

Decision

IN THE MATTER OF
CLEMMIE L. CARMICHAEL TRADING AS
DEX PHARMACAL COMPANY ET AL.

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

Docket 6549. Complaint, May 8, 1956—Decision, Aug. 18, 1956

Consent order requiring distributors in Birmingham, Ala., of a drug preparation designated as "K & K", to cease representing in advertising, mainly by radio, that said "K & K" would cure colds and prevent pneumonia and was an effective treatment for various nose and throat ailments and their symptoms, among other things, when its only therapeutic value was in providing temporary relief of coughs due to colds and minor throat irritations.

Mr. R. P. Bellinger for the Commission.

Rogers, Howard & Redden, of Birmingham, Ala., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 8, 1956, charging them with having violated the Federal Trade Commission Act by making false and misleading representations concerning the therapeutic value of their drug products. In lieu of submitting answer to the complaint, respondents appeared by counsel and entered into an agreement, dated June 21, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of 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. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official

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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 respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Clemmie L. Carmichael is an individual trading as Dex Pharmacal Company. Respondents Irving Z. Harris and Pauline B. Harris are copartners trading as Veltex Company, United Chemical Company and T-Lax Products Company. The post office address of all of said respondents is Box 1292, Birmingham, Alabama.

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

ORDER

It is ordered, That respondents Clemmie L. Carmichael, trading as Dex Pharmacal Company or under any other name, and respondents Irving Z. Harris and Pauline B. Harris, individually and as copartners trading as Veltex Company, United Chemical Company and T-Lax Products Company, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation known as K & K, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce,

as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That the use of said preparation will cure colds, prevent pneumonia or is of any value in the treatment of sore throat or chest congestion;

(b) That said preparation constitutes a competent or effective treatment for coughs due to colds or throat irritations, except to the extent that it will afford temporary relief for coughs so caused and for minor throat irritations;

(c) That said preparation, used as directed, constitutes a competent or effective treatment for running nose, watery eyes, asthma, hay fever, catarrh, chest congestion, bronchitis, sinus trouble, allergic conditions due to coughs or colds, other nose, throat or chest ailments, or that its use will make one healthy;

(d) That when used as directed, the pyrilamine content in said preparation will provide an antihistamine effect;

(e) That when used as directed, said preparation will, in case of colds:

(1) Open up the bronchial tubes;

(2) Alkalize the system;

(3) Relieve aches or pains or reduce fever;

(4) Make breathing easier;

(5) Soothe the bronchi or the after effects of a cold;

(6) Have any therapeutic value in excess of providing temporary relief of coughs due to colds and of minor throat irritations.

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

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 18th day of August, 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.

Commissioner Anderson not participating.

IN THE MATTER OF
ARCH V. SHIPMAN ET AL. TRADING AS
SHIPMAN MANUFACTURING COMPANY

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

Docket 6529. Complaint, Mar. 16, 1956—Decision, Aug. 22, 1956

Consent order requiring manufacturers in Los Angeles, Calif., of vending machines and ball point pens dispensed thereby, to cease representing falsely in newspaper advertisements and by agents that they turned over accounts for servicing to purchasers of their machines, to whom large profits would accrue; that the purchase price of the machines was secured by merchandise; that a tremendous number of repeat purchases of the pens was assured; and that purchasers would be given exclusive sales territory and advantageous locations for the machines.

Mr. George E. Steinmetz for the Commission.

Mr. Jack Altman, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued March 16, 1956, charges respondents with violation of the Federal Trade Commission Act in connection with the sale and distribution of their vending machines. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the answer filed by respondents to the complaint shall be considered as having been withdrawn, and that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; 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; 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 entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.