

## Decision

IN THE MATTER OF  
C. H. STUART & CO., INC., ET AL.<sup>1</sup>

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

*Docket 6634. Complaint, Sept. 14, 1956<sup>2</sup>—Decision, June 7, 1957*

Consent order requiring six affiliated companies, with offices at the same address in Newark, N.Y., to cease representing falsely the plant-growing qualities of their chemical fertilizer "Gold Medal Plant Food"; representing their door-to-door salesmen falsely as professional horticulturalists qualified to prepare expert landscaping plans and furnishing continuing service to customers; and variously misrepresenting the terms and conditions of purchases, and the size, hardiness, quality, etc., of their nursery stock.

*Mr. Donald K. King, Mr. Jerome Garfinkel and Mr. J. J. McNally* for the Commission.

*Wright & Livingston*, by *Mr. Marshall E. Livingston*, of Newark, N. Y.; *Harter, Calhoun, Lishman & Williams*, by *Mr. Leonard J. Calhoun*, of Washington, D. C.; and *Davies, Richberg, Tydings & Landa*, by *Mr. James T. Welch*, of Washington, D. C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The six corporations and numerous individuals listed as respondents in the caption of this proceeding and named in the order included herein have a common address, 165 Union Street, Newark, New York, and are all engaged in or have control over some phase of the nursery business in commerce. In connection with this business they are charged with having violated the Federal Trade Commission Act, directly, or indirectly through their sales representatives, by falsely representing the nursery stock, fertilizer, planting materials or services which they sell or offer to the public.

After the issuance of the complaint in September, 1956, a pre-hearing conference was held at which it was pointed out by respondents that, in said complaint, the names of four of the corporate respondents and of some of the officers had been incorrectly stated. In other minor respects also the complaint warranted clarification. Upon application of counsel in support of the complaint and without objection on the part of the respondents the Hearing Examiner allowed the complaint to be amended by order served

<sup>1</sup> Published as modified by order of July 17, 1958, which added the words "except when such is the fact" to the end of subparagraph (e) of Paragraph (1).

<sup>2</sup> Amended Jan. 31, 1957.

upon respondents in the early part of February, 1957. The amended complaint, both in its caption and text, correctly named all respondents, both corporate and individual. By way of clarification of the original complaint, but not in any way enlarging the issues of the proceeding, two additional subparagraphs were added to Paragraph 14 in the amended complaint, alleging that respondents had misrepresented (1) that their nursery stock would be of better grade than that sold by local nurserymen, and (2) that "the nursery stock purchases would be a certain size and would be delivered in good condition".

No answer was filed by respondents either to the original complaint or to the complaint as amended, but in April, 1957, an agreement was entered into by all respondents and their counsel with counsel in support of the complaint, and approved by the Director and the Assistant Director of the Commission's Bureau of Litigation. In this agreement all respondents are correctly named in conformity with the amended complaint, and the order agreed upon specifically covers the two additional charges contained therein. Hence it is obvious that the deliberations of the parties and the conclusions reached by them were and are based upon the amended complaint, and that where the words "the complaint" appear in the agreement, the parties actually had in mind the amended complaint. The omission of the word "amended" obviously was inadvertent, and wherever "the complaint" is used in the agreement, it will be interpreted as referring to the complaint as amended.<sup>3</sup> This interpretation of the agreement does not in any manner affect the issues or the disposition of the proceeding, but is necessary for clarification purposes.

The agreement states that C. H. Stuart & Co., Inc. and its officers control and direct the affairs and policies of C. W. Stuart & Co., which, with its officers, controls and directs the affairs and policies of the four other named corporate respondents. In this control and direction all the named corporate officers of each and all named corporations participate individually and as officers.

Under the agreement 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, as amended, and this agreement;

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<sup>3</sup> One exception is necessary since in paragraph 2 of the agreement reference is made to the date of filing of the original complaint.

1127

## Order

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, as amended, 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, as amended; 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 agreement states that it disposes of all of this proceeding as to all parties and that the order "covers all the allegations of the complaint which could be proven". An examination of the original complaint and the complaint, as amended, discloses that all the charges contained therein are fully covered by the provisions of the order agreed upon, excepting one which appears as subparagraph C. of Paragraph 9 of the original complaint and of the complaint as amended. In this subparagraph it is alleged that the respondents have falsely and deceptively represented:

That the landscaping plan recommended is a suitable and proper course to be followed as a means or method of efficiently and economically enhancing the appearance and increasing the effective use and enjoyment of the prospect's particular tract of land.

This is a vague, nebulous allegation extending into the realm of those concepts which the Commission has referred to as being relative and largely matters of personal opinion, against which specific inhibitions are not warranted.<sup>4</sup> The agreement is not weakened by the omission of any reference or order relating to this charge.

Having considered the agreement and proposed order and having concluded that they provide an adequate basis for appropriate disposition of this proceeding, the Hearing Examiner accepts the same and orders the agreement made a part of the record upon which this decision is based. The proceeding is found to be in the public interest. Accordingly,

*It is ordered*, That respondents C. H. Stuart & Co., Inc., a corporation, and Charles W. Stuart, Leslie J. Engleson, T. Spencer

<sup>4</sup> See *Kidder Oil Co. v. F.T.C.* (C.A. 7, 1941), 117 F. 2d 892; *Washington Mushroom Industries, Inc., et al.*, Docket 6273, issued by the Commission October 24, 1956.

