

Complaint

IN THE MATTER OF
MALCOLM E. SMITH, JR., ET AL.
DOING BUSINESS AS LOAMIUM COMPANY OF AMERICA

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

Docket 6180. Complaint, Oct. 27, 1953—Decision, Nov. 23, 1954

Consent order requiring a partnership in Harrison, N. J., to stop claiming that their chemical products "Kem-Kut" would produce an even lawn, make lawn mowing unnecessary, make grass greener, thicker, and more luxurious, was safe, and would not adversely affect the appearance of a lawn.

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

Mr. Terral A. Jordan for the Commission.

Mr. Harry T. Davimos, of Newark, N. J., 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 Malcolm E. Smith, Jr., Casper Pinsker, Jr., and Richard H. Davimos, individuals and copartners doing business as Loamium Company of America, 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. Respondents Malcolm E. Smith, Jr., Casper Pinsker, Jr. and Richard H. Davimos are individuals and copartners doing business as Loamium Company of America, with their office and principal place of business located at 2 Kingsland Avenue, Harrison, New Jersey.

PAR. 2. Since February 1953, respondents have been engaged selling a product designated Kem-Kut and chemically known as maleic hydrazide, a preparation represented as effective in controlling the growth of lawn grass. Respondents' cause said product, when sold, to be transported from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial

Complaint

51 F. T. C.

course of trade in their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of Kem-Kut, respondents have made numerous statements and representations concerning their said product by means of advertisements caused to be published in newspapers having a large circulation outside the State of New Jersey and by means of circulars disseminated among retail outlets. Among and typical of such statements and representations, but not all inclusive thereof, are the following:

NOW! TRIM YOUR LAWN JUST ONCE A YEAR WITH NOTHING BUT A WATERING CAN! REVOLUTIONARY NEW "KEM-KUT" SAFELY SLOWS GRASS GROWTH, NO MORE BACKACHES! JUST SPRINKLE ON! AT LAST! U. S. RUBBER COMPANY DEVELOPS AMAZING CHEMICAL THAT "CUTS" GRASS CHEMICALLY! KEEPS GRASS FROM GROWING TALLER! MAKES IT THICKER, GREENER!

It's amazing, yet it's true! Modern Science now makes it possible for you to trim your lawn with a watering can! Just imagine! No more hard work! No more backaches! No more sweating under a hot Summer Sun * * * thanks to a new miracle chemical!

This Spring and Summer while your neighbors are huffing and puffing cutting their grass, simply dissolve an amazing new chemical in a watering can * * * saunter around your lawn edges sprinkling as you go * * * and presto! Your grass is "cut". What's more, it will stay "cut" all Summer long! You do this simple easy thing once early in the season * * * and your grass trimming is finished for the whole Summer.

BUT that's not all. Not only will your grass NOT grow taller * * * it will be greener, thicker, more luxurious!

The amazing new chemical that makes this labor saving dream come true is called KEM-KUT with U. S. Rubber Company's patented growth inhibitor: Maelic Hydrazide. This remarkable product is the result of years of painstaking research and experimenting. It has been tested * * * and proven safe for finest lawns! It does not adversely affect grass roots. It does not harm the soil! But what a miraculous time, work and money saver it is! Imagine! If the grass around your house grows so fast you have to cut it 17 times a year, simply sprinkle on KEM-KUT with U. S. Rubber Company's discovery MH-40.

As it touches the grass KEM-KUT is absorbed into each grass blade, and slows down the formation of new cells inside each blade! Your grass acts as though it were already full-grown! New cells do not form on top of present cells to add additional height! Grass treated this way does not have to be cut again all season long!

What's more, since your grass remains about the same height, your grass becomes thicker * * * it becomes greener * * * it looks richer, heavier, more luxurious.

Yes, modern science has found a new way to save you time and money. No more bending and stooping to cut hard to reach grass around trees, stones, fence posts and hedges! No more backaches and blisters cutting grass around

paths, driveways, borders, shrubs and flower plots! No more sweating and straining cutting grass over and over again around your house! And no more spending four or five dollars every week having someone do these necessary jobs!

Instead you simply dissolve some miracle KEM-KUT in a watering can and sprinkle on! And you do this ONCE ONLY! Your KEM-KUT treated grass will be neat and trim all Summer long. You'll have a perfect edge around your driveway and paths. You'll have short, neat grass edges around every tree, every bush, every flower plot, every fence post. You'll have the neatest, trimmest, most even lawn in your neighborhood. And your grass will be greener, thicker, more luxurious than ever before!

PAR. 4. By and through the use of the foregoing statements and representations and others of similar import, but not specifically set out herein, respondents have represented, directly and by implication:

- (1) That Kem-Kut retards the growth of lawns;
- (2) That Kem-Kut produces an even lawn;
- (3) That Kem-Kut makes lawn mowing unnecessary;
- (4) That Kem-Kut makes grass greener, thicker and more luxurious;
- (5) That Kem-Kut is safe and when applied to a lawn will not adversely affect the appearance of the lawn.

