

IN THE MATTER OF  
KEITH E. MCKEE DOING BUSINESS AS NATIONAL  
LABORATORIES OF DES MOINES

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

*Docket 6871. Complaint, Aug. 21, 1957—Decision, Jan. 15, 1958*

Consent order requiring a distributor of vending machines and nut meats dispensed thereby, located in Des Moines, Iowa, to cease representing falsely in advertisements in newspapers and through his salesmen that he was offering employment, that exaggerated profits could be earned servicing his vending machines, that inventory of machines and their supplies was security for the purchaser's investment, that customers were given exclusive territory, aid in locating machines profitably, and that machines were repurchased from dissatisfied customers; and to cease misleading use of the word "Laboratories" in his trade name or otherwise.

*Mr. Garland S. Ferguson* for the Commission.

*Mr. Stanley R. Browne*, of Des Moines, Iowa, for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent Keith E. McKee, an individual trading and doing business as National Laboratories of Des Moines, with having violated the Federal Trade Commission Act in certain particulars. The respondent was duly served with process and in due course filed his answer. An initial proceeding was convened at Des Moines, Iowa, October 29, 1957, pursuant to due notice, at which place and time counsel supporting the complaint and respondent and his counsel were present and at which time during a recess of the hearing an "Agreement containing consent order to cease and desist" was executed by counsel supporting the complaint and by the respondent upon the advice of his counsel, and the hearing examiner was then so informed. The initial hearing was thereupon recessed and a further scheduled hearing was canceled pending the approval and submission of said agreement in due course.

On November 6, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval said "Agreement containing consent order to cease and desist" entered into and executed by respondent and Garland S. Ferguson,

counsel supporting the complaint, which agreement had been there-after approved by the Bureau of Litigation of the Commission.

On due consideration of said "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 have specifically agreed that:

1. Keith E. McKee is an individual trading and doing business under the trade name of National Laboratories of Des Moines, with his principal place of business located at 3023 36th Street, Des Moines, Iowa.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 21, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees 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.

5. Respondent waives:

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

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

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

6. The record on which the initial 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 respondent that he has violated the law as alleged in the complaint.

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 a 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 person of the re-

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spondent signatory to said 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, 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 respondent Keith E. McKee, individually and trading as National Laboratories of Des Moines or trading under any other name, his 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 supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Employment is offered by respondent when in fact the real purpose of the respondent's advertisements is to obtain purchasers for respondent's products.

(b) The earnings or profits derived from the operation of respondent's machines are any amounts in excess of those which have been, in fact, customarily earned by operators of respondent's machines.

(c) The amount invested in respondent's products is secured either by inventory or otherwise.

(d) Purchasers of respondent's products are given exclusive territory within which to place and operate their machines.

(e) It is necessary for a person to have a car or furnish references in order to qualify for respondent's offer.

(f) Purchasers will realize financial security by participating in respondent's proposal.

(g) Respondent or his sales representatives obtain or assist in obtaining satisfactory locations for machines purchased from respondent.

(h) Respondent will repurchase machines if purchasers are not satisfied unless such is the fact.

2. Using the word "Laboratories" as a part of any name under which he does business or representing in any manner that he operates a laboratory in connection with his business.

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 15th day of January 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Keith E. McKee, an individual trading and doing business as National Laboratories of Des Moines, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF  
SHAY AUERBACH TRADING AS BELVEDERE WOOL CO.

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

*Docket 6783. Complaint, Apr. 19, 1957—Decision, Jan. 16, 1958*

Consent order requiring a manufacturer of wool products in Brooklyn, N.Y., to cease violating the Wool Products Labeling Act by failing to comply with the labeling requirements and by invoicing products falsely.

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

*Mr. Samuel Shapiro*, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 19, 1957, charging respondent with misbranding and falsely and deceptively invoicing his wool products, in violation of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

Thereafter, on November 1, 1957, following a hearing at which counsel supporting the complaint completed the presentation of his evidence and rested his case, respondent, his counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Shay Auerbach as an individual trading as Belvedere Wool Co., with his office and principal place of business located at 99 Broadway, New York, N.Y.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, shall have the same force and