

Findings

IN THE MATTER OF

CLEAN-RITE VACUUM STORES, INC., SAMUEL
BERENSON, AND ETTA BERENSONORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6181. Complaint, Feb. 18, 1954—Decision, Apr. 8, 1955

Order requiring a retail dealer in Washington, D. C., to cease representing falsely in "bait" advertising that it was making a bona fide offer to sell reconditioned vacuum cleaners at exceptionally low prices and that the machines would do a satisfactory job of cleaning, when such offers were made for the purpose of obtaining leads as to prospective buyers and in follow-up calls on persons responding to them, respondent's salesmen disparaged the advertised cleaners and attempted to, and often did, sell them much more expensive cleaners.

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

Mr. William J. Tompkins and *Mr. Michael J. Vitale* for the Commission.

Koonin & Chalfonte, of Washington, D. C., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration on the complaint, answer thereto, testimony and other evidence and proposed findings as to the facts and conclusions presented by counsel, and the Hearing Examiner, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this his findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

1. Respondent Clean-Rite Vacuum Stores, Inc., is a corporation organized under the laws of the State of Maryland with its principal office and place of business located at 925 F Street, N. W., Washington, D. C. Respondents Samuel Berenson and Etta Berenson are individuals and are President and Secretary-Treasurer, respectively, of the corporate respondent. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent.

2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of vacuum cleaners in inter-

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state commerce and in the District of Columbia, and are engaged in direct and substantial competition with other concerns engaged in the sale and distribution of vacuum cleaners in interstate commerce and in the District of Columbia.

3. In the course and conduct of their business the respondents, for the purpose of inducing the purchase of their vacuum cleaners, have engaged in extensive advertising in newspapers and in television and radio broadcasts. Among and typical of the statements and representations made in such advertising were the following:

How would you like to get a superbly reconditioned Electrolux Vacuum Cleaner, rebuilt by the Cleanrite Vacuum Stores, for only \$8.75. Yes, only \$8.75 complete with these work-saving attachments that are specially designed to save you hours and hours of work every week on your household cleaning. You should see what a terrific job this rug attachment does, and how effortless too. It just glides over the carpet, but the powerful suction of this machine picks up every piece of lint, every dog hair, and it gets underneath the deep pile of the carpet and pulls out the dirt that's buried there.

* * * * *

Now this Electrolux doesn't cost you one cent until you're absolutely positive that this is the machine you've been looking for. We want you to try it before you buy it. A Cleanrite representative will call at your home and give you a complete free home demonstration with absolutely no obligation on your part.

* * * * *

Yes, this beautiful reconditioned Electrolux, with a full one year guarantee on both parts and labor, plus all the attachments, plus a sprayer attachment, can be yours for only \$8.75 and on the easiest of easy terms. So, go to your phone right now, and call REpublic 7-0606. That's Republic 7-0606.¹

CLEAN-RITE STORES

"Washington's Vacuum Center"

ME. 8-5600 925 F St. N. W. Open Daily to 6

RECONDITIONED

Beautifully
Reconditioned
By Clean-Rite
Cleaner of 101 Uses
COMPLETE WITH
CLEANING TOOLS
Written Guarantee
for 1 Year
(Parts and Labor)
10.95
FULL CASH PRICE

ELECTROLUX

(Picturization of an
Electrolux Vacuum
Cleaner)

ADVERTISED

ITEMS ALWAYS
AVAILABLE

¹ Commission Exhibit No. 3, being an advertisement which respondents caused to be broadcast over Radio Station WMAL in the year 1953.

Easy Terms Arranged—Liberal Allowance on Your Old Cleaner

FOR FREE HOME
DEMONSTRATION
Phone ME. 8-5600²

Through the use of the aforesaid statement and representations, respondents represented, directly or by implication, that they were making a bona fide offer to sell reconditioned Electrolux vacuum cleaners at prices of \$8.75 and \$10.95, and that said cleaners would do a satisfactory job of cleaning.

4. The advertisements hereinabove described and others of similar import used by the respondents were not bona fide offers to sell the reconditioned Electrolux vacuum cleaner described therein, but were, in fact, a part of a sales plan or procedure adopted by the respondents to sell their higher priced vacuum cleaners. In fact, the vacuum cleaners so advertised were of little or no value and would not do a satisfactory job of cleaning. When a member of the purchasing public answered respondents' advertisement a salesman was sent out with such vacuum cleaner for the purpose of making a demonstration. In so doing, the salesman made no effort to sell such vacuum cleaner, but instead used every effort to discourage such sale and belittle and disparage such cleaners and only in those instances where the customer was sufficiently insistent did the salesman sell the machine advertised, and in some instances refused and neglected to sell or deliver the vacuum cleaner demonstrated. The salesman customarily brought with him new or more expensive machines which he insisted on demonstrating in comparison with the machine advertised, and endeavored to induce and in many instances was successful in inducing the prospect to purchase a new or more expensive vacuum cleaner.

