

Decision

IN THE MATTER OF
WICO CORP. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6859. Complaint, Aug 13, 1957—Decision, Feb. 5, 1958

Consent order requiring distributors in Chicago, Ill., to cease representing falsely in newspaper and other advertising to promote the sale of hot food service bars, that their offer was that of a wholesale distributing business of food products or a managership thereof, that "UP TO \$16,000 A YEAR" income was assured, that accounts were established for customers, that they were given exclusive distributorships, that refunds were made to those dissatisfied, that customers did not have to vend or sell, that the purchase price was secured by inventory and no financial risk was involved, etc.; and that their business was associated with and endorsed by food manufacturers and producers.

Mr. William A. Somers supporting the complaint.

Mr. Nathan Engelstein of Chicago, Ill., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 13, 1957, charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After issuance and service of the complaint all respondents on November 25, 1957, entered into an agreement with counsel supporting the complaint for a consent order to cease and desist from the practices complained of, which agreement purports to dispose of all the issues in this proceeding. This agreement has been duly approved by the assistant director and the director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein, for his consideration in accordance with rule 3.25 of the rules of practice of the Commission.

Respondents in the aforesaid agreement have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of the jurisdictional facts had been duly made in accordance with such allegations. Said agreement provides further that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. It has also been agreed that the record herein shall consist solely of the complaint

Order

54 F.T.C.

and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders of the Commission and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order and it appearing that the agreement and order cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice and the hearing examiner accordingly makes the following findings for jurisdictional purposes and order:

1. Respondent Wico Corp. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2913 Pulaski Road, Chicago, Ill. Respondents Max Wiczer, Harry Wiczer, and Milton Wiczer are individuals and officers of said corporate respondent and their office and principal place of business is the same as that of the said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein. The complaint states a cause of action under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents Wico Corp., a corporation, and its officers; and Max Wiczer, Harry Wiczer, and Milton Wiczer, individually and as officers 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 or distribution of hot food service bars, or any other related products and supplies therefor, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The offer made in the advertisement is an offer of a wholesale or distributing business or any other business or as a manager thereof

1001

Decision

when, in fact, the real purpose of the advertisement is to sell respondents' products.

2. Respondents establish accounts for their purchasers, unless such is a fact.

3. That purchasers do not have to engage in vending or selling, unless such is a fact.

4. The money paid to respondents is secured by the inventory or equipment purchased or is otherwise secured.

5. Prospective purchasers must have a car or furnish good references or be under any particular age in order to purchase respondents' products, unless such is a fact.

6. Respondents provide adequate training to those who purchase their products or any kind of training that is not actually provided.

7. That the income or profits derived from the purchase and operation of the food bars sold by respondents are any amounts in excess of those which have been, in fact, customarily earned by the purchasers and operators thereof.

8. Respondents grant exclusive distributorships or exclusive territory to their purchasers.

9. There is no financial risk involved in dealing with respondents.

10. Respondents obtain satisfactory or profitable locations for the food bars purchased from them.

11. Respondents relocate their hot food service bars when the locations obtained by them are not satisfactory to the purchaser.

12. Respondents refund the purchase price of their hot food service bars sold by them or resell them to another person, in case the purchaser is dissatisfied.

13. Food manufacturers or producers are associated with respondents in their business of hot food service bars or endorse their method of selling their food products therewith.

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 5th day of February 1958, 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.

IN THE MATTER OF
BERNARD ROSTEN TRADING AS BERN PRODUCTS CO.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6758. Complaint, Apr. 3, 1957—Decision, Feb. 6, 1958

Order requiring a seller in New York City of dolls, clocks, electric appliances, and other articles of merchandise, to cease supplying to operators and members of the public plans of merchandising, including pushcards, which involved the operation of games of chance, gift enterprises, or lottery schemes in the sale of the merchandise to the purchasing public; and to cease selling merchandise by games of chance.

Mr. William A. Somers for the Commission.

Mr. Horace J. Donnelly, Jr., of Washington, D.C., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that the respondent has violated the Federal Trade Commission Act by selling and distributing merchandise in interstate commerce through the use of pushcards. This initial decision determines that the material allegations of the complaint have all been sustained and that the respondent has violated the act as charged.

The complaint herein was issued April 3, 1957, and thereafter duly served upon the respondent. Upon appearance and motion of Chicago, Ill., counsel for respondent, time for filing answer was extended to May 31, but postponement of time for initial hearing, set for June 11 in Chicago, was denied. Subsequently, however, the hearing was reset for the same date in New York, N.Y., at respondent's counsel's request, with further hearing ordered for Chicago on June 17, 1957. These hearings were held as ordered, respondent appearing in person and by New York counsel at the New York hearing. In addition to the formal notice filed of record in this proceeding, the hearing examiner also gave further notice of the Chicago hearing during the course of the New York hearing. Neither respondent nor any of his New York or Chicago attorneys appeared, however, at the time of the Chicago hearing, but testimony of three witnesses from Indiana was taken, which pertained to their receipt through the mail and their use of respondent's pushcards and explanatory literature sent them by respondent. At the close of this hearing, Commission's counsel rested his case-in-chief. Respondent's counsel having earlier indicated on the record that they desired to present evidence in respondent's