

Complaint

IN THE MATTER OF
FOOD TOWN, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6424. Complaint, Oct. 3, 1955—Decision, Jan. 11, 1956*

Consent order requiring a corporation operating a chain of supermarkets in Washington, D. C., to cease suggesting that the oleomargarine it sold was a dairy product through intermixing advertisements thereof among such items as cheese under the heading "DAIRY FOODS" in newspapers.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Morton Nesmith for the Commission.

Reasoner & Davis, of Washington, D. C., for respondent.

COMPLAINT ¹

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 Food Town, Inc., 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. Respondent, Food Town, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1400 S. Capitol Street in the city of Washington, District of Columbia.

PAR. 2. Respondent Food Town, Inc., is now and for more than one year last past has been engaged, among other things, in the distribution and sale of oleomargarine, a food. Respondent, or its subsidiaries, causes said oleomargarine, when sold, to be transported from a warehouse located in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent, or its subsidiaries, maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce in the District of Columbia and among and between the various States of the United States.

¹ Complaint is published as amended by order of hearing examiner granting motion to amend complaint dated November 8, 1955.

Complaint

52 F. T. C.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning said oleomargarine, by the United States mails, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements in newspapers having general interstate commerce circulation, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said oleomargarine; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning said oleomargarine, by the aforesaid means, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said oleomargarine in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, are the following:

DAIRY FOODS
COOPER—Black Rind
EXTRA SHARP
CHEESE
KRAFT—Parkay MARGARINE
Kraft—Handy Snax Kraft—Natural
Cheeses SWISS
 CHEESE

[picture of market basket with following enclosed therein:]

FOOD TOWN
CHEESE
FOOD
All Sweet
MARGARINE
Imported
SWEITZER
CHEESE

PAR. 4. The respondent, by placing its advertisements of oleomargarine or margarine under the heading of dairy foods and intermixing such between the advertisements of dairy foods, clearly suggests to many members of the purchasing public that said oleomargarine or margarine is a dairy product.

PAR. 5. The advertisements containing the various expressions set out in Paragraph 3 are misleading in material respects and constitute false advertisements, as such term is defined in Section 15(a)(2) of the Federal Trade Commission Act, in that they serve as repre-

sentations or suggestions that respondent's product is a dairy product, which is contrary to the fact.

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 EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 3, 1955, charging it with having violated the Federal Trade Commission Act by the use of unfair and deceptive acts and practices in commerce in the sale of oleomargarine. Said complaint was amended by the hearing examiner by order dated November 8, 1955. In lieu of submitting answer to the complaint as amended, respondent 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 Acting Director of the Bureau of Litigation.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint as amended and agreed that the record may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Respondent 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It was further provided that said agreement, together with the complaint as amended, 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; and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint as amended. 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 as amended may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint as amended and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the afore-

said 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. Respondent Food Town, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1400 South Capitol Street, in the City of Washington, District of Columbia.

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

ORDER

It is ordered, That Respondent Food Town, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound, or any combination thereof, which represents or suggests that said product is a dairy product;

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

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 11th day of January, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Complaint

IN THE MATTER OF

REGAL ACCESSORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 6353. Complaint, May 16, 1955—Decision, Jan. 12, 1956

Consent order requiring importers in New York City to cease violating the Flammable Fabrics Act by importing into the United States from Japan and selling in commerce silk scarves so highly inflammable as to be dangerous when worn.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Brockman Horne for the Commission.

Marlin & Sandberg, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Regal Accessories, Inc., a corporation, Irving Alpert and Mack Nord, 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 thereunder, 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 Regal Accessories, Inc., is a New York corporation. Respondents Irving Alpert and Mack Nord are President-Treasurer and Vice President-Secretary, respectively, of respondent Regal Accessories, Inc. The individual respondents formulate, direct and control the policies of said corporation. The business address of all respondents is 15 West 37th Street, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have imported into the United States articles of wearing apparel, as the term "articles of wearing apparel" is defined in the Flammable Fabrics Act, which, under the provisions of Section 4 of said Act, as amended, were so highly flammable as to be dangerous when worn by individuals. Respondents have sold, offered for sale, introduced, delivered for introduction, and transported and caused to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act, the said articles of wearing