Knight, Ernest E. Severson, Paul D. Newton, Lyman K. Stuart, Marshall E. Livingston, and William H. Newton, individually and as officers of said corporation, and C. W. Stuart & Co., a corporation, and Bernald C. Bush, Maynard E. Durei, Leslie J. Engleson, Lyman K. Stuart, Jr., Leslie P. Akenhead, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and Arthur N. Christy, individually and as officers of said corporation, and William C. Moore & Co., a corporation, and John B. Keane, Michael J. O'Neill, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, and Quaker Hill, Incorporated, a corporation, and Earl F. Milligan, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, and Knight & Bostwick, a corporation, and Richard G. Vickery, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, and Empire Nursery Products Co., Inc., a corporation, and Henry F. Robbins, Robert H. Hamilton, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, respondents herein, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of nursery stock, fertilizer, or planting material in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or indirectly by representation, depiction or otherwise, that:

(a) Application of a chemical fertilizer designated "Gold Medal Plant Food", or any other product containing substantially the same ingredients or possessing substantially the same properties, will prevent plants from becoming stunted or from shriveling or dying under any circumstances, or due to any conditions other than when such are caused by a lack of fertilizer;

(b) The dipping of plants into a liquid solution of such fertilizer will assure growth or will bring about an immediate or marked increase in rate of growth;

(c) The use of such fertilizer will never result in burning to plant life;

(d) Their salesmen are qualified to render professional or expert landscaping or horticultural advice or service, when such is not the fact;

(e) The planting sketches prepared by their salesmen are professional or expert landscaping plans designed to conform to the

1127

## Decision

physical features of the prospect's particular tract of land or that the landscaping effect produced therefrom will be individually distinctive, except when such is the fact;

(f) Their salesmen will furnish continuing or future guidance, advice, service or assistance to purchasers in following the planting sketch or in planting or caring for the nursery stock ordered from respondents, when such is not the fact;

(g) The nursery stock ordered from respondents will be received by the prospect during the planting season, unless such is the fact;

(h) The nursery stock will be received by the customer during desirable planting weather, unless such shipment is actually scheduled on the basis of United States Weather Bureau predictions;

(i) The nursery stock received by the customer which fails to grow or bloom will be replaced without expense to the customer;

(j) The customer's order may be canceled without cost to the customer;

(k) The price of the nursery stock sold by respondents is lower or no more than that charged by local nurserymen, when such is not the fact;

(2) Allowing their salesmen to utilize any literature, instruments or other materials, placed in their hands by respondents, in such manner as to pass themselves off as experts or professionals in landscaping or horticulture;

(3) Misrepresenting, directly or indirectly, the size, condition, physical characteristics, hardiness, appearance, quality, blooming, fruiting, or growth habits of the nursery stock sold by respondents.

## 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 June, 1957, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents C. H. Stuart & Co., Inc., a corporation, and Charles W. Stuart, Leslie J. Engleson, T. Spencer Knight, Ernest E. Severson, Paul D. Newton, Lyman K. Stuart, Marshall E. Livingston, and William H. Newton, individually and as officers of said corporation, and C. W. Stuart & Co., a corporation, and Bernald C. Bush, Maynard E. Durei, Leslie J. Engleson, Lyman K. Stuart, Jr., Leslie P. Akenhead, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and Arthur N. Christy, individually and as officers of said corporation, and William C. Moore & Co., a corporation, and John B. Keane, Michael J. O'Neill, Paul

## Decision

53 F.T.C.

D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, and Quaker Hill, Incorporated, a corporation, and Earl F. Milligan, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, and Knight & Bostwick, a corporation, and Richard G. Vickery, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, and Empire Nursery Products Co., Inc., a corporation, and Henry F. Robbins, Robert H. Hamilton, Paul D. Newton, Lyman K. Stuart, Frederick W. Wenban, and T. Spencer Knight, individually and as officers of said corporation, 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.

## Decision

## IN THE MATTER OF

LAWRENCE GREENWALD TRADING AS  
LARRY GREENWALD COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

*Docket 6727. Complaint, Feb. 19, 1957—Decision, June 7, 1957*

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling as "100% Reprocessed Wool, Cotton Backing", etc., rolls of interlining material which did not consist of 100% reprocessed wool, and by failing to label other rolls to show the percentages of the fiber weight, as required by the Act.

*Mr. Harry E. Middleton, Jr., for the Commission.*

Respondents, *pro se.*

INITIAL DECISION AND ORDER BY LOREN H. LAUGHLIN,  
HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on February 19, 1957, issued its complaint herein under the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939 against the above-named respondents Lawrence Greenwald, an individual trading as Larry Greenwald Company, and Emmett Greenwald, an individual. The complaint charges respondents with having violated in certain particulars the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling Act. The respondents were duly served with process. Upon being advised that Commission's counsel and the respondents were negotiating an agreement for a consent cease and desist order pursuant to § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the times for answer and for initial hearing were postponed by appropriate order, pending the negotiation of such an agreement.

On April 17, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between each of the said individual respondents, and Harry E. Middleton, Jr., counsel supporting the complaint, under date of April 9, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and Assistant Director of the Commission's Bureau of Litigation.