

Complaint

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IN THE MATTER OF
O. A. SUTTON CORPORATION

CONSENT ORDER ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6213. Complaint, June 18, 1954—Decision, Nov. 4, 1954

Consent order requiring a manufacturer in Wichita, Kans., to cease misrepresenting in advertising the capacity or performance of its "Vornado Turnabout Window Fan."

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. John J. McNally for the Commission.

Fleeson, Gooing, Coulson & Kitch, of Wichita, Kans., for respondent.

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 O. A. Sutton Corporation, a corporation, hereinafter referred to as respondent, has 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 O. A. Sutton Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 1812 West Second Street, Wichita, Kansas.

PAR. 2. Respondent is now and for several years last past has been, engaged in the business of manufacturing and distributing electric fans, including various models of ventilating fans which were designated by respondent as "Vornado Turnabout Window Fans." In the course and conduct of said business, respondent causes said fans, when sold, to be transported from its place of business located within the State of Kansas to the purchasers thereof located in various other States in the United States and the District of Columbia and at all times mentioned herein has maintained a course of trade in commerce among and between the various States of the United States. Its volume of trade in said commerce is substantial.

PAR. 3. The "Vornado Turnabout Window Fan," while it may also be used inside a home or other area to circulate air within such area,

was primarily designed, manufactured, represented and sold by respondent as an instrument for ventilation, by causing the air within such area to be replaced by air from outdoors. When so used for ventilation, the fan housing is placed in a window or other aperture; its adjustable sides permitting it to fit various sizes thereof. The power unit and blades are contained in a bell-shaped duct assembly which has a protective grill covering the blade. The entire blade assembly is so mounted on its horizontal axis as to permit its being turned so that the grill-protected blade faces outdoors or indoors, without disturbing the fan housing mounted in the window. According to the position of the blade assembly, said fan may be used either as an "exhaust" or as an "intake" fan, when used in conjunction with other windows or similar apertures in the area to be ventilated.

In its "exhaust" position, said fan draws indoor air through its blades and expels it outdoors. As a result thereof a like amount of outdoor air is drawn into the area through other windows or apertures, thereby ventilating such area.

In its "intake" position, the operation is reversed. Said fan draws outdoor air through its blade into the area. As a result thereof a like amount of indoor air is expelled outdoors through other windows or apertures, thereby ventilating such area.

PAR. 4. In the course and conduct of its business, respondent, through the use of sales literature and other means of advertising, has made certain statements in connection with its "Vornado Turnabout Window Fan." Among and typical, but not all inclusive of said statements, are the following:

In a sales brochure entitled "*A NEW MEMBER OF THE WORLD FAMILY*"
 * * * DAY VORNADO TURNABOUT—The reversible, adjustable Year
 AND window air circulator—give you 'ROUND
 NIGHT AIR COOLING

(Depiction illustrating fan adjusted for use as a window "intake" fan.)

Pull wave after wave of cool, refreshing night and morning air into every room.

(Depiction illustrating fan adjusted for use as a window exhaust fan.)

Turn about—and force all that hot, stale, stuffy daytime air out of the entire house!

(Series of 4 depictions showing fan in use as a window fan in a sleeping room, a living room, a kitchen and an office.)

TURNABOUT COOLS ALL YOUR ROOMS with its very high air-moving capacity—outperforms costlier, bigger ventilating units.

(Depiction showing a home in daytime with arrows indicating movement of air out of one window and movement of air in through two windows).

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DAYTIME—TURNABOUT pulls hot, stagnant air from every connecting room—expels it out doors—stirs, enlivens and freshens all the air in your home.

(Depiction of home at nighttime with arrows indicating movement of air in through one window and movement of air out through two windows).

NIGHTTIME—TURNABOUT brings cool night air into sleeping and living rooms—pushes it along into connecting rooms—cools the entire house quickly, quietly.

COMPARE * * * Turnabout moves 3,000 cubic feet of air every minute. That's real COOLING POWER!

In a brochure entitled "THE GENUINE VORNADO—WORLD'S FINEST AIR CIRCULATORS"

* * * PULLS FRESH AIR IN from outdoors or PUSHES STALE AIR OUT of your rooms for better cooling * * * DAYTIME—your Turnabout pushes hot, stuffy air outside to keep you cooler. AT NIGHT—your Turnabout pulls lots of cool, fresh night air into your rooms * * * SPECIFICATIONS MODEL 30W1 * * * C. F. M. 3,000 *.

* * * Capacity in cubic feet of air per minute when used as an intake fan. NOTE: Exhaust C. F. M. on Models 30W1, is 1,000 * * *

PAR. 5. Through the use of the aforesaid depictions and statements, and others of the same import not set forth herein, respondent represented that its "Vornado Turnabout Window Fan," Model 30W1 has the capacity to ventilate a given area, such as a home:

(a) When used as an "exhaust" fan, by replacing 1,000 cubic feet of indoor air per minute with a like amount of outdoor air,

(b) When used as an "intake" fan, by replacing 3,000 cubic feet of indoor air per minute with a like amount of outdoor air.

PAR. 6. The aforesaid statements and representations of respondent are false and deceptive. In truth and in fact:

(a) When used as an "exhaust" fan, said "Vornado Turnabout Window Fan" does not have the capacity to ventilate to the extent of replacing 1,000 cubic feet of indoor air per minute with a like amount of outdoor air.

(b) When used as an "intake fan," the Vornado Turnabout Window Fan" does not have the capacity to ventilate to the extent of replacing 3,000 cubic feet of indoor air per minute with a like amount of outdoor air.

