

IN THE MATTER OF

RICHARD H. DAVIMOS AND CASPER PINSKER, JR.,
TRADING AS ORCHIDS, ETC.

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

Docket 6129. Complaint, Oct. 27, 1953—Decision, Dec. 18, 1954

Consent order requiring two partners doing business in Harrison, N. J., and New York City, to cease representing falsely in advertising the kind and qualities of the orchids they sold, the properties and effectiveness of their chemical soil conditioner "Loanium", and that their private business was a "guild".

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 Richard H. Davimos and Casper Pinsker, Jr., individually and as copartners, trading under the names of Orchids, Orchid Guild, and White House Company, 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 Richard H. Davimos and Casper Pinsker, Jr., are individuals trading and doing business, or have traded and done business, as a copartnership under the names of Orchids, Orchid Guild, and White House Company with their principal office and place of business located at 2 Kingsland Avenue, Harrison, New Jersey, and also doing business at 8 East 54th Street, New York, New York.

PAR. 2. The respondents have engaged in the sale and distribution of orchid plants and have sold and distributed and are presently selling and distributing a combination chemical soil conditioner and plant fertilizer designated as "Loanium." Respondents have caused and presently cause said products when sold to be transported from their aforesaid 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 course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents, by means of statements and depictions appearing in advertising inserted by them in newspapers and by means of circulars and other advertising matter represented, directly or by implication:

1. That the orchid plants sold and delivered by them will produce flowers of the beauty, coloring, conformation, size, value and other characteristics commonly associated with a species of cattleya orchid or a hybrid orchid involving a species of cattleya or an orchid of a species having similar characteristics.
2. That said orchid plants will bloom within a short time after receipt by the purchaser.
3. That the blooms will be the same as those costing \$5 to \$20 at floral shops.
4. Through the use of the word "guild," that respondents' business is an association of persons or corporations with kindred pursuits or common interests formed for furthering some common interest and operated without profit.

PAR. 4. The statements and depictions appearing in said advertising matter were false, misleading and deceptive. In truth and in fact:

1. Respondents' orchid plants were of a species capable of producing only small, relatively dull colored flowers and of little monetary value. Such flowers are wholly inferior to and in no wise comparable in value to the cattleya orchid or a hybrid orchid involving a species of cattleya or other species of orchid having characteristics similar to the cattleya or cattleya hybrid species.
2. It is highly improbable that said orchid plants would bloom within a short time, or even during the entire season, after receipt by the purchaser.
3. The blooms produced by respondents' plants are inferior to those commonly sold in flower shops for the sum of \$5 or more.
4. Respondents' business organization is not properly characterized as a guild but is a commercial enterprise maintained, existing and operating for a profit.

PAR. 5. Respondents' product Loanium is a combination chemical soil conditioner and commercial fertilizer.

The formula for Loanium is 15% hydrolized—polyacrylonitrile; 20% fertilizer of which 5% is nitrogen, 10% phosphoric acid and 5% potash; and 65% inert ingredients.

The directions for use are that one part of Loamium be diluted in 40 parts of water and sprinkled on with a watering can or sprayed on with proportioners.

PAR. 6. Further, in the course and conduct of their said business, and for the purpose of inducing the purchase of Loamium, respondents have made and are making many statements and representations concerning said product by means of advertisements in newspapers having national circulation and by the aforesaid statements appearing on the label of said product. Among and typical of said statements and representations appearing in newspapers, but not all inclusive thereof, are the following:

Amazing new "Loamium" changes hard clay or sandy soil into rich, fertile loam—overnite!

One gallon of Loamium makes 40,000 pounds of rich, fertile nourishing top soil!

See for yourself the incredible difference in soil texture.

No raking. No spading. No hoeing. Just sprinkle on!

... one gallon diluted in water will transform up to 2000 square feet of dead, lifeless soil into the richest, most nourishing expensive loam.

See how dry, caked dirt has become rich porous loam 6 inches deep.

... a special penetrant in Loamium makes even the hardest packed clay absorb it instantly.

PAR. 7. Through the use of the statements and representations in connection with Loamium hereinabove set forth and others similar thereto, but not specifically set out herein, respondents represent and have represented, directly or by implication:

A. That said product changes soil texture and changes hard clay or sandy soil into loam and makes top soil.

B. That said product diluted with water and sprinkled on the surface will effectively condition the soil.

C. That one gallon of said product will condition 2,000 square feet of soil to a depth of six inches.

D. That said product contains a special penetrant which forces it into the soil.

PAR. 8. The foregoing claims, statements and representations with respect to Loamium are grossly exaggerated, false and misleading. In truth and in fact:

A. Said product will not change soil texture and will not change hard clay or sandy soil into loam and will not make top soil. Chemical soil conditioners such as said product do nothing more than affect soil structure. They stabilize aggregates that already exist or that are formed by mechanical manipulation of the soil.

B. Said product diluted in water and sprinkled on the surface will

not effectively condition the soil. On the contrary, the soil must be prepared, worked or manipulated and the product thoroughly mixed with the soil mass with which it is to react in order to be effective.

C. One gallon of said product is wholly insufficient to condition 2,000 square feet of soil to a depth of six inches. Even minimum effective conditioning of said area and depth would require many times more than one gallon of Loanium. The exact amount would vary considerably depending upon the nature and condition of the soil and the degree of structural improvement sought.

