

Decision

IN THE MATTER OF
HIRAM B. HUNDLEY TRADING AS BEN HUNDLEY

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

Docket 6626. Complaint, Sept. 11, 1956—Decision, Jan. 16, 1957

Consent order requiring a seller of new and used automobile and truck tires in Washington, D.C., to cease using bait advertising and other false claims in newspapers as to prices, values, and savings, and false representations that tires actually no longer manufactured were "Factory Fresh", of "1955" or "1956" stock, and that certain others were "Factory Reconditioned".

Mr. Michael J. Vitale for the Commission.

Mr. Frederick Stohlman and *Mr. George H. Beuchert, Jr.*, of Washington, D.C., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on September 11, 1956, charging him with violation of the Federal Trade Commission Act as set forth in said complaint. After issuance and service of the complaint, respondent and counsel supporting the complaint, on November 30, 1956, entered into an agreement containing consent order to cease and desist from the practices complained of, which agreement disposes of all the issues in this proceeding without hearing. This agreement has been duly approved by the Assistant Director and Director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein, for his consideration in accordance with Rule 3.25 of the Rules of Practice of the Commission.

Respondent Hiram B. Hundley, an individual, trading and doing business as Ben Hundley, in the aforesaid agreement has admitted all the jurisdictional facts alleged in the complaint and has agreed that the record may be taken as if findings of the jurisdictional facts had been duly made in accordance with such allegations. Said agreement provides further that respondent waives 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 the agreement. It has also been agreed that the record herein shall consist solely of the com-

Order

53 F.T.C.

plaint 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 settlement purposes only and does not constitute an admission by respondent that he has 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 of the Commission, 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 agreement and order cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement 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 Hiram B. Hundley is an individual, trading and doing business as Ben Hundley, with his office and principal place of business located at 3446 14th Street, N.W., Washington, D.C.

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

ORDER

It is ordered, That respondent Hiram B. Hundley, an individual, trading and doing business as Ben Hundley, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of new and used automobile and truck tires or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;

2. Representing, directly or by implication, that a specified brand of tire is being offered for sale at a featured price, unless such is the case;

3. Using the term "list price" to designate, describe, or refer to manufacturer's list price, without disclosing that it is the manufacturer's list price, on tires other than those which have been bona fide regularly sold and offered for sale at such "list price" by respondent in his usual and normal course of business;

4. Representing, directly or by implication, that specific savings or discounts are afforded a purchaser upon the purchase of tires when such purported savings or discounts do not take into account the trade-in if such be required in the sale of such tires;

5. Representing that tires are "Factory Fresh" or the stock of any particular year, unless such is the case;

6. Representing that any used tires are "Factory Reconditioned" when in fact such work has not been done by a factory or a manufacturing plant;

7. Representing that "Take-off" or "Changeover" tires are new;

8. Representing, directly or by implication, that any merchandise sold or offered for sale by respondent is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

9. Representing, directly or by implication, that respondent's usual or customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of respondent's business.

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 16th day of January, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Hiram B. Hundley, an individual, trading and doing business as Ben Hundley, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF
C. G. OPTICAL COMPANY ET AL.

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

Docket 6260. Complaint, Nov. 5, 1954—Decision, Jan. 18, 1957

Order requiring a Chicago seller of eyeglasses who sent to those answering his advertisements devices designated "Self-Test Opto-meter" or "Home Eye Tester" for their home use in the measurement of the face and nose, to cease representing falsely in advertising and in directions accompanying the eye-testing kit, that the eyeglasses made pursuant to the results of tests of the eyes by recipients using his devices would correct the defects in vision of all persons.

Mr. Frederick McManus for the Commission.

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

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration upon the complaint, answer thereto admitting all the allegations set forth in the complaint, and proposed findings as to the facts and conclusions presented by counsel.

The complaint in this proceeding was issued November 5, 1954, charging the respondent C. G. Optical Company, a corporation, and Benjamin D. Ritholz, individually, with the use of unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act.

At a hearing in this proceeding held on March 24, 1955, the parties entered into a stipulation for a consent order, which stipulation was accepted by the hearing examiner, and an initial decision was issued by him dated April 7, 1955, which was adopted by the Commission on May 20, 1955. Subsequent thereto, on March 1, 1956, on motion of respondent, the Commission issued its order reopening its proceeding, vacating the initial decision of the hearing examiner and the order of the Commission adopting the initial decision, and remanding this case to the hearing examiner for further proceeding in regular course.

Thereafter at a hearing in this proceeding held July 23, 1956, at Chicago, Illinois, the respondent by their counsel withdrew their answers previously filed and made an oral answer upon the record admitting all the allegations set forth in the complaint. In addition, counsel for respondent offered in evidence certain circulars pur-