

IN THE MATTER OF
JOSEPH BAUM

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

Docket 6265. Complaint, Nov. 26, 1954—Decision, Feb. 22, 1955

Consent order requiring a furrier in New York City to cease misbranding and false
invoicing of fur products in violation of the Fur Products Labeling Act.

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

Mr. John J. McNally for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joseph Baum, an individual, hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling 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 Joseph Baum is an individual with his principal office and place of business located at 214 West 28th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondent has introduced, manufactured for introduction, sold, offered for sale, transported, and distributed, in commerce, as "commerce" is defined in the Fur Products Labeling Act, fur products and furs, as those terms are defined in said Act, and has manufactured for sale, sold, offered for sale, transported, and distributed, fur products, which have been made in whole or in part of fur which had been shipped and received in commerce. Among such furs and fur products were trimmings, scarves and stoles.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4 (1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were misbranded in that respondent, on labels attached to fur products,

(a) Mingled non-required information with required information in violation of the Fur Products Labeling Act and Rule 29 of the Rules and Regulations promulgated under said Act; and

(b) Failed to show the item number of such fur products in violation of the Fur Products Labeling Act and Rule 40 of the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that such invoices misrepresented the name of the animal that produced the fur from which said fur products had been manufactured, in violation of Section 5 (b) (2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in that respondent, on invoices furnished to purchasers and prospective purchasers of said fur products, failed to show the item number of such fur products, in violation of the Fur Products Labeling Act and Rule 40 of the Rules and Regulations promulgated thereunder.

PAR. 9. The aforesaid acts and practices of respondent were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce under 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 February 22, 1955, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that the respondent, Joseph Baum, of 214 West 28th Street, New York, New York, has violated the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act by falsely and deceptively labeling and invoicing fur trimmings, scarves, stoles and other fur products which the respondent has manufactured, sold and distributed in commerce, as "commerce" is defined in said Acts.

Without filing an answer, and prior to the date set in the complaint for the initial hearing in this proceeding, respondent entered into a Stipulation For Consent Order with counsel supporting the complaint. This stipulation was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and transmitted to the Hearing Examiner.

The stipulation provides, among other things, that respondent admits all the jurisdictional allegations set forth in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the stipulation, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified or set aside in the manner provided by the statute for orders of the Commission; that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; and that the order provided for in the stipulation and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties waive the filing of answer, hearings 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 and the Commission to which respondent may be entitled under the Federal Trade Commission Act or the rules of the Commission, including any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The order agreed upon conforms to the order contained in the notice accompanying the complaint, and disposes of all the issues raised in the complaint. The Stipulation For Consent Order is there-

fore accepted, this proceeding is found to be in the public interest, and the following order is issued:

It is ordered, That respondent Joseph Baum, an individual, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacturing for sale, sale, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

2. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of used fur, when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is a fact;

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

3. Mingling non-required information with required information on labels attached to fur products in violation of Rule 29 of the Rules and Regulations.

4. Failing to show, on labels attached to fur products, the item number of such fur products, as required by Rule 40 of the Rules and Regulations.

B. Falsely or deceptively invoicing fur products by:

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1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name and address of the person issuing such invoice;

(f) The name of the country of origin of any imported furs contained in a fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in paragraph B(1) (a) above, or furnishing invoices which contain any form of misrepresentation or deception, directly or by implication, with respect to such fur product.

3. Failing to show the item number or mark of each fur product on the invoice pertaining to such product, as required by Rule 40 of the Rules and Regulations.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered. That respondent Joseph Baum, an individual, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of February 22, 1955].

Complaint

IN THE MATTER OF
COLUMBIAN BRONZE CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6204. Complaint, May 5, 1954—Decision, Feb. 24, 1955*

Consent order requiring the two corporate producers of the "vast bulk" of inboard marine propellers for pleasure craft in the eastern United States, with main offices at Freeport, Long Island, and Grand Rapids, Mich., respectively, to cease cooperating in fixing and maintaining prices, etc., for their products.

Before *Mr. John Lewis*, hearing examiner.

Mr. George W. Williams for the Commission.

Glass, Lynch & Kusch, of New York City, for Columbian Bronze Corp.

