

IN THE MATTER OF

RIT-ZIE NOVELTY COMPANY, INC., ET AL.

Docket 6354. Complaint, May 16, 1955—Decision, Oct. 7, 1957

VICTOR B. HANDAL & BRO., INC., ET AL.

Docket 6375. Complaint, June 27, 1955—Decision, Oct. 7, 1957

RELIANCE INTERCONTINENTAL CORPORATION ET AL.

*Docket 6520. Complaint, Feb. 28, 1956—Decision, Oct. 7, 1957*CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Consent orders requiring three importers in New York City to cease violating the Flammable Fabrics Act by importing into the United States from Japan and selling and transporting in commerce silk scarves which were so highly inflammable as to be dangerous when worn.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Brockman Horne for the Commission.

Weil, Gotshal & Manges, of New York City, for respondents.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

Upon the closing on the record of the case-in-chief in support of the complaint in each of the above-captioned proceedings, all of the parties thereto, moving through counsel supporting the complaint, on July 8, 1957, sought and obtained from the hearing examiner a deferment of the reception of evidence in opposition to the allegations of the complaint for the purpose of permitting negotiation of agreements containing cease and desist orders disposing of each of the proceedings. Thereafter, at a duly noticed hearing in New York on July 18, 1957, the record discloses agreements in each of the three cases had been negotiated and executed. Subsequently, on July 25, 1957, they were submitted to the hearing examiner under one memorandum of transmittal. The agreements were rejected by the hearing examiner. Counsel supporting the complaints and counsel for respondents in all three matters have filed joint appeal from that ruling as permitted under § 3.25 of the Commission's Rules of Practice.

The hearing examiner predicates his rejection of the consent agreements, first, upon the ground that respondents have “* * * availed themselves of delaying tactics and of every possible avenue of de-

fense and now, having forced counsel for the complaint to a full disclosure of his case and being apparently, at an end, seek approval of a consent settlement * * *." The Commission recognizes the hearing examiner's concern with the fact that two of these cases have been pending in the trial stage since 1955 and one since 1956 but, from its examination of the record, has concluded that not all, not even the majority, of the delay can be attributed to respondents' trial tactics. For example, in 1955 and 1956, as pointed out by respondents, there was pending in Congress proposed legislation which, if enacted, would have exempted silk scarves such as are involved in these proceedings from coverage by the Flammable Fabrics Act, and the complaints herein would have been subject to dismissal. All participants in the proceedings during that period appear to have been in agreement as to continuance of the hearings. The record, in any event, does not disclose otherwise.

On the point that respondents "forced counsel supporting the complaint to a full disclosure of his case," this is not the criterion by which to determine whether a consent order agreement should be accepted—or rejected. The record shows no evidence not previously known to respondents and counsel supporting the complaint was not subjected to an onerous burden in the presentation thereof. On the contrary, most of the physical exhibits, consisting of scarves sold by the respondents in commerce, were identified by respondents prior to hearing and were received in evidence pursuant to stipulation, as was much of the testimony, including some government expert testimony on flammability tests, thus effecting savings of time and money in making the case-in-chief.

Secondly, the hearing examiner, in his notice of rejection of the proposed agreements for settlement, refers to the Commission's policy of denying the privilege of informal stipulation procedures to respondents in certain types of cases, including those involving flammable fabrics; and states that, by analogy, the reasoning on which such policy is bottomed "should govern" the extension of the privilege of disposing of a proceeding through the entry of a consent order under § 3.25 of the Rules of Practice. We disagree that there is, or should be, any significant parallel between the policy behind informal stipulation procedures available prior to issuance of complaint and the policy embodied in the consent order method of disposing of cases after complaint has issued. Under the pertinent rule, the latter procedure is clearly available in all types of cases at any stage of a proceeding subsequent to the issuance of a complaint.

The hearing examiner next assigns as a reason for his rejection of the consent agreements the fact that respondents, in refusing an offer

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of settlement in a pretrial hearing, thereby gave themselves an unfair competitive advantage over their competitors who did execute consent agreements even though they had on hand considerable stocks of the scarves of the flammable type involved here. Whatever merit this argument may have, other considerations in the situation found here are persuasive for the acceptance of the agreements. The saving of time and money that will result will be more in the public interest than would the rejection of the agreements and the remand of the proceedings for the taking of further testimony and the reception of evidence in opposition to the complaints. Under the agreements, as a practical matter, everything is accomplished that would be achieved by entry of cease and desist orders after trial in each of the three cases, and, having in mind the statutory mandate contained in Section 6(a) of the Administrative Procedure Act, 5 U.S.C.A. 1005(b), that "Every agency shall proceed with reasonable dispatch to conclude any matter presented to it * * *," we feel that the agreements should be accepted. In the light of the foregoing considerations, the Commission is of the opinion that the agreements constitute appropriate disposition of the issues in each case, and we direct their acceptance and the entry of an appropriate decision in each proceeding.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

On the dates noted in the above title the Federal Trade Commission issued and subsequently served its complaints in these proceedings charging that the named corporate and individual respondents, in their respective capacities, were and are engaging in acts and practices in violation of the Flammable Fabrics Act and of the rules and regulations promulgated thereunder which constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. After the issuance of said complaints, the filing of respondents' answers thereto and the closing on the record of the cases-in-chief in support of the complaints, at a duly noticed hearing on July 8, 1957, in New York, on the request of counsel supporting the complaints, a postponement was granted by the hearing examiner to permit negotiation of agreements for consent settlements. Thereafter, at a hearing convened July 18, 1957, before the hearing examiner, such Agreements, entered into between counsel supporting the complaints and respondents were submitted in disposition of all the issues presented in these proceedings. Under procedures provided in § 3.25(e) of the Commission's Rules of Prac-

tice, the agreements are now before the Commission for its consideration.