D. Loanium does not contain a penetrant which forces it into the soil.

PAR. 9. Respondents, in the conduct of their said business, as aforesaid, have been and are in substantial competition in commerce with corporations and with other individuals and partnerships and others engaged in the sale of orchid plants and soil conditioners and fertilizers.

PAR. 10. The use by respondents of the aforesaid false and misleading statements, representations and pictorial depictions has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements, representations and pictorial depictions were and are true and to induce the purchase of substantial quantities of respondents' said products by reason of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted and is now being diverted to respondents from their competitors in commerce and substantial injury has been and is being done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and 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 December 18, 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 two products: orchid plants, and a chemical soil conditioner and plant fertilizer designated "Loanium."

On October 18, 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 the issues in this proceeding.

Respondents are identified as individuals and copartners doing business as Orchids, Orchid Guild, and White House Company, 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 20, 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.

The terms of the proposed order to cease and desist relating to the advertising of orchid plants are the same as those contained in the order accompanying the complaint. There are, however, variances between the order to cease and desist accompanying the complaint and the order proposed in the stipulation. The attorney supporting the complaint, in his memorandum transmitting the Stipulation For Consent Order to the hearing examiner, explains and justifies these variances, as follows:

"The terms of the order, * * *, as agreed to in the said Stipulation insofar as it relates to the sale and distribution of the combination chemical soil conditioner and fertilizer, designated Loanium, have been changed to reflect more recent information on the subject and to conform to the provisions of the Commission's very recently promulgated trade practice rules for the Chemical Soil Conditioner Industry. Chemical soil conditioners are a comparatively new product on the market and additional information respecting their possible uses, method of application and results has become increasingly available since this case was investigated and complaint issued. The Commission's trade practice conferences for this industry developed and clarified a great deal of this information so that it has been possible to redraft the proposed order set forth in the complaint and make its terms entirely consonant with the said trade practice rules.

* * * * *

"It is believed that the order which has been revised as to Loanium is more nearly consonant with the Commission's trade practice rules for the Chemical Soil Conditioner Industry, is more accurate in light of recent developments in the Industry and will inhibit the false, misleading and deceptive representations stated in the complaint while permitting truthful statements respecting said product."

In view of the provisions of the stipulation as outlined above and the statements and explanations presented 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 therein, 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:

Order

51 F. T. C.

It is ordered, That respondents, Richard H. Davimos and Casper Pinsker, Jr., individually and as copartners, trading as Orchids or Orchid Guild, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their orchid plants in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Misrepresenting the kind and type of orchid plants offered for sale and sold by them;
2. Misrepresenting the time within which their orchid plants will bloom;
3. Misrepresenting the retail value of the flowers which their orchid plants will produce;
4. Using the word "guild" or any other word of similar import or meaning as a part of a trade name, or otherwise, or representing in any other manner that respondents' business is other than a commercial enterprise operated for profit.

It is further ordered, That said respondents, Richard H. Davimos and Casper Pinsker, Jr., individually and as copartners trading as the White House Company, or under any other name, and respondents' representatives, agents 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 their combination soil conditioner and fertilizer, designated Loanium, or any other product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from representing directly or by implication:

1. That said product will change soil texture or change the clay, sand, silt ratio of soil or add to the soil elements other than those contained in said product;
2. That said product will effectively form and stabilize soil aggregates without revealing the extent to which the soil must be cultivated or the degree to which the product must be worked into the soil to effect the formation and stabilization of soil aggregates to the extent represented to result from the use of said product;
3. That any smaller amount of said product is needed to condition a given area of soil to a given depth than is actually required;
4. That said product contains a soil penetrant, when such is not a fact.

Order

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Richard H. Davimos and Casper Pinsker, Jr., individually and as copartners trading as Orchids, Orchid Guild, White House Company, 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 December 18, 1954].

Complaint

51 F. T. C.

IN THE MATTER OF
MERCURY MACHINE IMPORTING CORPORATION ET AL.

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

Docket 6011. Complaint, July 18, 1952—Decision, Jan. 4, 1955

Consent order requiring an importer of sewing machine heads from Japan and its corporate sales agent, with headquarters in New York City, to cease offering and selling such heads and completed sewing machines of which they were a part, without conspicuous disclosure on the heads of the country of origin, and to cease representing falsely that they were the manufacturers of the merchandise they sold.¹

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. William L. Taggart and *Mr. J. C. Williams* for the Commission.

Mr. Isaac Anolic, 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 Mercury Machine Importing Corporation, a corporation, and Emil Deligtisch and Philip S. Morse, individually and as officers of said corporation, and Morse Sewing Machine and Supply Corporation, a corporation, and Philip S. Morse and Marian Morse, 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 Mercury Machine Importing Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 50 West 27th Street, New York, New York. Respondents Emil Deligtisch and Philip S. Morse are President and Treasurer, respectively, of this corporate respondent, and, acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent, Mercury Machine Importing Corporation.

¹ The issue as to the use of the word "Mercury," charged in the complaint, was adjudicated in *Pickow Distributing Corp. et al.*, D. 5890, March 10, 1954, 50 F. T. C. 783, in which the Commission found that it was not sustained by the evidence.