

Decision

IN THE MATTER OF
BENJAMIN BRIAR PIPE COMPANY, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6540. Complaint, Mar. 27, 1956—Decision, Nov. 20, 1956*

Consent order requiring a Brooklyn, N.Y., manufacturer of tobacco smoking pipes to cease misrepresenting the quality and value of their products by such means as imprints on boxes and containers stating that certain pipes were "Imported Algerian Briar"; imprints on their artificially grained Hickok pipes that the pipes were "Straight Grain"; the statement on display cards that their McAndrews White Bowl pipe "Formerly Sold For \$2.50" and was being sold for 59¢ as a "Manufacturer's Closeout"; and stickers on their Bretton Hall and McAndrews White Bowl pipes that they were "Value \$2.50 Value," or "\$5.00" or "\$7.50 Value."

Mr. Michael J. Vitale for the Commission.

Mr. Moses M. Falk, of New York City, for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint March 27, 1956, against respondents Benjamin Briar Pipe Company, Inc., a corporation existing under and by virtue of the laws of the State of New York, and Leo Benjamin, Sarah Benjamin, and Nat Friedland, individuals and as officers of the respondent corporation, charging them with false representations in the advertising, marking and sale of tobacco smoking pipes in contravention of the provisions of the Federal Trade Commission Act.

After issuance and service of said complaint, respondents Benjamin Briar Pipe Company, Inc., Leo Benjamin, and Nat Friedland, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director of Litigation. The non-joinder in said agreement of the respondent Sarah Benjamin will be hereinafter explained. It was expressly provided in said agreement 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 said agreement, the signatory respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the signatory respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement the signatory respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, 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 agreement; and that the said order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

Accompanying the agreement, and to be filed in the formal record of these proceedings, upon issuance by the Commission of its decision, is an affidavit executed by respondent, Sarah Benjamin, to the effect that this respondent, while a stockholder of the corporate respondent, has for several years last past exercised no supervision or control over said company, nor helped in formulating any of its policies, nor has she had anything to do with the manufacturing, selling, or advertising of any of the merchandise produced by the said company for the period aforesaid.

Said agreement recites that the respondent Benjamin Briar Pipe Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, and that the respondents Leo Benjamin and Nat Friedland are individuals and officers of the corporate respondent. The office and principal place of business of all respondents signatory is located at No. 681 Snediker Avenue, Brooklyn, New York.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same 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 finds that the Federal Trade

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Order

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 respondent Benjamin Briar Pipe Company, Inc., a corporation, and its officers, and respondent Leo Benjamin, individually and as an officer of said corporation and respondent Nat Friedland, an individual, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tobacco smoking pipes or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, the place of origin of their products or any of the components thereof.

2. Representing, directly or by implication, contrary to the fact, that any of their products are made of briar, or misrepresenting in any manner the species of wood of which their products, or parts thereof, are manufactured.

3. Representing, directly or by implication, that any of their products are "straight grain," unless such is the fact, or misrepresenting in any manner the characteristics of their products.

4. Representing, directly or by implication, that the usual and customary price of any merchandise is in excess of the price at which their merchandise is regularly and customarily sold in the normal course of business.

5. Representing, directly or by implication, that a specified amount is the value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business, in the same trade territory.

6. Placing in the hands of others means or instrumentalities which may be used to misrepresent the regular and usual retail prices of merchandise.

7. Representing, directly or by implication, through the use of the words "Manufacturers' closeouts" or any other words of the same import or meaning, that they are closing out any line of merchandise, unless such is the fact.