McCobb, Heaney & Dunn, of Grand Rapids, Mich., for Michigan Wheel Co., etc.

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 the corporations listed above in the caption of this complaint, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the said Act (U. S. C. Title 15, Sec. 45), 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 Columbian Bronze Corporation is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at Freeport, Long Island, New York, and is sometimes herein referred to as "Columbian."

Respondent Michigan Wheel Company is a corporation organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 239 Market Avenue, S. W., Grand Rapids, Michigan, and is sometimes referred to herein as "Michigan."

The respondent Michigan Wheel Company purchased and wholly owns the trade name "The Federal Propellers," which is generally con-

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ducted by Michigan as a separate unit, and at the same address, and is sometimes referred to herein as "Federal."

PAR. 2. The above-named respondents are principally engaged in the production and marketing of marine propellers of the type generally used for pleasure craft and range in size from 8 inches to 65 inches in diameter, some of which may be of a special or unique design. Respondent, Michigan Wheel Company, produces and markets a line of both inboard and outboard propellers. Neither Federal nor Columbian produces or markets outboard propellers.

While propellers are produced by concerns on the West Coast, the business of those on the West Coast is confined largely to the western area of the United States, and the business of respondents is confined largely to the eastern area of the United States.

There are a number of propeller producers and marketers in the United States, as above indicated, most of whom are small producers thereof, and by reason of the position of the respondents in the industry, who produce and market the vast bulk of the said propellers in at least the eastern area, they have a dominant, or potentially dominant, position therein in said eastern area.

In addition to the production and distribution of propellers, respondents produce and market other marine hardware and equipment.

The respondent Columbian Bronze Corporation had an average annual volume of sales of approximately \$1,500,000, a large part of which was for the marine propeller segment of its business.

The respondent Michigan, including The Federal Propellers, had gross sales in 1952 of approximately \$2,000,000, of which amount approximately \$1,500,000 represents the marine propeller segment of its business.

The customers of the respondents are distributors, dealers, boat builders, boat owners and the government, on bids. Distributors are generally defined as those customers who start with and have a stock of propellers valued at \$1,000 for inboard and \$500 for outboard propellers, and generally perform the function of a distributor. Dealers are those who sell directly to the users thereof.

PAR. 3. The said respondents, in the regular course and conduct of their respective businesses, as hereinabove described, sell and cause the aforesaid products, when sold, to be shipped or otherwise transported to purchasers thereof located in States of the United States other than in the state of origin of said shipment, and in the District of Columbia, and the said respondents have, during all the time herein described, carried on and are now carrying on a constant course of trade in commerce in said products, between and among the various States of the United States and in the District of Columbia.

PAR. 4. The said respondents are in competition with one another and with others in producing, selling and otherwise distributing the products herein described and referred to as inboard marine propellers, in commerce, within the intent and meaning of the Federal Trade Commission Act, except insofar as actual and potential competition has been hindered, frustrated, lessened, restricted, restrained, or eliminated by the acts, practices and methods alleged herein.

PAR. 5. Since on or about January 1, 1947, respondents have engaged in a mutual and common understanding and planned common course of action to lessen, suppress and eliminate competition between and among themselves in the sale of inboard marine propellers, and in furtherance thereof and pursuant thereto have engaged in, done and performed the following acts, practices, methods and things:

(a) Discussed with one another prospective price changes and prospective discount schedules and sales terms, in advance of the establishment of such price lists and discount schedules.

(b) Exchanged price information in the form of price lists, discount schedules and sales terms before and after sales transactions.

(c) Conferred and consulted with one another concerning arrangements with dealers, jobbers and distributors.

(d) Discussed and conferred with one another in advance of publication or announcement of prices, or price changes, the charge to be included in the boring of shaft holes in propellers.

PAR. 6. The effect of the aforesaid mutual and common understanding and planned common course of action and the acts, practices, methods and things done in furtherance thereof and in pursuance thereto, as alleged in Paragraph Five above, has been and is to eliminate, lessen and suppress competition between and among the respondents by the establishment of uniform prices and substantially uniform prices and other terms and conditions of sale and charges, and has a dangerous tendency to enhance prices, and to injure and deprive the public of the benefits of free and full competition; and is altogether to the injury and prejudice of the public.

