

Decision

IN THE MATTER OF
THE MONTAMOWER COMPANY ET AL.

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

Docket 6667. Complaint, Oct. 29, 1956—Decision, Feb. 14, 1957

Consent order requiring the distributor in Traverse City, Mich., of a grass-cutting device designated "MontaMower", to cease representing falsely in advertisements in magazines, newspapers, etc., often accompanied by misleading pictures, the effectiveness in use and results obtainable from the device, its weed-controlling qualities, comparative merits, the price, savings available to purchasers, and that all the machines were new and made of new and unused parts and materials.

The proceeding as to the manufacturer respondents was terminated by a similar consent order dated March 7, 1957, p. 764, following.

Mr. Donald R. Moore for the Commission.

Mr. Earl Waring Dunn, of Grand Rapids, Mich., for Herbert B. Montague.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 29, 1956, charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After being served with the complaint, respondent Herbert B. Montague, an individual trading as MontaMower Distributing Company and his attorney entered into an agreement with counsel supporting the complaint for a consent order to cease and desist from the practices complained of which agreement purports to dispose of all the issues in this proceeding against him without hearing. The agreement does not purport to dispose of this proceeding or any of the issues insofar as they concern the other respondents, The MontaMower Company, a corporation and Hubert H. Montague, Gerald T. Montague and Velma Montague, individually and as officers of said corporation. The agreement has been duly approved by the Assistant Director and the 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 Section 3.25 of the Rules of Practice of the Commission.

Respondent Herbert B. Montague, an individual trading as MontaMower Distributing Company 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 jurisdictional facts had been made in accordance with such allegations. The agreement further provides that said respondent waives all further procedural steps before the hearing examiner and 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 into in accordance with the agreement. It has also been agreed that the record herein as to said respondent 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 settlement purposes only and does not constitute an admission by said 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 as to said respondent, on the complaint and the aforesaid agreement containing the consent order, it appears that the agreement and order cover all the allegations of the complaint as to said respondent and provide for an appropriate disposition of the proceedings as to him, but leaves the proceeding pending as to respondents The MontaMower Company, a corporation and Hubert H. Montague, Gerald T. Montague and Velma Montague, individually and as officers of said corporation. The order and the agreement are hereby accepted and ordered filed upon becoming a 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 Herbert B. Montague is an individual trading and doing business as MontaMower Distributing Company with his office and principal place of business located in the Keeler Building in Grand Rapids, Michigan.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named in the last preceding paragraph. 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 Herbert B. Montague, trading as MontaMower Distributing Company, or operating under any other trade name, and his agents, employees or representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution in commerce (as commerce is defined in the Federal Trade Commission Act) of lawn mowers now designated as "MontaMower" or any other lawn mower or grass-cutting device of substantially similar construction or operation, whether designated by the same or any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that used or reconditioned lawn mowers, or mowers made in whole or in part of used, second-hand or reconditioned parts or materials, are new or unused, or are made of new or unused parts or materials.

2. Advertising, offering for sale or selling any lawn mowers which have been used, or which contain parts or materials which have been used, without disclosing to the purchaser or potential purchaser, by a clear and conspicuous statement in advertising and sales promotion matter and on the mower and the container in which it is shipped and delivered, that the product is used or not new, or that it contains parts or materials which have been used or which are not new.

3. Representing by words, pictures or any other means;

(a) That the device is non-clogging.

(b) That it affords positive cutting of all grass and lawn weeds, without misses or skips.

(c) That it will cut all grass and all lawn weeds, regardless of height or toughness, or that it will cut grass and weeds left uncut by other mowers.

(d) That it leaves no grass or weeds standing, or that it eliminates the necessity of hand pulling or going back over a lawn with a whipper or other cutting device.

(e) That it trims so completely as to eliminate hand-trimming.

(f) That its use results in the elimination of weeds or the control of weeds, or keeps weeds from going to seed.

(g) That it smoothly, cleanly, evenly or easily cuts a 16-inch swath, or any other width swath, through grass, dandelions or tall weeds, or that it does this as evenly as a pair of keen-edged shears.

(h) That the regular price of the MontaMower is \$30, or that the regular price of this or any other product is any amount greater

than the amount at which such products are usually and customarily sold in the regular course of business.

(i) That regular prices are special or reduced prices.

(j) That savings to be realized through purchases under so-called special offers are greater than is actually the fact, whether through the use of a fictitious "regular" price or otherwise.

4. Misrepresenting in any other manner the performance of the device, the results obtainable from its use, or its price.

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 14th day of February, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent, Herbert B. Montague, trading as MontaMower Distributing Company, 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.

Findings

IN THE MATTER OF
NORTH AMERICAN ACCIDENT INSURANCE COMPANY

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

Docket 6456. Complaint, Nov. 18, 1955—Decision, Feb. 20, 1957

Order requiring a Chicago insurance company, doing a nation-wide business through some 2200 agents in all the States, to cease falsely advertising the benefits and coverage of its accident and health insurance policies.

Mr. Philip R. Melangton and Mr. Francis C. Mayer for the Commission.

Mr. Claud C. Cox and Mr. Jacob Logan Fox, of Chicago, Ill., and *Watters & Donovan*, by *Mr. Thomas A. Harnett*, of New York City, for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein issued November 18, 1955, charging respondent with misrepresenting its accident and health policies by soliciting their sale through newspaper advertisements, radio commercials, circulars, and other advertising material which stressed or mentioned only maximum benefits or coverage while omitting actual policy exclusions and limitations, thereby misleading prospects into purchasing policies not as extensive or secure as they believed, in violation of Section 5 of the Federal Trade Commission Act (Title 15, U.S.C.A. 45). Answers filed admitted the descriptive facts alleged, the excerpts of advertising done and denied misrepresentation, fair excerpting and jurisdiction to proceed as well as voluntary abandonment of a substantial part of the advertising done.

On the issues joined, two hearings were held at the close of which respondent's counsel moved to dismiss the complaint for lack of jurisdiction and insufficient proof to sustain the allegations of the complaint. Proposed findings of fact and conclusions were submitted by all counsel, on consideration of which, with the rest of the record herein, the finding is made that the public interest is clear and substantial, and the hearing examiner makes the following:

FINDINGS AS TO THE FACTS

1. Respondent, North American Accident Insurance Company, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and