and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said garments, in commerce among and between the various States of the United States.

PAR. 3. The garments manufactured, sold and distributed by respondents in the course and conduct of their business as aforesaid closely resemble the jackets and outer garments issued and furnished to members of the United States Armed Forces in color, pattern and style. Respondents also cause to be affixed to said garments certain markings, insignia, labels and tags which purport to designate the branch of service, model, contract number, specification number, stock number and directions as to the manner of use in substantially the same form, kind and manner as the markings, insignia, labels and tags prescribed and used by the United States Armed Forces on similar and like garments. Typical of the words and terms appearing on the markings, labels and tags, are as follows:

TYPE N-1
Contract No. 1SS
Mgr 212630
Foul Weather Jacket

Jacket, Field, M-1943

This Jacket increases greatly the warmth of clothing worn under it in cold and temperate climates because it is *windproof*.

USE: Sweat will chill you; therefore, when you start to get hot, open collar and loosen cuffs and waist. If that is not enough, remove clothing worn underneath.

Waist Drawstring

Pull drawstring up and loop each end to keep proper adjustment; in warm weather or when overheated, tie drawstring across body and open the unbuttoned jacket.

Specification #1SS 3098.

Typical of insignia used on certain of said garments is that of the Air Forces, consisting of a five point star with two wings enclosed in a circle, with the words "Air Forces" appearing immediately above.

PAR. 4. Through the use of said colors, patterns and styles and the markings, insignia, labels and tags, as described in Paragraph 3 hereof, respondents have represented and implied and do represent and imply that said jackets and outer garments, manufactured, sold and distributed by them in commerce were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces.

PAR. 5. Said representations and implications are false, misleading and deceptive. In truth and in fact, respondents' said garments

were neither manufactured for the United States Armed Forces nor in accordance with specifications of said Armed Forces.

PAR. 6. By selling and distributing to wholesalers and dealers said products manufactured as aforesaid and having affixed to them the markings, insignia, tags and labels hereinabove described, respondents furnish to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the origin, kind, type, and style of their said jackets and outer garments.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations and firms and individuals engaged in the sale in commerce of jackets and outer garments.

PAR. 8. The sale and distribution in commerce of said garments in the color, style, design and with markings, as hereinabove alleged, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the belief that said garments were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 October 19, 1954, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 24, 1954, issued and subsequently served its complaint upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in vio-

lation of the provisions of said Act. Thereafter, respondents appeared by counsel and entered into a stipulation for consent order, dated August 11, 1954. Said stipulation provides that the answer heretofore filed by respondents is withdrawn and expressly waives a hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner or the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents consent to the entry of an order to cease and desist in the form provided for in said stipulation which shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and waive any and all right, power or privilege to challenge or contest the validity of said order. Said stipulation further provides that the signing thereof is for settlement purposes only and does not constitute an admission of violation by respondents, except that respondents admit all the jurisdictional allegations of the complaint.

The said stipulation having been submitted to the above-named hearing examiner, theretofore duly designated by the Commission, for his consideration in accordance with Rule V of the Commission's Rules of Practice, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed as part of the record herein by the hearing examiner who, after considering the complaint and said stipulation, finds that this proceeding is in the interest of the public and makes the following:

JURISDICTIONAL FINDINGS

PARAGRAPH 1. Respondent I. Spiewak & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1186 Broadway, New York, New York. Respondent Philip Spiewak, Gerald Spiewak, and Robert Spiewak are president, vice president, and treasurer, respectively of said corporate respondent. The address of said individual respondent is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the manufacture, sale and distribution of heavy outerwear garments, including various armed service type jackets, in commerce, among and between the various States of the United States and in the District of Columbia. Respondents main-

Order

51 F. T. C.

tain, and at all times mentioned herein have maintained, a substantial course of trade in said garments, in commerce among and between the various States of the United States.

ORDER

It is ordered that respondents I. Spiewak & Sons, Inc., a corporation, and Philip Spiewak, Gerald Spiewak, and Robert Spiewak, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, or of any other garments, do forthwith cease and desist from representing, directly or by implication, by marking, branding, labeling, tagging, or in any other manner contrary to fact, that such merchandise was manufactured for the Armed Forces of the United States or in accordance with specifications of said Armed Forces.

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 October 19, 1954].

Order

IN THE MATTER OF
ARGUS CAMERAS, INC.

Docket 6199. Complaint, Mar. 26, 1954—Decision, Oct. 20, 1954

Dismissal—on the ground that respondent voluntarily discontinued all the practices involved, that resumption thereof was unlikely, and that everything that could be accomplished by a desist order had already been accomplished—of complaint charging a manufacturer of photographic equipment at Ann Arbor, Mich., with violation of Sec. 2 (a) of the Clayton Act as amended through its practice of pricing its products on an annual-volume discount basis, and violation of Sec. 2 (d) of the same Act through granting two of its customers an extra 3% discount from list price on all purchases made from their mail order business as compensation for advertising the products in their nationally-distributed mail order catalogs.

Before *Mr. William L. Pack*, hearing examiner.
Mr. Peter J. Dias, and *Mr. Rice E. Schrimsher* for the Commission.
Rogers, Hoge & Hills, of New York City, for respondent.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter coming on for the Commission's consideration of the question whether or not the respondent's showing of complete abandonment of the practices alleged in the complaint to have been unlawful warrants dismissal of said complaint without prejudice, which question was certified to the Commission by the hearing examiner under the provisions of Rule XIV (9) of the Commission's Rules of Practice; and

The Commission having considered the record thus far made, including the respondent's motion for dismissal and supporting material, and the answer in opposition to said motion filed by counsel in support of the complaint; and

The Commission having determined that said question should be answered in the affirmative and having set forth its reasons therefor in the accompanying written opinion:

It is ordered that the complaint in this proceeding be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Commissioner Mead dissenting.