PAR. 5. The aforesaid representations are false, misleading and deceptive. In truth and in fact, respondents' product Kem-Kut will not retard the growth of lawns. While it may slow or retard the growth of some species of lawn grass, it accelerates rather than retards the growth of crab grass and some other plant species found in lawns. Its use will not, therefore produce an even lawn or make it unnecessary to mow the lawn. Respondents' product will not make grass greener. When applied in sufficient quantities to be effective in retarding the growth of any species of lawn grass, it causes the grass to turn brown. The growth of new cells is necessary for grass to become thicker and more luxurious and since respondents' product inhibits the growth of new cells in existing plants, it cannot cause grass to become thicker and more luxurious. It is not safe to apply Kem-Kut to a lawn for the reason that when applied in the prescribed quantities, it causes the grass to turn an undesirable brown color, thereby adversely affecting the appearance of the lawn.

PAR. 6. The use by respondents of the foregoing false and misleading statements and representations has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of said product because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 23, 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 respondents with unfair and deceptive acts and practices in violation of the Federal Trade Commission Act, in the advertising of a product designated as Kem-Kut, and chemically known as maleic hydrazide. Specifically, respondents are charged with misrepresenting that Kem-Kut will retard the growth of lawns; will produce an even lawn; will make lawn-mowing unnecessary; will make grass greener, thicker and more luxurious; and that it is safe and will not adversely affect the appearance of the lawn. At the initial hearing, the first of the above allegations, that Kem-Kut, when applied to lawns, will retard the growth thereof, was abandoned on the record by counsel supporting the complaint as being contrary to fact.

On October 4, 1954, respondents entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner a stipulation for a consent order disposing of all issues remaining in this proceeding.

Respondents are identified as individuals and copartners doing business as Loanium Company of America, located at 2 Kingsland Avenue, Harrison, New Jersey.

Respondents admit all the jurisdictional allegations set forth in the complaint, and stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Respondents, in effect, request that their answer to the complaint herein, filed on November 17, 1953, be withdrawn, and expressly waive the filing of an answer to the complaint and further proceedings before the hearing examiner or the Commission.

It is stipulated that the signing of this stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Respondents agree that the order contained in said stipulation shall have the same force and effect as if made after full hearing, presentation of evidence, and findings and conclusions thereon, and expressly waive all right, power and privilege to contest the validity of said order. Said stipulation recites that said complaint may be used in construing the terms of said order, and that said order may be altered, modified or set aside in the manner provided by statute for orders of the Commission.

It is specifically agreed that said Stipulation For Consent Order, together with the complaint, 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, must 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, and the fact that the order embodied in the stipulation differs from the order accompanying the complaint only in the omission of the prohibition, "Will retard the growth of lawns," which was abandoned on the record by counsel supporting the complaint, 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 Stipulation For Consent Order submitted herein; grants respondents' request that their answer to the complaint herein, heretofore submitted, be withdrawn; and issues the following order:

It is ordered, That the respondents Malcolm E. Smith, Jr., Casper Pinsker, Jr., and Richard H. Davimos, individually and as copartners, doing business as Loamium Company of America, or under any other name, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with

Order

51 F. T. C.

the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their chemical plant growth inhibitor designated as Kem-Kut, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication, that the use of said product:

1. Will produce an even lawn;
2. Makes lawn mowing unnecessary;
3. Makes grass greener, thicker or more luxurious;
4. Is safe or will not adversely affect the appearance of a lawn.

It is further ordered, That the answer to the complaint herein, filed by respondents on November 17, 1953, be, and the same hereby is, withdrawn from the record.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Malcolm E. Smith, Jr., Casper Pinsker, Jr., and Richard H. Davimos, individuals and copartners doing business as Loanium Company of America, 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 November 23, 1954].

Opinion

IN THE MATTER OF
WILL-WELD MANUFACTURING COMPANY ET AL.

Docket 5922. Complaint, Sept. 11, 1951—Order, Nov. 24, 1954

Order setting aside cease and desist order issued Mar. 13, 1952, 48 F. T. C. 965, and dismissing complaint for the reason that said order went further than necessary to apprise users of potential dangers involved in the use of respondents' welding machines and also required respondents to make considerably more disclosures as to such dangers than other sellers of similar products were required to make; the matter being settled by respondents' subsequent execution of an informal stipulation and agreement to cease and desist.

Before *Mr. Webster Ballinger*, hearing examiner.
Mr. John M. Russell for the Commission.

OPINION OF THE COMMISSION

Per CURIAM:

The Commission on September 11, 1951, issued its complaint against the respondents charging them with the use of unfair and deceptive acts and practices in connection with the advertising and sale of unassembled home welding machines. Respondents filed their answer denying the material allegations of the complaint. Thereafter a hearing was held in Washington, D. C., before a hearing examiner of the Commission at which five pieces of advertising material used by the respondents were introduced in evidence and the testimony of an electrical safety engineer employed by the National Bureau of Standards was taken. Respondents were not represented at this hearing and they did not exercise their right to request a hearing for the purpose of taking testimony in opposition to the complaint.

The hearing examiner on December 29, 1951, filed his initial decision in which he found the facts to be substantially as alleged in the complaint and ordered the respondents to cease and desist from:

(1) Representing, directly or indirectly, that their electric home welding machine, made by the assembling of the various parts sold by them for a complete machine, will operate consistently and safely on the electric circuit ordinarily found in a home with a 30 ampere fuse.

(2) Selling or offering for sale their electric home welding machine without, in large type appearing in all literature relating thereto, expressly informing the purchaser or purchasers that their home welding machine cannot be safely connected with the electric current