

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

record on which the initial decision and the decision of the Commission 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 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 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 the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being 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 as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Barnet Epstein and Hyman Schustal, as individuals or as co-partners trading and doing business as Fit-Rite Mail Order House, Best Mail Order House or Peoples Mail Order House, or under any other trade name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of used children's dresses, used women's dresses, or used wearing apparel of any other kind, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "brand-new" or "new" or other words of similar import or meaning to describe said used wearing apparel or otherwise representing, directly or by implication, that said used wearing apparel is new or unused;
2. Advertising, offering for sale or selling said wearing apparel without clearly revealing that it is used merchandise;
3. Substituting without the prior consent of the purchaser, wearing apparel which differs in grade, quality, quantity, condition

or otherwise from that advertised or offered for sale or ordered by the purchaser.

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 9th day of March, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Barnet Epstein and Hyman Schustal, doing business as Fit-Rite Mail Order House, Best Mail Order House, and Peoples Mail Order House, 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.

Decision

IN THE MATTER OF
SIMPLICITY PATTERN COMPANY, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND SEC. 2(e) OF THE CLAYTON ACT

Docket 6221. Complaint, June 25, 1954—Decision, Mar. 13, 1957

Order requiring the largest manufacturer of dress patterns in the United States to cease violating Sec. 2(e) of the Clayton Act by giving favored customers special promotional services which it did not make available to all, specifically through supplying cabinets and other equipment for displaying and storing the patterns to larger customers free of charge while requiring smaller customers to rent or purchase the equipment; and Dismissing Count I of the Complaint, charging violation of the Federal Trade Commission Act, as unsustainable by the evidence.

Mr. William H. Smith for the Commission.

Mr. William Simon, of Washington, D.C., and *House, Grossman, Vorhaus & Hemley*, by *Mr. David Vorhaus*, of New York City, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this case charges the respondent, a manufacturer of dress patterns, with discriminating among its customers in the granting or supplying of certain services and facilities. The complaint is in two counts, Count I charging that certain alleged discriminations are violative of Section 5 of the Federal Trade Commission Act; and Count II charging that other alleged discriminations are violative of Section 2(e) of the Clayton Act, as amended by the Robinson-Patman Act. Upon the conclusion of the reception of evidence in support of the complaint, respondent filed a motion seeking dismissal of the complaint for failure of proof. After hearing oral argument on the motion, the hearing examiner granted the motion as to Count I and dismissed the complaint as to that count, but denied the motion as to Count II (Tr. 1020-1032).

2. Subsequently, at the request of counsel for respondent, a conference was held by the hearing examiner with counsel for both parties (Tr. 1040-1057). Upon ascertaining the views of the examiner with respect to the availability of cost justification as a defense to a proceeding under Section 2(e) of the Clayton Act, counsel for respondent elected to offer no evidence and rested their case insofar as Count II of the complaint was concerned, Count I having already been dismissed. As the case had been argued at length by counsel