PAR. 7. The aforesaid acts, practices and methods of said respondents constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 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 February 24, 1955, 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

The Federal Trade Commission issued its complaint against the above-named respondents on May 5, 1954, charging them with the use of unfair methods of competition and unfair acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act. After being duly served with said complaint, the respondents appeared by counsel and filed their separate answers thereto. Thereafter a stipulation was signed by the parties providing for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation has been submitted to the above-named hearing examiner, heretofore duly designated by the Commission, for his consideration in accordance with Rule V of the Commission's Rules of Practice.

Respondents, pursuant to the aforesaid stipulation, have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that the answer heretofore filed by respondents is to be withdrawn and that the parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, and specifically waive any and all right, power, or privilege to challenge or contest the validity of said order. It has been further stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation, and that the signing of said 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.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid stipulation for consent order dated November 22, 1954, the answer previously filed by respondents being hereby deemed withdrawn, 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 makes the following findings, for jurisdictional purposes, and order:

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Order

1. Respondent Columbian Bronze Corporation is a corporation, organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at Freeport, Long Island, New York.

Respondent Michigan Wheel Company is a corporation organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 239 Market Avenue, S.W., Grand Rapids, Michigan.

Respondent The Federal Propellers, a name under which Michigan Wheel Company also does business, is generally conducted by said respondent as a separate unit, and at the same address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents, Columbian Bronze Corporation, a corporation, and Michigan Wheel Company, a corporation, also trading as The Federal Propellers, their respective officers, agents and employees, and any subsidiary or affiliate, in connection with the offering for sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their said products, namely, marine propellers, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, agreement, understanding or arrangement between themselves or by and between either or both of them and others not parties hereto, to do or perform the following acts or things, namely:

(1) Fixing or maintaining the prices, bids, discounts or other terms or conditions upon which their respective propellers are sold or distributed.

(2) Fixing or maintaining charges for or in connection with the boring of their respective propellers.

(3) Exchanging or otherwise supplying competitors or potential competitors with price information, including discounts and other terms of sale of said products and boring charges, in advance of the announcement of prices, discounts and other terms of sale or boring charges.

Provided, It is understood that this order prohibits exchanging of price information, including discounts and other terms of sale of said products and boring charges, only when done in advance of the public announcement of such information; except that this proviso shall not

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be deemed to authorize the exchanging of such information at other times if done pursuant to a planned common course of action, agreement, understanding or arrangement to do the things prohibited in sub-paragraphs (1) and (2) hereof.

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 February 24, 1955].

Decision

IN THE MATTER OF
ADVERTISING SPECIALTY NATIONAL ASSOCIATION
ET AL.

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

Docket 5952. Complaint, Feb. 7, 1952—Decision, Mar. 4, 1955

Order requiring a trade association of manufacturers and jobbers of advertising specialties, its jobber members and its manufacturing members who sold to jobbers, to cease acting in concert to secure resale price maintenance for the purpose of eliminating price competition among jobbers in each manufacturer's product; and dismissing the complaint as to all the direct-selling manufacturer members of respondent association who did not sell to jobbers.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Rufus E. Wilson and *Mr. George W. Williams* for the Commission.

Kittelle & Lamb, of Washington, D. C., for respondents generally.

Mendelsohn, Lane & Friedman, of Cleveland, Ohio, for Kromex Sales Co.

DECISION OF THE COMMISSION

The Commission, having fully considered the entire record herein including the transcript of the hearings (which shows that all members of Respondent Association were represented by counsel), the briefs of the parties and oral argument of counsel, hereby finds that this proceeding is in the interest of the public and makes this, and the accompanying opinion, its findings as to the facts and conclusion.

Respondent Advertising Specialty National Association, a non-profit corporation, is a trade association of the respondent manufacturers and jobbers of advertising specialties, organized and existing under the laws of the State of Illinois with its principal office located at 1346 Connecticut Avenue, N. W., Washington, D. C. The jobbing members and the member manufacturers supplying jobbers of said Association are numerous and changing.

The Named Jobber Respondents

The following listed respondent jobber members are representative of all of the jobber members of the respondent Association at the time of the issuance of the complaint, as named in the 1952 Membership Roster (Com. Ex. 45), and who are all respondents herein.