5. Through the use of the aforesaid false, deceptive and misleading statements and representations in advertising as a part of, and in conjunction with, respondents' sales plan hereinabove described, the respondents have induced a substantial portion of the purchasing public to purchase substantial quantities of respondents' more expensive vacuum cleaners as is indicated by the fact that respondents' gross volume of business for the year 1951 amounted to \$364,000; for 1952, \$340,000; and for 1953, \$290,000.

CONCLUSION

The aforesaid acts and practices as herein found 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.

² Commission Exhibit No. 2. Advertisement in the Washington Post August 14, 1953.

ORDER

It is ordered, That respondents Clean-Rite Vacuum Stores, Inc., a corporation, and its officers and respondents Samuel Berenson and Etta Berenson, individually and as officers of the corporate respondent, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of vacuum cleaners or other similar merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

2. The use of any sales plan or procedure involving the use of false, deceptive or misleading statements or representations in advertising which are designed to obtain leads or prospects for the sale of other or different merchandise.

3. Representing, directly or by implication, that vacuum cleaners which have little or no value as cleaning devices will, in fact, do a satisfactory job of cleaning.

ON APPEAL FROM INITIAL DECISION

By MEAD, Commissioner:

Presented here for final determination upon the merits is the appeal of respondents from the hearing examiner's initial decision which ruled that the named respondents, Clean-Rite Vacuum Stores, Inc., and two individuals, Samuel Berenson and Etta Berenson, have engaged in unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent.

The findings and conclusions of the hearing examiner follow generally the allegations of the complaint. In substance they are that respondents offered for sale, through extensive advertising in newspapers, and on radio and television, reconditioned Electrolux vacuum cleaners at prices of \$8.95 and \$10.95, which machines, in fact, were of little or no value and would not do a satisfactory job of cleaning; that such offers were not bona fide, but were, in fact, part of a sales plan adopted by respondents to sell higher priced vacuum cleaners; that such offers were made to obtain leads and information as to potential purchasers of vacuum cleaners responding to advertisements, after which respondents' salesmen called upon prospects to demon-

strate the machines advertised. It was found below also that salesmen made no effort to sell the reconditioned vacuum cleaners advertised but, instead, belittled and disparaged them; that only where customers were insistent were the advertised vacuum cleaners sold; and that in some instances respondents, through their salesmen, refused or neglected to sell or deliver the reconditioned machines demonstrated. The hearing examiner found, as well, that salesmen customarily offered and insisted on demonstrating machines which were new or more expensive in comparison with those advertised and in many instances were successful in inducing the purchase of new and more expensive machines. Finally, the hearing examiner found that, through the use of false and misleading advertising, and in conjunction with the sales plan described, respondents have induced the purchase of substantial quantities of more expensive vacuum cleaners, as is indicated by the respondents' gross annual volume of business in 1951 of \$364,000; in 1952 of \$340,000; and for 1953 of \$280,000.

Respondents' appeal seeks to have the initial decision set aside on the ground that the allegations of the complaint have not been sustained and to have the complaint herein dismissed. Respondents submitted specific exceptions to the initial decision adverted to in their brief, and hereinafter discussed; and in addition to specific record references set forth therein, included the entire stenographic record and all exhibits offered by both parties. We have fully considered the entire record, including the transcript of hearings, exhibits, briefs of both parties and oral argument of counsel.

For the reasons hereinafter stated, we have concluded that the hearing examiner's initial decision is correct, that respondents' exceptions thereto are without merit and that respondents' appeal should be denied.

Appellants excepted to the findings of the hearing examiner to the effect that:

1. Advertisements involved did not make bona fide offers to sell the merchandise advertised;
2. Vacuum cleaners advertised were of little or no value and would not do a satisfactory job of cleaning;
3. Advertisements offering reconditioned cleaners were part of a plan to sell higher priced vacuum cleaners;
4. Through use of false and misleading advertising, and in conjunction with their sales plan, respondents induced purchase of substantial quantities of higher priced vacuum cleaners as evidenced by gross sales volume for each of the years 1951, 1952 and 1953.

At the outset we will consider exceptions 1 and 3 together.

