

IN THE MATTER OF
AUTOMOBILE OWNERS SAFETY INSURANCE COMPANY

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

Docket 6239. Complaint, Oct. 14, 1954—Decision, Apr. 26, 1957

Order requiring an insurance company in Kansas City, Mo., to cease misrepresenting the coverage and benefits of its accident and sickness insurance policies.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Robert R. Sills, Mr. P. R. Melangton, Jr. and Mr. Francis C. Mayer for the Commission.

Mr. A. Alvis Layne, Jr., of Washington, D.C., for respondent.

FINDINGS AS TO THE FACTS, CONCLUSIONS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 14, 1954, issued and subsequently served upon respondent, Automobile Owners Safety Insurance Company, a corporation, its complaint, charging said respondent with the use of unfair and deceptive acts and practices in commerce in the sale of health and accident insurance policies, in violation of the Federal Trade Commission Act.

Thereafter, respondent filed its answer and, in conjunction therewith, a motion requesting dismissal on the ground that the Federal Trade Commission Act has no application to the business of respondent, or, in the alternative, that the complaint be dismissed and the matter referred to the Bureau of Consultation of the Commission for handling and disposition under the cooperative procedures of the Bureau. This motion was denied by the hearing examiner duly designated in the complaint, the first part for the reason that the question of jurisdiction could be resolved satisfactorily only after the submission of evidence, and the second part for the reason that it was not within the examiner's authority.

Hearings were conducted in due course. At the close of the taking of evidence in support of the complaint, respondent again moved to dismiss the proceeding on the grounds: (1) that the evidence failed to establish facts sufficient to constitute jurisdiction, and (2) that the evidence did not show violation of the Federal Trade Commission Act. This motion was denied by the hearing examiner on September 9, 1955, by an order which stated that the Federal Trade

Commission does have jurisdiction in the matter and that a *prima facie* case had been established. Subsequently, evidence was presented in opposition to the allegations of the complaint. The hearing examiner filed his initial decision on October 4, 1956, in which it was held that, in the circumstances shown, a dismissal of the proceeding would fully serve the public interest and in which it was ordered that the complaint be dismissed without prejudice to the right of the Commission to take further action as it may deem appropriate.

Within the time permitted by the Commission's Rules of Practice, counsel in support of the complaint filed an appeal from said decision, and, the Commission, after considering said appeal, respondent's brief in opposition thereto, and the entire record herein, rendered its decision granting the appeal and vacating and setting aside the initial decision.

Thereafter, this matter came on for final consideration by the Commission, and the Commission, being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order, which, together with the aforesaid decision on the appeal, shall be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

1. Respondent, Automobile Owners Safety Insurance Company, is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 1319 Walnut Street in the City of Kansas City, State of Missouri. Respondent has been engaged in the business of health and accident insurance. It is licensed to engage in the business of insurance by the State of Missouri, but is not licensed by any state other than the State of Missouri.

2. Respondent has been maintaining a substantial course of trade in commerce, as that term is defined in the Federal Trade Commission Act, in health and accident insurance, issuing policies to purchasers thereof located in every state except the State of Virginia. Three of its policies are in evidence in this proceeding. One policy, the Automobile Owners Accident and Hospital Policy, identified as Form 1-29-53, provides coverage for death and disabilities from automobile accidents. Between February, 1953, and about the middle of 1954, this policy was sold to 38,882 policyholders residing outside the State of Missouri, in every state except Virginia. Another policy, designated Automobile Owners Accident and Family Hospital Policy, Form F-8-10-53, provides indemnity for loss of life or time due to certain automobile accidents and losses due to hospital

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expenses resulting from accidents and sickness. It was issued between August 10, 1953, and July 10, 1954, to 63,879 persons living outside Missouri in every state except Virginia. A third policy, Form No. 1-10-53, similar to the F-8-10-53 policy, was sold for a short period of time, but there are no specific charges in the complaint relating to the advertising of this policy.

