

Decision

IN THE MATTER OF
OLD YORK DISTRIBUTORS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6790. Complaint, May 3, 1957—Decision, Sept. 18, 1957

Consent order requiring an incorporated concern in Philadelphia, Pa., to cease using in advertising in newspapers and otherwise purported offers of employment to sell its candy vending machines and misrepresenting profits customers would make operating them; and falsely representing orally and through salesmen that it represented the Hershey Chocolate Corp., and that vending machine purchasers would also be Hershey representatives—among a variety of false and misleading claims, all made for the purpose of inducing purchase of their products.

The same order was issued in default upon the president and co-owner of Old York Distributors, on Feb. 27, 1958, p. 1096 herein.

Mr. Floyd O. Collins for the Commission.

Mr. Mark Charleston, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes hereinafter referred to as the Commission), on May 3, 1957, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents, Old York Distributors, Inc., a corporation, and Kolman Freedman and Henry Perkins, individually and as officers of said corporation, charging said respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars. The respondents were duly served with process.

On July 19, 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 said respondent, Old York Distributors, Inc., respondent Henry Perkins, individually and as an officer of said corporation, and Floyd O. Collins, counsel supporting the complaint, under date of July 15, 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 that Bureau.

The initial hearing set in the notice portion of the complaint for July 15, 1957, was canceled by order dated July 1, 1957, pending the negotiation of an Agreement Containing Consent Order To Cease And Desist. Another order was issued on July 22, 1957, set-

ting hearing for August 16, 1957, to determine the form of order as to respondent Kolman Freedman who is not a party to nor bound by said agreement so submitted to the hearing examiner on July 19, 1957.

On due consideration of the "Agreement Containing Consent Order To Cease And Desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings and that by said agreement the parties thereto have agreed that:

1. Old York Distributors, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its home office and principal place of business located at 5940 Old York Road, Philadelphia, Pennsylvania. Henry Perkins is an individual and is now President of respondent corporation and was until March 7, 1957, Secretary-Treasurer of respondent corporation, and his address is the same as that of the corporate respondent. Kolman Freedman is an individual and was until March 7, 1957, President of respondent corporation and his address is 1022 Sydney Street, Philadelphia, Pennsylvania.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 3rd day of May, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents, Old York Distributors, Inc., and Henry Perkins, 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.

4. This agreement disposes of all of this proceeding as to all parties, except respondent Kolman Freedman and as to all issues as against the parties to the agreement except as to the charge in the complaint set out in subparagraph 4 of Paragraph 6. As to this charge, counsel supporting the complaint states that, in his opinion, there is not sufficient evidence, presently available, to sustain such charge.

5. Respondents Old York Distributors, Inc., and Henry Perkins waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist therein in accordance with this agreement.

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6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

In the said agreement, the parties thereto have further specifically agreed that the proposed order to cease and desist included therein may be entered in this proceeding by the Commission without further notice to the respondents who are parties to said agreement; that when so entered it shall have the same force as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein, and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents who are parties to the agreement; that the complaint states a legal cause for complaint under the Federal Trade Commission Act both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, except as to respondent Kolman Freedman and except as to the charge in the complaint set out in subparagraph 4 of Paragraph Six, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondents Old York Distributors, Inc., a corporation, and its officers, and Henry Perkins, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution

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of vending machines or candies, or both, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered when, in fact, the purpose of the offer is to obtain purchases of respondents' products.

2. The route the prospective purchaser would serve is in any way connected with or under the supervision or control of the Hershey Chocolate Corporation, or that said route had been established prior to the time of the purchase of respondents' machines.

3. It is necessary for a purchaser to own a car or furnish references in order to qualify for respondents' offer, or misrepresenting in any manner the necessary qualifications.

4. The earnings or profits derived from the operation of respondents' machines are any amounts that are in excess of those which have been, in fact, customarily earned by operators of said machines.

5. The amounts invested in respondents' products are secured by inventory or otherwise.

6. Respondents' salesmen or the purchasers of their products represent the Hershey Chocolate Corporation.

7. Respondents will place the machines sold by them in choice locations from a revenue producing standpoint.

8. Purchasers of respondents' machines and supplies are allowed to purchase additional machines and supplies on credit.

9. Salesmen or placement men render services to purchasers after the machines purchased are located.

10. Freight, express, or other delivery charges on the initial shipment are paid by respondents or any of them.

11. Candy dispensed by respondents' machines cannot be bought in local stores at retail.

12. Respondents pay any or all taxes or licenses on machines sold by them.

13. Respondents have had 43 years of experience in the vending machine business or for any period of time that is not in accordance with the facts.

14. Purchasers of respondents' machines are under respondents' jurisdiction for any period of time or are required to operate in accordance with respondents' standards.

15. In the event purchasers of their machines desire to sell the machines, respondents will assist them in finding buyers, unless such is a fact.

16. Respondents will refund the purchase price of machines.

17. Purchasers are given exclusive territorial franchises.

18. The amount paid for respondents' machines is a surety bond or anything other than the purchase price.

It is further ordered, That the charge set out in subparagraph 4 of Paragraph 6 of the complaint be, and the same hereby is, dismissed without prejudice as to the respondents Old York Distributors, Inc., a corporation, and Henry Perkins, individually and as an officer of said corporation.

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 18th day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Old York Distributors, Inc., a corporation, and Henry Perkins, individually and as an officer 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.

IN THE MATTER OF
ELLISBERG'S, INC., ET AL.

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

Docket 6819. Complaint, June 14, 1957—Decision, Sept. 18, 1957

Consent order requiring a furrier in Raleigh, N.C., to cease violating the Fur Products Labeling Act by fictitious pricing on labels and in advertising, and by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products or the country of origin or that certain furs were artificially colored, and which misrepresented values, comparative prices, percentage savings, and guarantees; and by failing in other respects to comply with the labeling, invoicing and advertising requirements of the Act.

Michael J. Vitale and Thomas A. Ziebarth, Esqs., supporting complaint.

Howard E. Manning, Esq., representing respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued June 14, 1957, charges the respondents, above-named, with violation of the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with the sale, advertising and offering for sale, transportation and distribution, shipping and receiving in commerce, of fur and fur products, as the designations "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

Subsequent to the service of the complaint on all respondents, all parties did, on July 20, 1957, enter into an agreement for a consent order 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 Commission. It was provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by the 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