

Decision

IN THE MATTER OF
BELL, MERCHANDISING-AUTOMATICALLY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6849. Complaint, July 24, 1957—Decision, Feb. 22, 1958

Consent order requiring a seller in St. Louis, Mo., of razor blade and ball point pen vending machines and the merchandise dispensed therein, to cease representing falsely in advertising in newspapers and periodicals and through its salesmen, that it was affiliated with the Gillette Co.; that purchasers of its machines would realize large returns on their investment and had their future secured; and that it would supervise operation of the machines, extend financial assistance to purchasers, locate machines for them, etc.

Mr. Terral A. Jordan for the Commission.

Mr. Morris A. Shenker, of St. Louis, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 24, 1957, charging respondents with the dissemination of false, misleading and deceptive representations in connection with the distribution in commerce of vending machines and articles of merchandise, including razor blades and ball point pens, in violation of the Federal Trade Commission Act.

On October 22, 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 Respondent Bell, Merchandising-Automatically, Inc. as a Missouri corporation, and Respondents Donald J. Garrison and Clovis Ooley as individuals and as president and vice president, respectively, of the corporate respondent, all respondents having their office and principal place of business at 7307 Olive Street Road, St. Louis, Mo.

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 and conclusions of law; and all the rights they 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

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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 effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents Bell, Merchandising-Automatically, Inc., a corporation and its officers, and Donald J. Garrison and Clovis Ooley 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 and distribution of vending machines or articles of merchandise, including razor blades and ball point pens, dispensed in said vending machines, or other similar merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That respondents are affiliated with, approved by or are agents or representatives of the Gillette Co., Gillette Park, Boston, Mass., or of any other person, firm, or corporation when such is not the fact;
2. That large returns upon the amount invested by a purchaser will accrue from the operation of said vending machines, or that said returns will be in excess of those usually and ordinarily realized;
3. That the sale of merchandise by vending machines is unaffected by economic depressions;
4. That the income from the sale of said merchandise by said vending machines is adequate to secure a purchaser's future;
5. That respondents will provide supervision or assume the control and direction of the vending machine businesses established by purchasers of their said vending machines and articles of merchandise or will extend financial assistance to such purchasers;

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6. That respondents will establish a vending machine business for purchasers of said vending machines and articles of merchandise or will locate said vending machines in profitable locations;

7. That purchasers of respondents' said vending machines and merchandise are not required to sell or solicit in connection with the establishment and operation of the business of selling articles of merchandise by vending machines.

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 February 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Bell, Merchandising-Automatically, Inc., a corporation, and Donald J. Garrison, and Clovis Ooley, individually and as officers 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

COCA COLA BOTTLING CO. OF NEW YORK, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF
THE CLAYTON ACT*Docket 6594. Complaint, July 19, 1956—Decision, Feb. 26, 1958*

Order dismissing without prejudice for "lack of potential proof" complaint charging a bottling company in New York City with granting unlawful promotional allowances to favored customers indirectly through payments of money to major radio broadcasting networks for the benefit of certain chain store customers for their own advertising purposes, in compensation for services furnished in connection with the sale of respondent's products.

Mr. J. Wallace Adair, Mr. William R. Tincher and Mr. Eugene Kaplan for the Commission.

Appell, Austin & Gay, by *Mr. Cyrus Austin*, and *Mr. Harry Malter*, of New York, N.Y., for Respondent.

INITIAL DECISION BY ARNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

The complaint in this proceeding charges the respondent with having paid money to three of the major broadcasting companies for the benefit of certain chain-store customers, thereby providing broadcasting time through such broadcasting companies to respondent's favored customers for their own advertising purposes. The payments thus made by respondent are alleged to have been made as compensation or in consideration for services or facilities furnished it by these favored customers in connection with the offering for sale and sale of respondent's products. It is further alleged that the benefits so furnished to some of respondent's customers were not made available to respondent's other customers on proportionally equal terms, in violation of the provision of subsection (d) of § 2 of the Clayton Act, as amended.

The complaint then describes in some detail the sales promotion plans through which respondent is alleged to have favored certain of its customers.

THE ANSWER

Respondent in its answer admits that it is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 425 E. 34th Street, New York, N.Y.