Pursuant to the agreements, respondents have admitted all the jurisdictional allegations of the complaints and agreed that the records herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. The agreements further provide that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or to contest the validity of the orders to cease and desist entered in accordance with these agreements. The agreements further state that the records on which the decision of the Commission shall be based shall consist solely of the complaints and said agreements. Further, the agreements assert that they are for settlement purposes only and do not constitute admissions by respondents that they have violated the law as alleged in the complaints. Respondents additionally have agreed that the orders to cease and desist contained in the agreements may be entered in these proceedings without further notice to respondents and that, when so entered, they shall have the same force and effect as if entered after full hearing, and that they may be altered, modified or set aside in the manner provided by statute for other orders, and that the complaint may be used in construing the terms of the orders.

For the reasons assigned in its accompanying opinion, the Commission has determined that the aforesaid agreements containing the consent orders to cease and desist provide for an appropriate disposition of these proceedings in the public interest, and the same are hereby accepted and ordered filed; and

Having determined that these proceedings are in the public interest, the Commission hereby makes the following jurisdictional findings, and issues the following orders:

JURISDICTIONAL FINDINGS IN DOCKET 6354

1. The respondent Rit-Zie Novelty Company, Inc., is 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 234 Fifth Avenue, in the City of New York, State of New York.

2. Respondents Moe Liebowitz and Samuel Einhorn (the latter whose name is incorrectly spelled in the caption of the complaint herein) are president-secretary and vice-president-treasurer, respectively, of said corporate respondent, and they formulate, direct and

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control the policies, acts and practices of said corporation. Their address is the same as that of the corporate respondent.

JURISDICTIONAL FINDINGS IN DOCKET 6375

1. Respondent Victor B. Handal & Bro., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, and with its principal place of business located at 277 Fifth Avenue, in the City of New York, State of New York.

2. Respondents Victor B. Handal and John Handal are individuals and are vice-president and secretary-treasurer, respectively, of said corporate respondent, and they formulate, direct and control the policies, acts and practices of said corporation. Their address is the same as that of said corporate respondent.

JURISDICTIONAL FINDINGS IN DOCKET 6520

1. The respondent Reliance Intercontinental Corporation is 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 48 West 37th Street, in the City of New York, State of New York.

2. Respondents Adolph Meirowitz and Jerrold Kurtz are individuals and are president and secretary-treasurer, respectively, of said corporate respondent, and they formulate, direct and control the policies, acts and practices of said corporation. Their address is the same as that of said corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of the respondents, and the proceedings are in the public interest.

ORDER

It is ordered, That respondents Rit-Zie Novelty Company, Inc., a corporation, and its officers, and Moe Liebowitz and Samuel Einhorn, individually and as officers of said corporation; Victor B. Handal & Bro., Inc., a corporation, and its officers, and respondents Victor B. Handal and John Handal, individually and as officers of said corporation; and Reliance Intercontinental Corporation, a corporation, and its officers, and respondents Adolph Meirowitz and Jerrold Kurtz, individually and as officers of said corporation; and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

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(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce; any article of wearing apparel, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That above-named respondents shall, within sixty (60) days after service upon them of these orders, file with the Commission reports, 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

MAURICE BALL TRADING AS MAURICE BALL FURS

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

Docket 6631. Complaint, Sept. 12, 1956—Decision, Oct. 7, 1957

Order requiring a Los Angeles furrier to cease violating the Fur Products Labeling Act in advertising and labeling which falsely identified the animals producing the fur in certain products and carried fictitious prices; by failing to comply with the labeling and invoicing requirements of the Act; by advertisements in newspapers which failed to disclose that certain fur products were artificially colored, and misrepresented the geographic origin of certain furs, their values, and prices; and by failing to keep adequate records as a basis for such pricing claims.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth for the Commission.

Tyre & Kamins, of Beverly Hills, Calif., by *Mr. Richard J. Kamins*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by both parties, and all findings of fact and conclusions of law proposed by the parties respectively not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondent Maurice Ball is an individual trading as Maurice Ball Furs with his place of business located at 521 West Seventh Street, Los Angeles 14, California. Respondent is a retail furrier and has been engaged in the purchase and distribution of fur products, including coats, jackets, stoles and related fur garments in the downtown Los Angeles area for over 35 years.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been engaged in the advertising and in the sale and distribution of fur products in interstate commerce. The evidence in this proceeding shows that respondent obtained substantial quantities of its fur products by means of pur-