

Decision

IN THE MATTER OF
COMFORT ZONE CORPORATION ET AL.

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

Docket 6361. Complaint, June 7, 1955—Decision, Oct. 2, 1956

Consent order requiring Long Island distributors of a device they designated as "Weather Zone Portable Air Conditioner"—consisting of a fan motor with two centrifugal single-inlet blowers, a plastic tray for water, and means to direct the air over the surface of the water before entering the blowers—to cease representing falsely in advertising that the device was an air conditioner.

Mr. William L. Taggart for the Commission.

Levy & Nevins, by *Mr. Saul S. Nevins*, of New York City, for Comfort Zone Corp., Harry Goldberg and John Murano.

McQuaid & Stephens, by *Mr. Thomas J. Stephens*, of White Plains, N.Y., for James L. Simpson.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondent Comfort Zone Corporation was organized and is existing and doing business under and by virtue of the laws of New York, with its office and principal place of business located at Jericho Turnpike, Mineola, Long Island. Respondent Harry Goldberg, an individual, was formerly vice-president of the corporate respondent. Respondent John Murano, an individual erroneously referred to in the complaint as Joseph Murano, is secretary of the corporate respondent. Respondent James L. Simpson, an individual, was formerly president of the corporate respondent.

Respondents are charged in the complaint with unfair and deceptive acts and practices in violation of the Federal Trade Commission Act in connection with the sale and distribution in commerce of a device which they have advertised as an air conditioner. The device consists of a fan motor with two centrifugal single-inlet blowers, a tray in which water may be placed over which the stream of air passes before it is picked up by the blowers and driven into the area to be cooled. It is alleged that this device will not control the temperature, humidity and circulation of air simultaneously and is therefore not an air conditioner.

Respondent James W. Simpson filed an answer, supported by an affidavit, denying, among other things, that he had acted in cooperation with the other respondents individually named to formulate, direct and control the policies, acts and practices of the

corporate respondent, asserting that although he never owned any stock in that corporation, he was employed by it on May 7, 1954; became its president June 25, 1954; resigned October 28, 1954; and since then has not been connected with the corporate respondent nor engaged in the sale and distribution of the device here involved.

A hearing was held on the issues raised by respondent Simpson's answer, but no evidence was presented to show that he had been individually involved in the acts and practices complained of, nor that he had ever controlled or been responsible for the acts and practices of the respondent corporation. The complaint should therefore be dismissed as to respondent James L. Simpson, individually.

Thereafter the corporate respondent, by its current president, Louis Levin; respondent Harry Goldberg individually and as former Vice President of the corporate respondent; respondent John Murano, individually and as Secretary-Treasurer of the corporate respondent; their counsel, and counsel supporting the complaint herein, entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director of the Commission's Bureau of Litigation and transmitted to the Hearing Examiner for his consideration.

The agreement provides, among other things, that respondents signatory thereto admit all the jurisdictional facts alleged in the complaint and agree that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission, as to them, shall be based shall consist solely of the complaint and this agreement; 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 the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents, in said agreement, waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of their rights to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint as to the respondents agreeing thereto, and adequately prohibits the acts and practices alleged to be in violation of the Federal Trade Commission Act. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest, and accepts the Agreement Containing Consent Order To Cease And Desist which, with the complaint, constitutes the record upon which this decision is based insofar as it relates to the corporate respondent herein and to individual respondents Harry Goldberg and John Murano. Therefore,

It is ordered, That respondent Comfort Zone Corporation, a corporation, and its officers; and Harry Goldberg and John Murano, individually and as officers or former officers of said corporate respondent, 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 their device or apparatus, now designated "Weather Zone Portable Air Conditioner", or any other device or apparatus of substantially similar construction or design, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Using the words "Air Conditioner" or any other word or words of similar import or meaning, either alone or in combination with any other word or words, as a trade name, or to designate, describe or refer to said device or apparatus;

2. Representing, directly or indirectly, that said device or apparatus is an air conditioner.

It is further ordered, That the complaint herein, insofar as it relates to respondent James L. Simpson individually, be, and the same hereby is, dismissed.

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 2nd day of October, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Comfort Zone Corporation, a corporation, and its officers; and Harry Goldberg and John Murano, individually and as officers or former officers of said corporate respondent, 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
KEDVALE PHARMACAL COMPANY ET AL.

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

Docket 6544. Complaint, Apr. 30, 1956—Decision, Oct. 2, 1956

Consent order requiring Chicago distributors of a drug product designated "Sanforin", to cease advertising falsely that the preparation was a new discovery and an effective treatment and cure for all kinds of arthritis, rheumatism, and similar ailments, and the symptoms and pains thereof.

Mr. Harold A. Kennedy for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 30, 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. After the issuance of the complaint, appearance by counsel, and filing of answer to said complaint, respondents entered into an agreement, dated July 19, 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 respondents' answer to the complaint shall be considered as having been withdrawn, and the record herein shall consist solely of the complaint and said agreement, 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