

Decision

IN THE MATTER OF
ROYAL TRUE COLOR CORPORATION ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6773. Complaint, Apr. 11, 1957—Decision, Sept. 14, 1957

Order requiring a photographer in Long Island City, N.Y., to cease advertising falsely by means of post cards mailed to patrons of local post offices, a "Cutest Child Contest" with prizes awarded to winners and free portraits, sponsored by the "American Family Magazine"; and to cease misrepresenting the quality of photographs; and dismissing the charges with respect to two respondents, a dissolved corporation and a deceased individual.

Mr. Charles W. O'Connell supporting the Complaint.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On April 11, 1957 the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that copies of such complaint together with copies of an order designating and appointing the undersigned as hearing examiner in this proceeding were sent by registered mail to each respondent at the address indicated in the complaint and that copy of said complaint and copy of said order were duly served on the respondent Alton L. Hubbard. The complaint so served contained a notice that a hearing would be held on June 21, 1957 at 10:00 A.M. in the Federal Trade Commission office, U.S. Court House, Foley Square, New York, New York, on the charges set forth in the complaint, at which time and place respondents would have the right to appear and show cause why an order should not be entered requiring each of them to cease and desist from violations of the law charged in the complaint.

On June 11, 1957 the undersigned, as hearing examiner herein issued an order that the hearing then set for New York City on June 21, 1957 would be held on the same date beginning at 10:00 A.M. in the Federal Trade Commission Hearing Room, Federal Trade Commission Building, Washington, D.C. This order was duly served by registered mail on respondent Alton L. Hubbard on June 13, 1957. The reason for such order was set forth therein.

On June 21, 1957 at 10:00 A.M. in pursuant to the last mentioned order a hearing was held in Room 332, the Federal Trade Commission Hearing Room, Federal Trade Commission Building, Washing-

Findings

54 F.T.C.

ton, D.C., before the undersigned a duly appointed hearing examiner of the Commission. At that hearing counsel supporting the complaint was present but respondent Alton L. Hubbard was not present either in person or by counsel. Attention of the hearing examiner was called to the fact and it was noted on the record that no answer was filed by any of the respondents.

Counsel supporting the complaint stated on the record that he desired to move that the complaint be dismissed as to the corporate respondent and as to the respondent William T. Hubbard for the following reasons:

(1) That respondent Royal True Color Corporation, a corporation was dissolved on October 18, 1956. (A photostatic copy of a certificate of dissolution issued by the Office of Secretary of State, State of Delaware, showing such dissolution was offered and received in evidence).

(2) That he had received reliable information to the effect that respondent William T. Hubbard died in Goldwater Memorial Hospital, Welfare Island, New York, New York on November 21, 1956.

The motion of counsel supporting the complaint on the record for dismissal as to these respondents was and is granted.

Following Section 3.7(b) of the Commission's Rules of Practice, the respondent Alton L. Hubbard, having failed to answer the complaint within the time provided therefor and having failed to appear either in person or by attorney at the time and place fixed for hearing was deemed to be in default and it was so stated on the record by the hearing examiner at said hearing. Also at said hearing consideration was given to determination of the form of order to be entered herein. In view of the foregoing the hearing examiner now makes the following findings as to the facts, conclusions and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Royal True Color Corporation was, prior to October 18, 1956, a corporation organized and existing under and by virtue of the laws of the State of Delaware with its home office and principal place of business located at 2713 - 41st Avenue, Long Island City, New York.

The individual respondents Alton L. Hubbard and William T. Hubbard, were President and Secretary-Treasurer, respectively, of the corporate respondent Royal True Color Corporation prior to October 18, 1956 and these individuals formulated, directed and controlled the acts, policies and practices of said corporate respondent. The address of these individual respondents was the same as that of the corporate respondent.

PAR. 2. Respondents prior to October 18, 1956 were engaged in the promotion, sale and distribution of photographs. Said photographs were sold directly to purchasers by the respondents and by their agents in various States of the United States. In the course and conduct of their business, respondents caused said photographs when sold, to be transported from the corporate respondents place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintained at all times mentioned herein a substantial course of trade in commerce in said photographs.