3. Respondent has been soliciting business entirely by mail. It has used no newspaper, magazine, radio, television or other medium for its advertising. Respondent employed an affiliated company known as Automobile Owners Association, Inc., hereinafter referred to as the Association, as its exclusive agent for the solicitation of business. All advertising material was prepared by an advertising agency and approved by respondent.

4. Different form letters and application blanks were used in soliciting the sale of the two policies involved in this proceeding. The printing and mailing was by a Chicago mailing house. Such material was mailed from Chicago, Illinois, to persons located in every state except Virginia. Each solicitation letter, except in one special mailing, invited the recipient to join the Association provided he had not had an automobile accident in the preceding twelve months, and stated that as a member he would be entitled to apply through the Association for the particular policy mentioned in the letter. Each prospective purchaser also received a return envelope and an application form which he was asked to fill out and return with the appropriate initial premium. In a special experimental mailing, the invitation to become a member of the Association was omitted from the form letter.

5. Completed applications with initial premium remittances, when received, were transmitted by the Association to respondent's underwriting department, which passed upon the application and issued the policies. Policy 1-29-53 was issued if the applicant for that policy had no automobile accident within the preceding twelve months. Policy F-8-10-53 was issued without further question if the application for that policy showed no medical consultations within the preceding three years; if such consultations were shown, then approval was based upon an estimate of the risk after further inquiry. Upon issuance, policies were mailed to insureds with covering letters and premium receipts.

6. In a form letter relating to respondent's policy, form 1-29-53, and disseminated as indicated in Paragraph 4 above, the following statement is made:

* * * automobile accidents happen every day. If such a misfortune occurs and you are injured in an automobile accident, you can have an income of

\$100.00 a month for life, while you are at home under medical care or hospitalized. Our policy insures you while driving or riding in any automobile, bus, or truck, and provides these benefits:

1. \$100.00 a month beginning the first day you are injured. The policy provides that if you have an automobile accident and you are confined at home or in the hospital under medical care, you will be paid at the rate of \$100.00 a month from the first day of injury even for life.

Respondent has represented by this statement, directly or indirectly, that any policyholder who is injured in an automobile accident will be indemnified in the amount of \$100 a month from the first day of injury for life, the only condition being that the policyholder is confined at home or in a hospital under medical care. We do not believe that the ambiguous language warrants construing the statement as containing the further condition or limitation that the policy insures the policyholder only while driving or riding in any automobile, bus or truck.

In truth and in fact, respondent's policies issued under form 1-29-53 do not so provide. Indemnification is made under such policies, by their terms, only against loss from injury sustained while driving or riding within any automobile, truck or bus and then only when such injury is caused solely by reason of an automobile, truck or bus accident. Moreover, the policies provide that indemnification is payable only if the injury shall immediately after accident wholly and continuously disable and prevent the insured from performing any and every duty pertaining to any business or occupation and where, as the result thereof, the insured is thereby necessarily confined within doors and requires regular visits therein by a legally licensed medical or osteopathic physician or surgeon. In addition, the policies contain specific limitations and exclusions such as that the insurance does not cover any disability or loss unless sustained in the continental limits of the United States or Canada or that disability or loss resulting from military or naval service is not covered.

Respondent's representations as to the indemnification provided by its policies for injury or loss in an automobile accident are, therefore, misleading and deceptive. They state or suggest that a policyholder will be broadly protected as for life from such injury or loss with only one condition to be met, but the truth is that the policyholder is not so protected.

7. In a solicitation letter relating to policy F-8-10-53, disseminated as set forth in Paragraph 4, the following statements are made:

Hospitalization—\$50.00 a week direct to you for 52 weeks if you are in the hospital for any sickness or any accident.

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\$50.00 a week if you have any sickness or accident that sends you to the hospital, even for one day. This \$50.00 is sent to you every week for as long as 52 weeks—up to \$2600.00.

Through such statements, respondent represents, directly or by implication, that the policies provide indemnification for a period of 52 weeks if the insured is hospitalized from any sickness or any accident contracted or suffered.

