

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, Mar. 7, 1957

Consent order requiring the manufacturer in Traverse City, Mich., of a grass-cutting device designated "MontaMower" to cease representing that lawn mowers which were used or reconditioned or which contained secondhand parts were new or unused, and to cease advertising or selling used lawn mowers without disclosing the fact by a clear and conspicuous statement. A consent order disposing of the issues as to the distributor respondent was entered February 14, 1957, *supra*, page 697.

Mr. Donald R. Moore for the Commission.

The MontaMower Co., Hubert H. Montague, Gerald T. Montague and Velma Montague appearing without counsel.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

As to respondents The MontaMower Company, a corporation; Hubert H. Montague, Gerald T. Montague, and Velma Montague, individually and as officers of said corporation

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 alleged in the complaint. After being served with the complaint, respondent Herbert B. Montague entered into an agreement, with counsel supporting the complaint, containing a consent order to cease and desist which was the basis of an initial decision by the hearing examiner, filed January 2, 1957. That initial decision left the issues pending as to respondents The MontaMower Company, a corporation, Hubert H. Montague, Gerald T. Montague and Velma Montague, individually and as officers of said corporation.

On January 18, 1957, respondents, The MontaMower Company, a corporation, Hubert H. Montague, Gerald T. Montague and Velma Montague, individually and as officers of said corporation 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 as to their remaining respondents without hearing. The agreement has been duly approved by the Acting 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 Commission's Rules of Practice.

In said last mentioned agreement, respondents, The Montamower Company, a corporation, Hubert H. Montague, Gerald T. Montague and Velma Montague, individually and as officers of said corporate respondent, have admitted all the jurisdictional facts alleged in the complaint and have 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 respondents waive 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 in accordance with the agreement. It has also been agreed by said respondents and counsel supporting the complaint that the record 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 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 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, it appears that the agreement and order cover all the allegations of the complaint as to said respondents and provide for an appropriate disposition of the proceeding as to all parties except Herbert B. Montague, an individual trading as Montamower Distributing Company. The proceedings as to him was disposed of in the former initial decision. The order and the agreement are therefore accepted and ordered filed upon becoming a part of the Commission's decision, pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice and the hearing examiner accordingly makes the following findings for jurisdictional purposes, and order.

1. Respondent, The Montamower Company is a corporation organized, existing and doing business by virtue of the laws of the State of Michigan. It has its office and principal place of business

in the MontaMower Building, Traverse City, Michigan. Respondents Hubert H. Montague, Gerald T. Montague and Velma Montague are officers of said corporation and formulate, direct and control its policies. They have their office and principal place of business at the same address as the corporate respondent.

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

ORDER

It is ordered, That respondent The MontaMower Company, a corporation, and its officers; respondents Hubert H. Montague, Gerald T. Montague and Velma Montague, individually and as officers of respondent The MontaMower Company; and respondents' 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, 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 product 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.

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 7th day of March, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The MontaMower Company, a corporation, and respondents Hubert H. Montague, Gerald T. Mon-

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Decision

tague and Velma Montague, individually and as officers of respondent The MontaMower Company, 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

BARNET EPSTEIN ET AL. DOING BUSINESS AS
FIT-RITE MAIL ORDER HOUSE, ETC.

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

Docket 6496. Complaint, Jan. 17, 1956—Decision, Mar. 9, 1957

Consent order requiring New York City mail order sellers of children's and women's dresses and other wearing apparel, including used garments, to cease representing falsely in advertising that the used apparel they sold was new, and to cease substituting a substantially lesser number of garments for the "12" or "10" or "5" specified, and of a quality or condition not ordered.

Mr. Terral A. Jordan for the Commission.

Messrs. Walter L. and Robert M. Post, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that the respondents have been and are engaged in the mail-order business of selling and distributing, in commerce, children's and women's dresses and other kinds of wearing apparel, including used dresses and apparel, and charges that in the course of said business respondents have misrepresented said products in advertisements pertaining thereto, in violation of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondents Barnet Epstein and Hyman Schustal as individuals trading and doing business as a copartnership under the names of Fit-Rite Mail Order House, Best Mail Order House and Peoples Mail Order House, with their office and principal place of business located at 15 Hester Street, New York, New York.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the