

Complaint

IN THE MATTER OF

NOVEL MFG. & DISTRIBUTING CO., INC., ET AL.

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

Docket 6384. Complaint, June 30, 1955—Decision, Nov. 23, 1955

Consent order requiring sellers in New York City to cease advertising falsely in newspapers and other publications that its "Garden Under Glass" floral centerpiece contained natural flowers, that its offer to sell the product at designated prices was for a limited time, and that the prices at which it was offered for sale were reduced.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Michael J. Vitale 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 Novel Mfg. & Distributing Co., Inc., a corporation, and Sam Weitz and Richard Weitz, individually and as officers of said corporation, and Russell Weitz, individually and as General Manager 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 Novel Mfg. & Distributing Co., Inc., 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 33 Second Avenue, New York, New York. In connection with the practices hereinafter referred to it trades as Everlast Gardens. Respondents Sam Weitz, Richard Weitz, and Russell Weitz are president, secretary-treasurer, and general manager, respectively, of this corporate respondent. The address of these individuals is the same as that of corporate respondent.

All of the aforesaid respondents cooperated and acted together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents during the years of 1953 and 1954 engaged in the advertising and sale, among other things, of a so-called floral centerpiece designated as the "Garden Under Glass." In the course

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and conduct of their said business respondents caused said product when sold to be transported from their place of business in the State of New York to purchasers located in various other States. Respondents maintained a course of trade in said product in commerce among and between the various States of the United States. Their volume of business in said commerce was substantial.

PAR. 3. At all times mentioned herein respondents have been in direct and substantial competition in commerce with other corporations, firms, and individuals engaged in the sale and distribution of products of the same or similar nature.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of said product, respondents made certain statements and claims with respect to said product and the prices thereof in advertising matter inserted in newspapers and other publications. Among and typical of the statements and claims made in said advertising matter are the following:

BREATHTAKING—

Garden Under Glass

Centerpiece of Lush, Exotic Flowers Preserved forever.

They'll ask you where you got it,

How it can stay fresh looking through the years.

Imagine! Red roses, white gardenias, and rare, natural flowers brought in from the deep Brazilian forests are forever preserved under crystal-clear glass by a special sealing process.

Limited Time Offer at Special Introductory Price:

25" around regularly \$4.00 NOW only \$2.00 (plus .50 to cover postage and handling).

30" around Deluxe Assortment regularly \$8.00 NOW only \$3.50 (plus .50 to cover postage and handling of 5 lbs.).

25" around regularly \$5.00 NOW only \$2.50 (plus .50 to cover postage and handling).

30" around Deluxe Assortment regularly \$8.00 NOW only \$3.50 (plus .50 to cover postage and handling of 5 lbs.).

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import, but not specifically set out herein, respondents represented, directly or by implication:

1. That all of the flowers contained in said product were natural flowers.

2. That the offer to sell at the prices designated was for a limited time.

3. That the prices at which the product was offered for sale were reduced from those regularly charged.

PAR. 6. The aforesaid statements were false, deceptive, and misleading. In truth and in fact:

1. The greater portion of the flowers contained in said product were not natural but were artificial flowers made of a plastic material.

2. The offer to sell said product at the designated prices was not limited as to time but was a continuous offer.

3. The regular prices of said product were those at which the product was offered for sale. Respondents never sold the product at the prices designated as regular and such prices so designated were fictitious.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce the purchasing public to purchase substantial quantities of respondents' said product as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 30, 1955, charging them with having violated the Federal Trade Commission Act through the making of certain misrepresentations regarding a floral centerpiece designated as the "Garden Under Glass." In lieu of submitting answer to said complaint, respondents entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in ac-

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cordance with said agreement. It was further provided that said agreement, together with the complaint shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The agreement further provided that the names Richard Weitz and Russell Weitz, appearing as individual respondents in this matter, should be corrected to read Richard Weith and Russell Weith.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement the hearing examiner makes the following jurisdictional findings and order:

1. The respondent corporation, Novel Mfg. & Distributing Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 33 Second Avenue, New York, New York. Respondents Sam Weitz and Richard Weith are individuals and officers of said corporation and respondent Russell Weith is an individual and general manager of said corporation, with their offices and principal place of business the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Novel Mfg. & Distributing Co., Inc., a corporation, and its officers, and Sam Weitz and Richard Weith, individually and as officers of said corporation, and Russell

Weith, individually and as general manager of said corporation, 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 a so-called floral centerpiece designated as the "Garden Under Glass," or by any other name or names, or any other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That any flowers which they sell or offer for sale are natural flowers unless such is the fact.
2. That offers to sell merchandise at designated prices are limited as to time when they are continuous offers.
3. That the usual and customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23rd day of November, 1955, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
ATLANTIC SPONGE AND CHAMOIS CORPORATION
ET AL.

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

Docket 6162. Complaint, Feb. 5, 1954—Decision, Nov. 29, 1955

Order requiring sellers of leather products in New York City to cease labeling as "Chamois," "Supreme Oil Tanned Chamois," and "Atlantic Oil Tanned Chamois," certain leather products which, while having the same general appearance, did not possess the softness, pliability, quick moisture absorption and moisture release and other desirable qualities of genuine chamois, and were not genuine chamois in the accepted meaning of the term; making false statements of similar purport on letterheads, postal cards, and other advertising media; and representing falsely, by such statements in circulars distributed to the trade as "Buy direct from Tannery and Save," that they operated their own tannery.

Mr. Charles S. Cox, counsel supporting the complaint.

Weisman, Allan, Spett & Sheinberg, by *Mr. Herbert S. Keller* and *Mr. Richard L. Sapiro* of New York, New York, for respondents.

INITIAL DECISION OF HEARING EXAMINER JOHN LEWIS

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on February 5, 1954, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint charges in substance that the respondents falsely represented certain of the leather products sold by them to be "chamois" leather, and falsely represented that they operate a tannery in which the leather products sold by them are tanned. Respondents appeared by counsel and filed a joint answer in which they admitted that the corporate respondent had represented its product as "chamois" but denied the falsity of such representation, and admitted that said respondent had on a single occasion made the statement set forth in the complaint concerning the operation of a tannery.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, theretofore duly designated by the Commission to hear this proceeding, on various dates between May