

Decision

IN THE MATTER OF
SYDCO INDUSTRIES, INC., ET AL.

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

Docket 6774. Complaint, Apr. 11, 1957—Decision, July 17, 1957

Consent order requiring a dealer in New York City to cease misbranding wool-filled bed comforters by failing to disclose the nature of the fibers used in the covering materials, and to cease marking containers of such comforters with fictitious prices and with the word "Mothproof" improperly.

Michael J. Vitale and Thomas A. Ziebarth, Esqs. in support of the complaint.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued April 11, 1957, charges the respondents Sydco Industries, Inc., a corporation, and Morton Springer, individually and as an officer of the corporate respondent, with violation of the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the sale, offering for sale and distribution of bed comforters under the brand name "Sweetheart Custom Made Comforter," in commerce, as "commerce" is defined in said Acts.

After the issuance of said complaint respondents, on May 28, 1957, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Com-

Order

54 F.T.C.

mission, and all further and other procedure before the Hearing Examiner and the Commission to which the respondents may otherwise, but for the execution of said agreement, be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondent Sydco Industries, Inc., is a corporation existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at No. 624 Broadway, New York, New York; that respondent Morton Springer is an individual and President of the corporate respondent; that as such he formulates, directs and controls the policies, acts and practices of the corporate respondent.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

ORDER

It is ordered. That respondents Sydco Industries, Inc., a corporation, and its officers and Morton Springer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "com-

101

Order

merce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of bed comforters or other "wool products" as such products are defined in and subject to said Wool Products Labeling Act, which products contain, purport to contain, or in any way are represented as containing "wool," "re-processed wool" or "reused wool" as these terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where such percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool products of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool products or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That Sydco Industries, Inc., a corporation, and its officers and Morton Springer, individually and as an officer 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 or distribution of bed comforters or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Representing in any manner that said bed comforters or any other products are mothproof, when such is not the fact.

2. Representing in any manner that various prices are the regular and usual retail prices of bed comforters or other products when such prices are in excess of the prices at which such bed comforters or other products are usually and regularly sold at retail.

3. Putting into operation any plan or scheme, or furnishing any materials, devices, or promotional media whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

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 17th day of July, 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
SUPERIOR DISTRIBUTING CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6719. Complaint, Feb. 1, 1957—Decision, July 18, 1957*

Consent order requiring sellers in Denver, Colo., to cease representing falsely—through salesmen whom they furnished with sales literature and by advertising in newspapers and periodicals—the profits to be made by a purchaser of ten of their hot drink vending machines or the assistance they rendered purchasers in obtaining locations, that they trained purchasers in maintenance and servicing the machines, allotted exclusive territory, or conducted surveys to determine the number of machines that could be profitably located in a locality; and requiring them to meet promised delivery dates.

Mr. William A. Somers for the Commission.

Mr. Thomas K. Hudson, of Denver, Colo., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that the respondents have violated the provisions of the Federal Trade Commission Act by the use of false and misleading newspaper advertisements in connection with the sale of hot drink vending machines.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of 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 said 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, and 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 entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not

Order

54 F.T.C.

constitute an admission by respondents that they have violated the law as alleged in the complaint.

The Hearing Examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Superior Distributing Corporation, is a corporation organized and doing business under the laws of the State of Colorado, with its office and principal place of business located at 4555 East Warren Avenue, Denver, Colorado. The individual respondent Glenn E. Mercer is the president of said corporation and his office and principal place of business is the same as that of the corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Superior Distributing Corporation, a corporation, and its officers; Glenn E. Mercer, individually and as an officer of said corporation and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines or vending machine supplies, or both, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the earnings or profits derived from the operation of respondents' machines are any amounts in excess of those which have been, in fact, customarily earned by operation of their machines.

2. That respondents' experts, or any other person or persons, will obtain satisfactory or profitable locations, or any other locations, for machines purchased from respondents, unless such is the fact.

3. That purchasers of respondents' machines will be trained by respondents' experts, or by any other person, in the maintenance, repair or servicing of said machines, or in any other respect, unless such is the fact.

4. That respondents will allot exclusive territory in which machines purchased by them may be located, unless such is the fact.

5. That respondents conduct surveys of any nature in localities in which their machines are offered for sale, unless such is the fact.

6. That machines purchased will be delivered within a specified period of time unless delivery is made within the time specified.

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 did, on the 18th day of July 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.