In truth and in fact, respondent's policies issued under form F-8-10-53 do not so provide. The policies, by their terms, insure against loss resulting from sickness only when such sickness originates while the policy is in effect and more than fifteen days after the date of the policy. This denies benefits for hospitalization resulting from sickness traceable to a condition existing prior to or within fifteen days after the date of the policy.

Such policies also contain a number of exclusions or limitations including the following: The policies do not cover any disability or loss unless sustained in the United States or Canada, or that resulting from insanity or from military or naval service. They do not cover hospitalization for nervous or mental disorders or rest cures. Tuberculosis, cancer, diabetes, any heart or circulatory disease or disturbance, hernia, sickness or disease resulting in surgical operation, or sickness or disease of or involving organs which are peculiar to women are not covered if hospital confinement begins before the policy has been in force for six months.

Respondent's representations as to indemnification provided by its policies issued under form F-8-10-53 for losses from hospitalization for sickness or accident are, therefore, false and deceptive. They state or suggest in broad and general terms that the coverage is for *any* sickness or *any* accident, but the truth is, in view of the limitations and conditions in the policies, that hospitalization for some sicknesses and for some accidents is not covered.

8. Respondent has made the contention that disclosure of certain of the limitations in its advertising material is not required, since many of them have no effect on the payment of claims under the policies because respondent interprets its policies liberally to the benefit of its policyholders, the Missouri State Department of Insurance discourages or forbids the interjection of technical defenses to obviate payment of claims, and ruling case law makes the limitations innocuous and ineffective. Respondent has further contended that if the policyholders receive the benefits that the Commission alleges respondent advertised, then any apparent provisions of the policy to the contrary are immaterial. The issue, however, is

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whether respondent's policies provide the benefits advertised rather than whether, by liberally interpreting policy provisions, respondent pays benefits which might not be collectible under a stricter interpretation of those provisions. Moreover, it is not clear that even a liberal interpretation of such provisions would eliminate their effect entirely. At the least, they might discourage in some instances the making of otherwise valid claims. The Commission finds that there is no merit in such contentions.

9. Respondent has also contended that the business of respondent is regulated by state law as that term is used in Public Law 15, 79th Congress, and hence the Federal Trade Commission Act is not applicable to respondent or its business. As previously noted, however, the respondent solicits sales of its policies solely by means of the mails among purchasers residing in states other than Missouri, the only state in which it is licensed, and transmits them, when sold, to purchasers through the same channels. For reasons stated in the Commission's opinion in the matter of the *American Hospital and Life Insurance Company*, Docket No. 6237, we believe, and so find, that there is no merit in this contention of the respondent.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over all the respondent's acts and practices found herein to be false and deceptive.

2. The public interest in this proceeding is clear and substantial.

3. The use by the respondent of the statements found in Paragraphs 6 and 7 above to be deceptive with respect to the terms and conditions of its policies of health and accident insurance, and its failure to reveal the limitations of the coverage of said policies, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are unqualifiedly true and to induce the purchase of said policies of insurance because of such erroneous and mistaken belief.

4. The aforesaid acts or practices of respondent, as above set forth, are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, Automobile Owners Safety Insurance Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device,

in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from representing, directly or by implication, that said policy provides for indemnification against losses due to sickness or accident, unless a statement of all the conditions, exceptions, restrictions and limitations affecting the indemnification actually provided for are set forth conspicuously, prominently, and in sufficiently close conjunction with said representations as will fully relieve it of all capacity to deceive.

It is further ordered, That the respondent, Automobile Owners Safety Insurance Company, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Chairman Gwynne dissenting.

OPINION OF THE COMMISSION

By SECRET, Commissioner:

This matter is before the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision filed October 4, 1956, dismissing the complaint without prejudice, and respondent's answer in opposition thereto.

The complaint charges respondent, Automobile Owners Safety Insurance Company, with violating the Federal Trade Commission Act, as that Act is applicable to the business of insurance under Public Law 15, 79th Congress (Title 15, U.S. Code, Sections 1011 to 1015), by disseminating false and misleading advertising relating to accident and health insurance policies which it has sold in commerce.