PAR. 3. Respondents at all times mentioned were in substantial competition, in commerce, with other corporations, and with individuals, firms and partnerships engaged in the sale of photographs.

PAR. 4. Respondents' method of interesting members of the public in the purchase of their photographs was by mailing post cards to patrons of certain local post offices in various States of the United States. A typical card used for this purpose is as follows:

DEAR MOTHER

55 Valuable Prizes

You are cordially invited to bring your child to GRANGE HALL (Farm Village Road) in WEST SIMSBURY, CONN. on FRIDAY, AUGUST 26th 11: A.M. till 6: P.M. to be photographed in TRUE COLOR. For our "CUTEST CHILD CONTEST". \$750.00 in prizes sponsored by AMERICAN FAMILY MAGAZINE. There is no charge for this service. Each entrant will receive a Beautiful Transparency PORTRAIT FREE. Courtesy of ROYAL TRUE COLOR STUDIOS. Our COLOR CAMERA takes pictures in NATURAL COLOR. Photographing every cute smile and expression quick as a wink. All children are eligible 2 months to 12 yrs. Tell your Friends to come. IT'S FREE.

IMPORTANT: These are taken in TRUE-COLOR. If possible dress children in BRIGHT COLORS.

PAR. 5. By means of the statements appearing on said post cards respondents represented, directly or by implication, that:

(1) Respondents are and have been conducting a photographic contest, the sole and exclusive purpose of which is to select winners for a contest sponsored by a magazine published under the name of "American Family Magazine" and that the designated winning children will receive valuable prizes.

(2) Parents allowing their children to pose for respondent or "entrant" will receive a free portrait.

(3) American Family Magazine is a recognized and established magazine, independent of respondents.

(4) Pictures delivered will be in true and natural colors.

PAR. 6. The foregoing representations and implications were grossly exaggerated, false and misleading. In truth and in fact:

(1) Respondents had not been conducting a photographic contest

Findings

54 F.T.C.

to select winners for a contest. Respondents' only objective in preparing and disseminating the post cards aforementioned, was to sell photographs to the parents of the children photographed. Such children as were designated by respondents as a "winner" did not receive valuable prizes but, on the contrary, received trivial toys of little or no value. The so-called contest was not sponsored by American Family Magazine.

(2) No parent whose child posed for respondent or "entrant" received a free portrait. Some of said parents received a small film slide or transparency, but not a portrait. The transparency was not free since a payment of 35 cents was required.

(3) American Family Magazine was not a recognized or established magazine. The magazine was owned and published by the respondents.

(4) Pictures delivered by respondents were not in true and natural color but were of unnatural and inferior color.

PAR. 7. When parents, in response to the aforementioned postal cards brought their children to the location respondents designated, and at subsequent times thereafter, they were told in certain instances, or it was implied in other instances, by respondents or their agents that:

(1) Photographs purchased by the parents will be in true and natural color, and will be similar in quality to photographs exhibited to the parents or to the color transparencies viewed by them.

(2) Photographs purchased by parents will be delivered promptly and workmanship and materials used by respondents are guaranteed.

(3) American Family Magazine is recognized and established magazine of nation-wide circulation similar to magazines published for and distributed by supermarkets, and is published monthly and the subscriber will receive the new issue each month during the subscription period.

PAR. 8. The foregoing representations and implications were grossly exaggerated, false and misleading. In truth and in fact:

(1) Photographs sold by respondents were not in true and natural color but were of unnatural and inferior color. Said photographs were greatly inferior in quality to photographs which were exhibited to parents and to the colored transparencies viewed by them at the time they placed their orders.

(2) In some cases photographs ordered by parents were never delivered. In other instances the photographs were delivered only after extended delay. In many instances parents received photographs which were of poor quality in color or workmanship, and upon notification thereof, the respondents failed or refused to re-print such photographs or to make monetary adjustment therefor.