Appeal

54 F.T.C.

IN THE MATTER OF
BELL & HOWELL COMPANY

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

Docket 6729. Complaint, Feb. 20, 1957—Order, July 19, 1957

Order on interlocutory appeal dismissing—due to abandonment of the alleged unfair practices when respondent terminated its over-all fair trade program prior to issuance of complaint—complaint charging sellers of audio-visual equipment with unfair practices in cases of sales outside of allocated territories, and sales at less than “fair trade” prices, both types of practices dependent for operation upon the establishment of minimum retail prices under the various State fair trade laws.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. William H. Smith for the Commission.

Campbell, Miller, Carrol & Paxton, of Chicago, Ill., and *Howrey & Simon*, of Washington, D.C., for respondent.

ON INTERLOCUTORY APPEAL FROM RULING OF THE HEARING EXAMINER

By the Commission:

Respondent has appealed from the hearing examiner's order of May 29, 1957, denying its motion to dismiss. Counsel in support of the complaint has filed an answer in opposition thereto. The sole question presented for determination by the Commission is whether the complaint should be dismissed on the ground that the practices alleged have been surely stopped and there is no likelihood that they will be resumed in the future.

Complaint herein was served February 28, 1957. It attacks particularly two practices engaged in by respondent as being violative of Section 5 of the Federal Trade Commission Act. The first of these involves contracts between respondent and its special representatives who sell audio-visual equipment to institutions and commercial accounts whereby such special representatives, if they sell outside their allocated territory, are required to pay respondent the difference between the “dealer net price and the minimum retail price established by respondent.” The second practice involves sales by special representatives or regular retail dealers at less than “fair trade” prices. Where such sales are made, respondent collects from the offender an amount equal to the profit realized on the sale, or equal to the established dealer discount, which in turn is paid to

108

Order

one of respondent's other dealers who has claimed injury by reason of loss of such sale.

Respondent, according to the supporting affidavits accompanying its motion for dismissal, effective February 1, 1957, terminated its over-all fair trade program, and because both of the practices in question depended for their operation upon the existence of established minimum retail prices under the various state fair trade laws, they became inoperative. Such action was announced to respondent's dealers and to the public in January, 1957, prior to issuance of the complaint herein.

Respondent's action in voluntarily abandoning the practices complained of, it is shown, resulted from its appraisal of the difficulty of maintaining a fair trade program in the light of developments in that field of law in recent years. This evidences respondent's bona fide abandonment of the practices claimed to be unlawful and, we think, establishes it is not only unlikely that they will be resumed, but that there is no reasonable possibility that they will be resumed. The sworn assurances of respondent's responsible officers that the practices will not be revived are likewise persuasive that the "practices alleged have been surely stopped and there is no likelihood that they will be resumed in the future." Everything that could be accomplished by a cease and desist order has been accomplished. It would not be in the public interest for the Commission to issue an order to cease and desist at this time. It is the Commission's opinion that the hearing examiner acted erroneously in denying respondent's motion for dismissal and that respondent's appeal should be granted. The Commission is further of the opinion that the complaint in this proceeding should be dismissed without prejudice. An appropriate order will be entered.

Briefs filed by counsel in support of, and in opposition to, respondent's appeal have afforded sufficient basis for an informed determination on the merits of the appeal and respondent's request for oral argument, therefore, is not being granted.

Chairman Gwynne did not participate in the decision herein.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on to be heard by the Commission upon appeal from the hearing examiner's order denying respondent's motion to dismiss the complaint, and answer of counsel supporting the complaint filed in opposition to the appeal; and

The Commission, for the reasons stated in its accompanying opinion, having determined that respondent's appeal is well taken:

It is ordered, That the appeal of respondent be, and it hereby is, granted.

Order

54 F.T.C.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Chairman Gwynne not participating.

Decision

IN THE MATTER OF
NORD-RAY BELT MFG., INC., ET AL.

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

Docket 6780. Complaint, Apr. 16, 1957—Decision, July 20, 1957

Consent order requiring a New York manufacturer to cease preticketing ladies', men's, and boys' belts with fictitious prices, thereby giving retailers the means to deceive the public into believing the actual selling price a bargain.

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

Hoffman, Buchwald, Nadel, Cohen & Hoffman, by *Mr. Irving Margolies*, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, The Federal Trade Commission on April 16, 1957, issued and subsequently served its complaint in this proceeding against respondents Nord-Ray Belt Mfg., Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 670 Broadway, New York, New York; Ray (Raymond) Sokoloff and Aaron Nordwind (erroneously named in the complaint as Aaron Nordwin), individually and as president-secretary, and vice president-treasurer, respectively, of the corporate respondent. The office and principal place of business of said respondents is the same as that of the corporate respondent.

On June 5, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said 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. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the deci-