

IN THE MATTER OF

U.S. PACKAGING CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6580. Complaint, June 29, 1956—Decision, June 21, 1957*

Consent order requiring a company engaged in Bridgeport, Conn., in packaging snow-making chemicals in pressurized over-sized containers only partially filled, under the trade name of "Frosty Snow", for sale mainly during the Christmas season, to cease representing falsely in advertising and counter displays furnished to dealers that because its containers were larger than those of competitive brands, a larger amount of snow would be produced therefrom, and that the amount of snow produced from an ounce of its material was substantially greater than that produced by an ounce of competitors'.

Mr. Edward F. Downs supporting the Complaint.

Weil, Gotshal & Manges, of New York City, for U.S. Packaging Corp. and *Mr. Jack Schenberg* and *Mr. Joseph G. Abramson*, of New York City, for H. R. Shepherd.

Respondent *Herbert L. Cohen* appearing for himself.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above named respondents on June 29, 1956 charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After issuance and service of the complaint all respondents on April 29, 1957 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 without hearing. This 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 Rule 3.25 of the Rules of Practice of the Commission.

Respondents in the aforesaid agreement have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of the jurisdictional facts had been duly made in accordance with such allegations. Said agreement provides further that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to

1174

Order

challenge or contest the validity of the order to cease and desist entered into accordance with the agreement. It has also been agreed that the record herein 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 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 and it appearing that the agreement and order cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon becoming 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 U.S. Packaging Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 706 Bostwick Avenue, in the City of Bridgeport, State of Connecticut.

2. Respondents Abraham O. Samuels and Jack Schenberg are officers of corporate respondent, and respondents H. R. Shepherd and Herbert L. Cohen were, prior to the issuance of the complaint herein, officers of said corporate respondent. These respondents, as officers of corporate respondent, did during the period covered by this complaint formulate, direct and control the policies, acts and practices of said corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. 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 U.S. Packaging Corporation, a corporation, and its officers, and Abraham O. Samuels, H. R. Shepherd, Jack Schenberg, and Herbert L. Cohen, individually and as

officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of materials or preparations for use in making artificial snow, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the size of the container is a determination of the amount of artificial snow that will be produced therefrom.

(b) That respondents' product will produce more artificial snow than competitive brands by any method of measurement or determination, unless such is the fact.

2. Offering for sale or selling their products in containers or packages of a size or capacity in excess of that reasonably required for packaging the quantity of product actually contained therein.

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 21st day of June, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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
ROY M. BLOOM, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6723. Complaint, Feb. 11, 1957—Decision, June 21, 1957*

Consent order requiring a seller in New York City to cease representing falsely in advertisements in newspapers, in circulars, etc., and by use of the words "Air Conditioner", that its "Port-a-Temp" device—a rubber and plastic receptacle in which a fan drew air through a fiber glass filter over two small cans of refrigerant (required to be cooled periodically in the refrigerator) and expelled it through grilled openings in the front of the housing—performed all the functions of an air conditioner, and would purify and deodorize and significantly dehumidify and cool hot air in the home, office, automobile, etc.

Mr. Floyd O. Collins for the Commission.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

Roy M. Bloom, Inc., and Roy M. Bloom, individually, hereinafter called respondents, are charged with making false, misleading and deceptive statements and representations through advertisements in newspapers and circulated pamphlets that a device "Port-A-Temp", which they offered for sale, was an air conditioner, whereas, the complaint alleges, said device is not an air conditioner as such descriptive term is commonly understood by the trade and the public.

After issuance and service of the complaint, the respondents and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of all the matters complained about. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the Hearing Examiner and the Commission; the order may be altered, modified or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order