On the contrary, the difference, if any, between the "exhaust" and the "intake" capacity of said fan to ventilate a given area, is slight and the actual ventilating capacity or measure of the ability of said fan to draw air through its blades into or away from a given area such as a home, is considerably less than the lowest rated capacity given by

respondent for said fan, this being the representation of 1,000 C. F. M. of exhaust capacity.

PAR. 7. In the course and conduct of its business, respondent is in substantial competition with other individuals, firms and corporations engaged in the manufacturing, distributing and selling of electric fans in commerce.

PAR. 8. The use by respondent of the false and misleading statements and representations with respect to the capacity of its fans had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true.

As a result thereof a substantial portion of the purchasing public were induced to purchase substantial quantities of respondent's "Vornado Turnabout Window Fan" by reason of such erroneous and mistaken belief, and substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's 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 November 4, 1954, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint in this proceeding charges the respondent with unfair and deceptive acts and practices in the offering for sale, sale and distribution of various models of ventilating fans, which have been designated by respondent as "Vornado Turnabout Window Fans," in violation of the Federal Trade Commission Act. In lieu of submitting an answer to said complaint, respondent on September 14, 1954, entered into a Stipulation For Consent Order with counsel supporting the complaint, which was duly approved by the Director and Assistant Director of the Bureau of Litigation.

Respondent is identified in the above-mentioned stipulation as a corporation, with its office and principal place of business located at 1812 West Second Street, Wichita, Kansas.

Respondent admits all the jurisdictional allegations set forth in the complaint and stipulates that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Respondent expressly waives the filing of an answer to the complaint and further proceedings before the Hearing Examiner and the Commission. Respondent agrees that the order contained in said stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and expressly waives all right, power and privilege to contest the validity of said order.

Said stipulation provides that the complaint may be used in construing the terms of the order contained in the stipulation, and that said order may be altered, modified, or set aside in the manner prescribed by statute for orders of the Commission.

Respondent also agrees that said Stipulation For Consent Order, together with the complaint herein, shall constitute the entire record in this proceeding. Inasmuch as this initial decision, and the decision of the Commission, if it affirms such initial decision, will hereafter also become part of the record, the aforesaid provision of the stipulation is interpreted to mean that it is agreed that the complaint and Stipulation For Consent Order shall constitute the entire record upon which the initial decision herein shall be based. It is further agreed that the order contained in said stipulation may be entered without further notice upon the record, in disposition of this proceeding.

In view of the provisions of the stipulation as outlined above, the fact that the order embodied in the stipulation differs from the order accompanying the complaint only in that the phrase "the ventilating capacity or performance of said fans" has been modified by the insertion of the word "ventilating" immediately preceding the word "performance," and that such change in phraseology serves merely to clarify the limitations of the order, it appears that the Stipulation For Consent Order should be accepted; and that such action, together with the issuance of the order contained in the stipulation, will resolve all the issues arising by reason of the complaint in this proceeding, and will safeguard the public interest to the same extent as could be accomplished by full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, the Hearing Examiner, in consonance with the terms of said agreement, accepts the

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Order

Stipulation For Consent Order submitted, and issues the following order:

It is ordered, That respondent O. A. Sutton Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of electric fans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, the ventilating capacity or ventilating performance of its said fans, through the use of a numerically expressed rating or otherwise, which rating or other statement as to capacity or performance is in excess of the amount of cubic feet of air per minute that such fan is capable of drawing through its blades under ordinary operating conditions, into or away from any place or area to be ventilated.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondent O. A. Sutton Corporation, a corporation, 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 November 4, 1954].

Order

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IN THE MATTER OF
LUSTBERG, NAST & COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 2536. Orders and opinion, November 8, 1954

Order modifying cease and desist order dated July 10, 1942, 35 F. T. C. 132, 139, which required respondent to cease using the term "Buck Skein" to describe any product not made from the skin of the deer or elk, by adding the provision that nothing therein "shall be construed to prohibit the respondent from using the words 'Buck Skein Brand' * * * for garments which neither simulate nor resemble leather".

Mr. Joseph Callaway for the Commission.

Feinberg, Jerry & Lewis, of Plattsburgh, N. Y., and *Mr. Martin Whyman* and *Hays, St. John, Abramson, & Schulman*, of New York City, for respondent.

ORDER RULING ON PETITION TO MODIFY AND MODIFYING PARAGRAPH (1)
OF THE ORDER OF JULY 10, 1942

This matter coming on to be heard upon the petition filed on August 18, 1954, by the respondent requesting that Paragraph (1) of the order to cease and desist as entered on July 10, 1942, be modified, and upon the answer of counsel on the Commission's staff interposing no objection to modification of such order; and

The Commission having duly considered the matter and having determined, for the reasons set forth in the accompanying opinion, that the respondent's request for modification of the order to cease and desist should be granted and that the proceeding accordingly should be reopened for the purpose of modifying Paragraph (1) of said order:

It is ordered, That the petition of the respondent be, and it hereby is, granted.

It is further ordered, That this proceeding be, and it hereby is, reopened solely for the purpose of modifying Paragraph (1) of the order to cease and desist.

It is further ordered, That the order to cease and desist heretofore entered in this matter be, and it hereby is, modified by changing Paragraph (1) thereof to read as follows:

1. Using the term "Buck Skein," either alone or in conjunction with the outline of a deer's head, or any other colorable simulation of the word "buckskin," in advertising, or otherwise, to describe,