329

Order

(3) American Family Magazine was not a magazine similar to magazines of nation-wide circulation published for and distributed by supermarket chains in form, composition or appearance. Said alleged magazine was not published monthly but published quarterly. In many instances the subscribing parent did not receive any issues of the said alleged magazine.

PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements, representations and practices in connection with the sale and distribution of their photographs had the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of said photographs into the erroneous and mistaken belief that such statements and representations were true and into the purchase of substantial quantities of photographs. As a result thereof trade in commerce was unfairly diverted to respondent from their competitors and injury done to competition in commerce.

PAR. 10. Respondent, Royal True Color Corporation, a corporation, was dissolved on October 18, 1956.

CONCLUSIONS

The aforesaid acts and practices as hereinabove set forth were all to the injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent Alton L. Hubbard. The complaint herein states a cause of action against respondent Alton L. Hubbard under the Federal Trade Commission Act and this proceeding against him is in the public interest.

ORDER

It is ordered, That respondent Alton L. Hubbard, his agents, representatives and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs 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 American Family Magazine or any other publication owned by him or by any other individual for whom he is a representative, agent or employee, or by any partnership in which he is a partner or for which he is a representative, agent or employee or by any corporation with which he is connected in any official capacity or for which he is agent, representative or employee is a recog-

Decision

54 F. T. C.

nized or established magazine, or is an independent publication; or is similar to magazines of nation-wide circulation; or that said magazine will publish and furnish a new issue to each subscriber each month during the life of his or her subscription;

(2) That said respondent or any individual for whom he is a representative, agent or employee, or any partnership in which he is a partner or for which he is a representative, agent or employee or any corporation with which he is connected in any official capacity or for which he is a representative, agent or employee,

(a) is conducting a photographic contest the purpose of which is to select a winner or winners for a contest sponsored by a magazine; or for any other purpose;

(b) will award valuable prizes to the winner or winners of such contest;

(c) will give free portraits to parents of children who pose for pictures;

(d) will furnish pictures in true or natural color;

(e) will guarantee the workmanship and materials in photographs;

(f) will promptly deliver photographs purchased;

(g) will furnish photographs similar in quality to demonstration photographs or to color transparencies viewed by prospective purchasers.¹

It is further ordered, That the complaint be and the same hereby is dismissed as to respondents Royal True Color Corporation and William T. Hubbard.

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 14th day of September, 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.

¹ The Commission's order may prohibit variations of the basic theme used in causing the deception and prohibit such practices by respondent through the use of other vehicles than the one used. An order forbidding the making of representations which are false need not be qualified by a provision permitting them if in the future they can be truthfully made. *P. Lorillard Co. v. F.T.C.*, 186 F. 2d 52, 59; *Consumers Sales Corp. v. F.T.C.*, 198 F. 2d 404, 408.

Complaint

IN THE MATTER OF
McCORMICK & COMPANY, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 6470. Complaint, Nov. 21, 1955—Decision, Sept. 17, 1957

Consent order requiring a seller in Baltimore, Md. of spices, extracts, teas, coffees, and condiments on a nation-wide basis, with sales for 1954 approaching \$44,000,000, to cease violating Sec. 2(d) of the Clayton Act through such practices as payment of a sum of money to a Philadelphia chain of food stores as compensation for advertising respondent's products, while not offering proportionally equal allowances to all competitors of the favored customer.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Anderson, Barnes & Coe, by *Mr. G. C. A. Anderson*, of Baltimore, Md., and *Mr. James W. Cassidy*, of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, McCormick & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located in Baltimore, Maryland.

PAR. 2. Respondent is now and has been engaged in the business of producing and selling food products. Respondent's principal products are spices, extracts, teas, coffees and condiments. Respondent sells such products to the retail grocery trade through grocery wholesalers, and, in addition, respondent sells direct to retail chain store organizations. Respondent sells spices and extracts in the eastern part of the United States under the trade name "McCormick," and sells spices, extracts and coffees in the western part of the United States under the trade name "Schilling." Sales made by respondent of its products are substantial, amounting in the fiscal year ended November 30, 1954, to \$43,764,725.