Respondent is a corporation doing business under the laws of the State of Missouri, with its office and principal place of business in Kansas City, Missouri. Respondent is licensed to engage in the business of insurance in Missouri, but in no other state. It sells accident and health insurance policies to purchasers and insureds located in every state except Virginia. The record shows that respondents manner of doing business has been through the use of the mails. Solicitation has been entirely by mail; no advertising by newspapers, magazine, radio, television or other medium has been used. The mailings have included form letters and application blanks. Upon the approval of applications, policies were issued and mailed to insureds.

The advertising representations at issue in this proceeding have been made with respect to the promotion of the sale of insurance policies issued under forms designated 1-29-53 and F-8-10-53.

In connection with the solicitation for policies issued under form 1-29-53, the following statement has been made in form letters disseminated by respondent:

* * * automobile accidents happen every day. If such a misfortune occurs and you are injured in an automobile accident, you can have an income of \$100.00 a month for life, while you are at home under medical care or hospitalized. Our policy insures you while driving or riding in any automobile, bus, or truck, and provides these benefits:

1. \$100.00 a month beginning the first day you are injured. The policy provides that if you have an automobile accident and you are confined at home or in the hospital under medical care, you will be paid at the rate of \$100.00 a month from the first day of injury even for life.

The hearing examiner found that this statement did not disclose clearly the limitations and conditions in the policies such as, among others, that an automobile, truck or bus accident must have been the sole cause of injury or that the injury must have resulted in immediate disability. He concluded, therefore, that such advertising is unfair, misleading and deceptive.

The hearing examiner found, in addition, that representations contained in advertisements relating to the sale of policies issued under form F-8-10-53 were unfair and deceptive to the extent that not all of the exclusions, conditions and limitations in the policies are set forth conspicuously and prominently in such advertisements.

The complaint, however, was dismissed without prejudice by the hearing examiner on the ground that, under the circumstances, this would fully serve the public interest. The hearing examiner held that insofar as respondent has failed to comply with the requirements of the Federal Trade Commission Act, it has been by acts of omission rather than of commission; that respondent has demonstrated cooperation with the Commission; that the practices complained of were discontinued before the issuance of the complaint; that it is reasonable to assume that they will not be resumed; and that all that could be accomplished by an order has been accomplished. In addition, the examiner points out that there is no evidence that anyone has ever been deceived or misled by respondent's advertising.

Counsel supporting the complaint in their appeal argue the matter on the basis that the only question presented is in connection with the alleged discontinuance of the practices found to be unlawful. It is clear that the examiner considered other factors in arriving

at his decision, but it is possibly fair to say that his conclusion as to the alleged discontinuance was the most important; otherwise there would be no sufficient grounds for dismissal. For one thing, we cannot agree with the hearing examiner that the acts of the respondent found to be unlawful were acts of omission. The respondent has represented in a positive manner, by its advertising, that its policies provide insurance coverage which they do not in fact provide. Thus, this matter is not strictly one of failing to reveal limitations and conditions, even though the disclosing thereof would have prevented the advertising from being deceptive. This matter involves affirmative statements which are false or misleading and deceptive. We believe, therefore, the examiner erred to the extent that he did not so find.

Furthermore, the examiner's holding that the evidence fails to show that anyone has been deceived or misled relates to a subject which cannot be controlling. As we stated in the *National Casualty Company*, Docket No. 6311, it is not necessary that actual deception be proved or found under Section 5 of the Federal Trade Commission Act. A showing that the advertisements in question have a tendency or capacity to deceive is all that is required.

The other circumstances mentioned by the hearing examiner relate to the showing of the alleged discontinuance of the practices found to be unlawful or to the likelihood that they will not be resumed in the future. Respondent's past cooperation with the Commission is relevant only in so far as it might indicate that respondent is not likely to resume such practices. The essential question before the Commission, therefore, is whether or not the showing in the record relative to the abandonment or the discontinuance of the practices found to be unlawful is of such a nature as to warrant dismissal of the complaint.

