

Decision

IN THE MATTER OF
SPURGEON PICKERING TRADING AS MONDO GRASS CO.
AND MONDO GRASS & NURSERY CO.

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

Docket 6847. Complaint, July 23, 1957—Decision, Jan. 22, 1958

Consent order requiring a seller of nursery stock in Biloxi, Miss., to cease representing falsely in newspaper and magazine advertisements that the plant *Ophiopogon Japonicus*—which he referred to as "Mondo 'Grass'"—is a grass, will make a lawn, maintain lawn height, withstand traffic, remain evergreen the year round, withstand severe freezing, and is drought resistant.

Mr. John W. Brookfield, Jr., and Mr. Charles W. O'Connell for the Commission.

Mr. Leonard J. Calhoun, of Washington, D.C., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the advertising of a plant known as *ophiopogon japonicus*, referred to by respondent as "Mondo Grass." An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

Order

54 F.T.C.

The proposed order covers all of the charges in the complaint except the charge that respondent has represented, contrary to fact, that his product forms a sod. As to this charge, the agreement contains a statement by counsel supporting the complaint to the effect that the charge cannot be sustained. The omission of the matter from the proposed order therefore appears proper.

The hearing examiner being of the opinion that the agreement and proposed order represent an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Spurgeon Pickering is an individual trading and doing business under his own name and as Mondo Grass Co. and Mondo Grass & Nursery Co., with his office and place of business located at Briarfield Avenue, Route 3, Biloxi, Miss.

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

ORDER

It is ordered. That Spurgeon Pickering, an individual trading and doing business under his own name and as Mondo Grass Co. and Mondo Grass & Nursery Co., or trading under any other name or names, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the plant ophiopogon japonicus, by whatever name it may be designated, do forthwith cease and desist from:

1. Advertising or offering ophiopogon japonicus for sale unless a clear and conspicuous disclosure is made that it is not a grass.

2. Representing directly or by implication:

(a) That ophiopogon japonicus will make a lawn unless it is clearly and conspicuously disclosed that it will not serve all the uses of a lawn.

(b) That without mowing it will maintain the height to which lawns are usually mowed.

(c) That regardless of the region of the United States in which it is planted:

(1) It remains evergreen the year around.

(2) It is winter hardy.

(3) It is drought tolerant.

3. Misrepresenting directly or indirectly the ability of ophiopogon japonicus to withstand traffic.

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 22d day of January 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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
FREDERICK MANUFACTURING CO. ET AL.

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

Docket 6866. Complaint, Aug. 14, 1957—Decision, Jan. 22, 1958

Consent order requiring manufacturers in Providence, R.I., to cease affixing to their costume jewelry and men's accessories, before shipping to retail dealer purchasers, labels bearing fictitious prices greatly in excess of the usual retail prices, thereby providing retailers with means for deceiving the purchasing public.

Mr. John W. Brookfield, Jr., and Mr. Charles W. O'Connell, for the Commission.

Dick & Carty, by Mr. E. Harold Dick, of Providence, R.I., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on August 14, 1957, charging respondents with the dissemination, upon labels at the request of purchasers, of false, deceptive, and misleading representations of the retail prices of their costume jewelry and men's accessories, in violation of the Federal Trade Commission Act.

On November 18, 1957, respondents, their 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 Respondents Frederick Manufacturing Co. and Casselini, Inc. as Rhode Island corporations, having their office and principal place of business, in common, at 244 Oak Street, Providence, R.I.; and Respondents Albert Lieberman and Albert Bensusan as president and treasurer, respectively, of both corporations, and having the same office and place of business.

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.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or