Nine of the witnesses testifying in support of the complaint were shown to have been induced by the questioned advertising in various media to seek to purchase reconditioned vacuum cleaners from respondents. From our examination of their uncontroverted testimony it is clear that the representations which stimulated them to act were not bona fide offers to sell the items advertised. It truly was "bait" advertising resorted to in order to get the feet of respondents' salesmen in the doors of prospective customers. This accomplished, the "sales pitch" utilized, as disclosed by the record, uniformly involved aggressive and deliberate belittlement and disparagement of the advertised reconditioned units, outright refusal to demonstrate or to sell, and resort to high pressure methods, hardly legitimate in several instances, to induce the purchase of more expensive machines. We think the testimony and exhibits are thoroughly convincing that the advertising employed by respondents to further the sale of more expensive vacuum cleaners was false, misleading and deceptive in that respondents had no intention of selling the reconditioned machines except as part and parcel of a sales scheme to sell more expensive vacuum cleaners. Such sales schemes, whereby many persons are, or may be, induced to purchase merchandise other than that featured in advertisements, are contrary to public policy and, in themselves, are an injury to the public and constitute unfair and deceptive acts and practices in commerce. We expressly find respondents' exceptions 1 and 3 to be totally lacking in merit.

Respondents' second exception goes to the hearing examiner's finding that the reconditioned vacuum cleaners were of little or no value and would not do a satisfactory job of cleaning. There is direct and uncontroverted testimony that these machines were as found by the hearing examiner. For example, two witnesses testified that reconditioned machines demonstrated "had a motor that was so weak * * * there was no suction at all," or that "it would not pick a thread up, and it would not pick a straw up * * * no suction at all."¹ Also, we find the record shows respondents' salesmen to be in substantial agreement with the hearing examiner on this finding when, as part of their "sales pitch," they belittled and disparaged the reconditioned machines in attempting to induce the purchase of higher priced ones. We find respondents' second exception to be without merit and so reject it.

Respondents' fourth exception, in substance, is that there is no basis in the record for the hearing examiner's finding and conclusion that respondents' gross volume of sales for the years 1951 (\$364,000), 1952 (\$340,000) and 1953 (\$280,000) indicated that the questioned adver-

¹ Record, pp. 24, 40, 47.

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tisements resulted in the sale of a substantial quantity of respondents' more expensive vacuum cleaners. The argument is made that the testimony of the witness Samuel Berenson on this aspect of the case dealt entirely with the gross annual volume of sales for the years indicated, with no breakdown of such figures as to "reconditioned" or "new and more expensive" vacuum cleaners.

We think the inference drawn by the hearing examiner is valid on the record. He did not find that the entire gross annual sales volume resulted from respondents' use of "bait" advertising in conjunction with the sales scheme described. Nor is that the position we take. The record establishes that sales in fact were made; and, that "bait" advertising accounted for some of those sales. The inference is reasonable, and we so find, that respondents' gross volume of business for the years stated *indicates*, in the circumstances, that substantial quantities of more expensive vacuum cleaners were sold as a result of the respondents' sales scheme. Respondents elected to introduce no evidence to contravene the allegations of the complaint in this regard or to offset the testimony of the witnesses supporting the finding. There are present in the record here undisputed facts and circumstances, the weight of which support the ultimate fact found—namely, that the advertisements complained of did result in the sale of a substantial quantity of respondents' more expensive vacuum cleaners. Consequently, we reject respondents' fourth and last exception. The respondents' appeal is denied and the initial decision of the hearing examiner is affirmed.

Commissioner Howrey did not participate.

FINAL ORDER

Respondents Clean-Rite Vacuum Stores, Inc., a corporation, and Samuel Berenson and Etta Berenson, individually, having filed, on August 4, 1954, their appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on briefs and oral argument; and the Commission having rendered its decision denying the appeal and affirming the initial decision:

It is ordered, That the aforesaid respondents 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 contained in said initial decision.

Commissioner Howrey not participating for the reason that he did not hear the oral argument.

IN THE MATTER OF
SOUTHERN NATIONAL INSURANCE COMPANY

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

Docket 6251. Complaint, Oct. 14, 1954—Decision, Apr. 14, 1955

Consent order requiring an insurance company in Little Rock, Ark., to cease advertising falsely the duration, medical examination requirements, indemnification, and coverage of its accident and health insurance policies.

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

Mr. William A. Somers and *Mr. Robert R. Sills* for the Commission.
Catlett & Henderson, of Little Rock, Ark., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Southern National Insurance Company, 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. The respondent, Southern National Insurance Company, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at Little Rock, Arkansas.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Arkansas, in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.