In approaching this question, the first consideration is that the Commission, under Section 5 of the Federal Trade Commission Act, has a duty to prevent the use of unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce. The law provides only one effective method by which the Commission may discharge its duty and that is by the issuance of an appropriate order to cease and desist. The object, of course, is to stop the unfair practice. Therefore, in the somewhat exceptional circumstances where the practice has been surely stopped by the act of the party offending and the object of the proceeding has been attained, no order is necessary, nor should one be entered.

If, however, the action of the wrongdoer does not insure a cessation of the practice in the future, an order to cease and desist is appropriate. *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F.2d 321. The Commission has a broad discretion in making any such determination, although it must be a reasonable exercise or discretion.

In this instance, superficial circumstances may seem to present a good cause for dismissal. Several months prior to the issuance of the complaint, respondent discontinued the use of the particular policy forms with which its unfair advertising was connected, and with this discontinuance respondent would have us find that all such unfair advertising had ceased, particularly since no evidence of repetition of the practices at a later date was introduced into the record.

The Commission, however, in view of its primary duty, must concern itself with factors other than a mere outward manifestation. In other words, we must inquire into whether or not the discontinuance is one of real substance. Does it have a high degree of finality so as to merit consideration for the exceptional treatment of a dismissal? There are some cases which are relatively obvious in this respect, such as where the discontinuance takes place long before the complaint issued or where there has been an abandonment of the entire method or type of business. No such circumstances are shown in this instance. Respondent stopped using the particular policy forms here involved in the very shadow of Commission action and after the Commission had instituted a general investigation of advertising practices in the accident and health insurance industry. There has been no showing of any discontinuance of the type of insurance coverage contained in such policy forms. Considering all the circumstances, we must conclude that there is little in this record to suggest that the unlawful practices have been finally and definitely discontinued. Conversely, there is no assurance that practices which have not been surely stopped will not be resumed in the future. We believe, therefore, that respondent should be prohibited by an appropriate order from again engaging in the practices found to be unlawful.

The appeal of counsel supporting the complaint is granted. Accordingly, the initial decision is vacated and set aside, and our findings as to the facts, made on the whole record including the initial decision, and conclusions and order to cease and desist, are issuing in lieu thereof.

Chairman Gwynne dissented to the decision herein.

CONCURRING OPINION OF COMMISSIONER TAIT

It is my view that the Commission has jurisdiction herein for the reasons outlined in the concurring opinion in Travelers Health Association, Docket 6252, and the dissenting opinion in North American Accident Insurance Company, Docket 6456. It also should be noted that the respondent concedes "that it has violated the law and that the Commission has jurisdiction."

The order should be limited accordingly.

Decision

IN THE MATTER OF
SINGER MANUFACTURING COMPANY ET AL.

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

Docket 6685. Complaint, Dec. 6, 1956—Decision, May 1, 1957

Consent order requiring the sales corporation selling new and used Singer sewing machines through company-owned retail stores in various States, to cease representing and selling repossessed and used machines as new, floor samples, or demonstrators; and failing to reveal clearly the used nature of the machines.

Mr. Michael J. Vitale for the Commission.

Winthrop, Stimson, Putnam & Roberts, by *Mr. Arthur E. Pettit*, New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on December 6, 1956, charging Respondents with representing and selling in commerce, as new, Singer sewing machines which appear to be new and unused, but which allegedly are floor samples, demonstrators, or exchanged or repossessed machines; and with failing to disclose such fact, in violation of the Federal Trade Commission Act.

On March 1, 1957, Respondent Singer Sewing Machine Company, its 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 of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration. All parties signatory thereto agree that the complaint herein should be dismissed as to Respondent Singer Manufacturing Company, because it has not and does not direct or participate in any retail selling activities referred to in the complaint herein. This fact is attested in two affidavits attached to and made a part of the agreement, and executed, respectively, by the Vice President and the Secretary of Respondent Singer Sewing Machine Company.

Respondent Singer Sewing Machine Company is identified in the agreement as a New Jersey corporation, with its office and principal place of business located at 149 Broadway, New York, New York.

Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of