Further ordered, That the complaint herein be dismissed as to respondent Sarah Benjamin.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Whereas, the hearing examiner on September 28, 1956, filed an initial decision in this proceeding, which initial decision was based on an agreement containing a consent order executed under date of September 4, 1956, by certain of the parties including the respondent, Nat Friedland; and

Whereas, said respondent is joined as a party to the order to cease and desist contained in said decision in his capacity as an individual and also named as an officer of the respondent corporation; and, whereas, a motion to modify said order has been filed by counsel supporting the complaint, together with an affidavit executed by respondent, Nat Friedland, which affidavit affirms that he has never been an officer of the corporate respondent and that his participation in formulating policies and conducting the corporate respondent's affairs instead was engaged in his capacity as sales representative; and

Whereas, respondent Friedland appended the words "Individual, not as an officer" when subscribing to the agreement for a consent order, and it appearing thereby that he became a signatory to the agreement solely in his capacity as an individual and not as a corporate officer, and the Commission having determined that the motion to modify should be granted:

It is ordered, That the reference to the respondent, Nat Friedland, as an officer of the corporation as it appears in the order contained in the initial decision be, and it hereby is, stricken.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read in full as follows:

It is ordered, That respondent Benjamin Briar Pipe Company, Inc., a corporation, and its officers, and respondent Leo Benjamin, individually and as an officer of said corporation and respondent Nat Friedland, an individual, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tobacco smoking pipes or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, the place of origin of their products or any of the components thereof.

2. Representing, directly or by implication, contrary to the fact, that any of their products are made of briar, or misrepresenting in any manner the species of wood of which their products, or parts thereof, are manufactured.

3. Representing, directly or by implication, that any of their products are "straight grain," unless such is the fact, or misrepresenting in any manner the characteristics of their products.

4. Representing, directly or by implication, that the usual and customary price of any merchandise is in excess of the price at which their merchandise is regularly and customarily sold in the normal course of business.

5. Representing, directly or by implication, that a specified amount is the value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business, in the same trade territory.

6. Placing in the hands of others means or instrumentalities which may be used to misrepresent the regular and usual retail prices of merchandise.

7. Representing, directly or by implication, through the use of the words "Manufacturers' closeouts" or any other words of the same import or meaning, that they are closing out any line of merchandise, unless such is the fact.

Further ordered, That the complaint herein be dismissed as to respondent Sarah Benjamin.

It is further ordered, That, as so modified, the initial decision of the hearing examiner shall, on the 20th day of November, 1956, become the decision of the Commission; and, accordingly,

It is further ordered, That the respondents Benjamin Briar Pipe Company, Inc., a corporation, and Leo Benjamin and Nat Friedland, 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 as modified hereby.

IN THE MATTER OF
ROSLYN FURS, INC., ET AL.

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

Docket 6562. Complaint, June 7, 1956—Decision, Nov. 22, 1956

Consent order requiring a furrier in Toledo, Ohio, to cease violating the Fur Products Labeling Act, by false advertising, false invoicing, and misbranding of fur products, including failure to disclose the names of animals producing certain furs or naming other animals, false representations that fur products were being offered for sale from the stock of a business in liquidation, removal or mutilation of required labels, failure to maintain full records on which comparative prices and percentage claims were based, and failure to conform otherwise to the requirements of the Act.

Mr. R. D. Young, Jr. for the Commission.

Mr. Meyer Rosenberg, President of the corporate respondent, of Toledo, Ohio, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 7, 1956, alleging that the Respondents are, and subsequent to August 9, 1952, the effective date of the Fur Products Labeling Act, have been using unfair and deceptive acts and practices in commerce by falsely and deceptively advertising certain of their fur products in newspapers and by other means; by removing or mutilating, or causing the removal or mutilation of, labels required to be affixed to such products; by misbranding and falsely and deceptively invoicing such products; and by failing to maintain full and adequate records disclosing the facts upon which comparative prices and percentage savings claims were purportedly based, in violation of the Fur Products Labeling Act, the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act.

On August 13, 1956, no answer to the complaint herein having been filed, Respondents and counsel supporting the complaint 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 thereafter submitted to the Hearing Examiner for consideration.

Respondent Roslyn Furs, Inc. is identified in the agreement as an Ohio corporation, with its office and principal place of business located at 224 Erie Street, Toledo, Ohio, and Respondent Meyer