

Complaint

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IN THE MATTER OF
WESTERN STAR MILL CO. ET AL.

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

Docket 6500. Complaint, Feb. 3, 1956—Decision, May 10, 1956

Consent order requiring a flour mill at Salina, Kans., and a wholesale grocery dealer of Tupelo, Miss., to cease furnishing to retail dealers and other purchasers of their flour, devices and merchandising plans involving the operation of a lottery scheme, in that purchasers of a bag of flour who selected either of two lucky numbers on a push card received an additional 25-pound bag of flour.

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Jason K. Yordy, of Salina, Kans., for Western Star Mill Co.,
John J. Vanier and Robert H. Adams.

Mitchell & McNutt, of Tupelo, Miss., for L. P. McCarty.

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 Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of said corporation, and L. P. McCarty, an individual, 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Western Star Mill Co. is a corporation, organized and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 215 East Iron Street, in the City of Salina, Kansas; respondent John J. Vanier is president of said corporate respondent, and respondent Robert H. Adams is sales manager of said corporate respondent, and these two respondents direct the sales and advertising practices of the corporate respondent.

Respondent Western Star Mill Co. is engaged in the milling, sale and distribution of flour to dealers and jobbers, and causes said flour, when sold, to be shipped from its place of business in the State of

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Kansas to purchasers at their points of location in the various other States of the United States.

Respondent L. P. McCarty is an individual, and co-partner in the wholesale grocery firm of L. P. McCarty & Son, with his office and principal place of business located in the City of Tupelo, Mississippi. Respondent McCarty purchases flour from respondent Western Star Mill Co. and sells and distributes the same in the State of Mississippi and also ships and causes to be shipped said flour, when sold, from his place of business in the State of Mississippi to purchasers thereof located in other States of the United States. All of said respondents act together and cooperate in the performance of the acts and practices hereinafter alleged.

There is now and has been for more than two years last past a substantial course of trade in such flour by said respondents in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their said business and in connection with and in furtherance of the sale of the said flour, respondents have furnished to retail dealers, and other purchasers of their flour, devices and plans of merchandising involving the operation of games of chance, lottery schemes and gift enterprises.

Respondents' plans of merchandising include the distribution to retailers of pull cards or punch cards having the following legend:

WIN 25 LBS	
OF FLOUR	
Pick your Lucky Number	
TWO BIG WINNERS	
(Gold Seal)	(Gold Seal)
Winner No. 1	Winner No. 2
25 Lbs Flour	25 Lbs Flour

Here's All You Do, put your name on two blank spaces below with each purchase of a 50 lb sack of flour. Put your name on ONE blank space with the purchase of 25 lbs. Lucky numbers are printed under the Gold Seals. The seals will be removed when all blanks are filled.

Under the legend are printed the numbers from "1" to "40" and a lined blank space for writing in the name of the purchaser of a sack of flour. Respondents also furnish each dealer with two 25 lb. bags of flour to be awarded to the selectors of the winning numbers. Retail dealers who purchase and resell respondents' flours display the "lucky number" cards in their places of business and award the winners the bags of flour in accordance with the legend.

Each purchaser of a bag of respondents' flour makes a choice of a number and writes his or her name in the blank line opposite the chosen number. Under each of the two gold seals is concealed a number. When the card is completely filled in with the names of

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purchasers, the gold seals are broken, revealing a number from 1 to 40, and the persons whose names are registered opposite the numbers corresponding with the numbers under the gold seals are awarded a 25 lb. bag of respondents' flour without additional charge. The numbers under the gold seals are effectively concealed from purchasers and prospective purchasers until all of the numbers on the cards have been chosen. The two bags of respondents' flour are thus awarded to the purchasers of respondents other flour wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' flour, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting a lottery, game of chance, or gift enterprise in the sale of their products in accordance with the sales plan hereinbefore set forth. Use by respondents of said plan or method in the sale of their flour, and the sale of said flour by and through the use thereof, and by the aid of said sales plan or method is contrary to the public interest and contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said flour to the purchasing public in the manner above alleged involves a game of chance or the award of a chance to procure a sack of flour without additional cost. Many persons are attracted by respondents' sales plan or method and the element of chance involved therein and are thereby induced to buy and sell respondents' flour.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the injury and prejudice of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued February 3, 1956, charged the respondents Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of Western Star Mill Co., located at 215 East Iron Street, Salina, Kansas, and L. P. McCarty, an individual located at Tupelo, Mississippi, with the use of unfair and deceptive acts and practices in interstate commerce in violation of the provisions of the Federal Trade Commission Act.

After the issuance of said complaint and before the filing of answers thereto, the respondents Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of Western Star Mill Co., and respondent L. P. McCarty, an individual, entered into separate agreements for consent order with counsel in support of the complaint disposing of all the issues in this proceeding,

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which agreements were duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in these agreements that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of these agreements, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreements, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreements.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreements, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreements, together with the complaint, shall constitute the entire record herein, that the complaint herein may be used in construing the terms of the order issued pursuant to said agreements and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreements and the identical orders therein contained, and, it appearing that said agreements and orders provide for an appropriate disposition of this proceeding, the same are hereby accepted and are 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 agreements the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of Western Star Mill Co., and respondent L. P. McCarty, an individual, their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of flour or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Using any sales promotion plan or scheme whereby purchasers of their said products are entitled to participate in the award of flour or other prizes, the winners of which are determined by the use of push cards, pull cards, or any other lottery devices.

2. Selling or otherwise disposing of any merchandise through the use of, or by means of, a game of chance, gift enterprise or lottery scheme.

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 10th day of May, 1956, 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.

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IN THE MATTER OF
WILLIAM OVERTON TRADING AS VANCOUVER
FUR FACTORY

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

Docket 6509. Complaint, Feb. 17, 1956—Decision, May 10, 1956

Consent order requiring a fur dealer to cease false advertising, misbranding, and false invoicing of his fur products in violation of the Fur Products Labeling Act, through failing to disclose the names of animals producing the fur or that certain products contained artificially colored fur, setting forth names of animals other than the real source of certain furs, failing to maintain adequate records supporting purported claims of savings, failing to attach labels, and failing to set forth information as required on attached labels and invoices.

Before *Mr. William L. Pack*, 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 William Overton, an individual trading as Vancouver Fur Factory, 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 William Overton is an individual trading as Vancouver Fur Factory, with his office and principal place of business located at 114 Sixth Avenue, Vancouver, Washington.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and has sold, advertised, 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, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act. Certain of said fur products have been misbranded, falsely advertised and