

Complaint

IN THE MATTER OF
SPURGEON PICKERING DOING BUSINESS AS
NATIONAL NURSERIES

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

Docket 6343. Complaint, May 5, 1955—Decision, Aug. 11, 1955

Consent order requiring a seller in Biloxi, Miss., to cease misrepresenting in advertising the quality, condition, etc., of azaleas, camellia plants, rose bushes, and other nursery stock, and shipping to purchasers small unrooted dried cuttings which would not grow when planted.

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr. for the Commission.

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 Spurgeon Pickering, an individual trading and doing business as National Nurseries, 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 Spurgeon Pickering is an individual trading and doing business as National Nurseries, with his office and principal place of business located at Briarfield Avenue and Railroad in the City of Biloxi, Mississippi.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of nursery stock in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said nursery stock, when sold to be shipped and transported from his place of business in the State of Mississippi to purchasers thereof at their respective points of location in the various States of the United States other than Mississippi and in the District of Columbia.

There is now, and has been for more than one year last past, a course of trade by respondent in said nursery stock 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 his said business and for the purpose of inducing the purchase of his said nursery stock, respondent

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represented, directly or by implication, in advertisements in newspapers and periodicals having a general circulation in various States of the United States and in circulars and catalogues distributed to persons in various States by means of the United States mails, that of his nursery stock offered for sale: (1) the Camellia plants were rare varieties true to name as listed, and were three years old, heavily rooted branched plants; (2) the Azalea plants were well established blooming size two to three years old, with good root systems; (3) the blueberry plants and blackberry plants were three year old plants which would bear the first year planted and produce up to six gallons of berries from each plant; (4) the Multaflora Rose plants were extra large hardy well rooted plants, one to four feet high pruned to 10 inches and would grow three to four feet the first season; (5) the assortment of 48 roses and shrubs included 10 rose bushes from one to three years old, well rooted, of blooming size, and that they would bloom the season planted; (6) that other rose bushes were well rooted three year old plants.

PAR. 4 The foregoing representations and the implications arising therefrom were false and misleading. In truth and in fact, (1) camellia plants delivered by respondent were in many instances not of the variety named in his advertisements but were other and cheaper and less desirable plants and were not one to three year old plants and were not well rooted branched plants; (2) the Azalea plants delivered by respondent were, in many instances, not well established two to three year blooming size plants with good root systems, but were unrooted dried cuttings; (3) the blackberry and blueberry plants delivered were not well rooted three year old plants and would not bear the first season, nor produce six gallons or any other large amount of berries; (4) the Multaflora Rose hedge plants delivered were not extra large hardy well rooted plants, were not one to four feet high, pruned to 10 inches, and would not grow three to four feet the first season after planting; (5) the rose bushes included in respondent's 48 plant assortment were not one to three year old plants of blooming size nor would they bloom the first season; (6) the other rose bushes delivered were not three year old well rooted plants. In lieu of the plants as represented, respondent in many instances shipped to purchasers, who ordered plants advertised by him, small unrooted dried cuttings which would not grow when planted by the purchaser.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements and representations and practices in connection with the sale and distribution in commerce of said nursery stock has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of said nursery stock into the erroneous and mistaken belief that such

statements and representations are true, and into the purchase of substantial quantities of respondent's nursery stock, in commerce, by reason of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondent, 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.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondent with violation of the Federal Trade Commission Act through the making of certain misrepresentations in connection with the sale of his nursery products. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the filing of an answer to the complaint is waived, and that the complaint and agreement shall constitute the entire record in the proceeding; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, respondent specifically waiving any and all right, power and privilege to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided in the Federal Trade Commission Act for other orders of the Commission; and that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of the proceeding, the agreement is hereby accepted and made a part of the record, the following jurisdictional findings made, and the following order issued:

1. Respondent Spurgeon Pickering is an individual trading as National Nurseries, with his office and principal place of business located at Briarfield Avenue and Railroad in the City of Biloxi, Mississippi.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Spurgeon Pickering, an individual, trading as National Nurseries, or trading and doing business under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of nursery stock in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting the nursery stock offered for sale as to size, variety, age, rate of growth, production, condition or blooming time.
2. Shipping to any purchaser nursery stock different from that advertised by respondent and ordered by the purchaser.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of August, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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.

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IN THE MATTER OF

JONI GAIL, INC. ET AL.

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

Docket 6323. Complaint, Apr. 4, 1955—Decision, Aug. 12, 1955

Consent order requiring a manufacturer and its corporate selling agent in New York City to cease violating the Wool Products Labeling Act by Labeling as "50% wool, 50% orlon" two-piece ladies' weskit and skirt combinations which contained substantial quantities of reprocessed wool and miscellaneous non-woolen fibers, and by failing to identify the manufacturer on tags and to label the skirts separately, as required by the Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. George E. Steinmetz and *Mr. Roslyn D. Young, Jr.* for the Commission.

Mr. Robert J. Eliasberg, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joni Gail, Inc., a corporation, and Ethel Boroff, also known as Ethel Estran, Evelyn Finke and Elvira Torre, individually and as officers of said corporation; Sue Carson, Inc., a corporation, and Herman Boroff, Ben Costa, and Paul Weiner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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:

PAR. 1. The corporate respondent, Joni Gail, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Respondent Ethel Boroff is President, respondent Evelyn Finke is Vice President and Respondent Elvira Torre is Secretary-Treasurer of said corporate respondent. These individual respondents formulate, direct and control the acts, policies and practices of the corporate respondent. The office and principal place of business of each and all of said corporate and individual respondents is located at 1400 Broadway, New York, New York.