

IN THE MATTER OF
OLD YORK DISTRIBUTORS, INC., ET AL.

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

Docket 6790. Complaint, May 3, 1957—Decision, Feb. 27, 1958

Order issued in default requiring the president of an incorporated business in Philadelphia, Pa., to cease using in advertising in newspapers and otherwise purported offers of employment to sell candy vending machines and misrepresenting profits customers would make operating them; and falsely representing orally and through salesmen that he represented the Hershey Chocolate Corp. and that vending machine purchasers would also be Hershey representatives—among a variety of false and misleading claims, all made for the purpose of inducing purchase of his products.

As to the corporation and its secretary-treasurer, also named as respondents, the matter was settled by their consenting to an identical order on September 18, 1957, p. 349 herein.

Mr. Floyd O. Collins and *Mr. William M. King* for the Commission.
No appearance on behalf of respondent Kolman Freedman.

INITIAL DECISION AS TO RESPONDENT KOLMAN FREEDMAN BY
LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of the Federal Trade Commission Act as amended, it being charged in the complaint, in substance, that the respondents have committed unfair and deceptive acts and practices and unfair methods of competition in commerce by misrepresenting through printed advertisements and oral statements of respondents' salesmen certain claims concerning respondents' vending machines and candies. On August 6, 1957, the hearing examiner herein issued an initial decision based upon an "agreement containing consent order to cease and desist," which had been entered into by and between respondents other than Kolman Freedman and Floyd O. Collins, counsel supporting the complaint, under date of July 15, 1957, which had been approved by the Bureau of Litigation. This initial decision, on September 18, 1957, was approved by the Commission, which issued on that date its "decision and order to file report of compliance." This initial decision now rendered is against only the respondent Kolman Freedman upon his default.

From the record it appears that said respondent Kolman Freedman was duly served with a copy of the complaint herein on June 7, 1957; that he never filed an answer or other pleading and has long been in default of answer or any other appearance, either in person or by

counsel; that due service was made upon him pursuant to the Commission's rules of practice for adjudicative proceedings of the orders setting this proceeding for November 8, 1957, at 9:30 a.m., in room 362, Federal Trade Commission Building, Sixth and Pennsylvania Avenue NW., Washington, D.C., for the purpose of hearing the evidence to be presented by counsel supporting the complaint to find whether or not the facts as against said respondent Kolman Freedman are as alleged in the complaint, to make proper findings on the evidence presented, and to determine the form of order to be issued against said respondent under said complaint and evidence in the initial decision to be rendered herein as to said respondent.

On November 8, 1957, at the time and place designated therefor, the hearing examiner conducted such a hearing; counsel supporting the complaint appeared, but no appearance was made at or prior to such hearing by said respondent Kolman Freedman, either in person or by counsel, and on motion of counsel for the Commission his default was taken and entered of record by the hearing examiner. Hearing then proceeded upon the presentation made by the attorney for the Commission who requested that findings be made against said respondent in accordance with the allegations of the complaint and that order be issued against said respondent in the same language as was the order entered against the other respondents in the initial decision issued August 6, 1957, and filed August 7, 1957. The proceeding was then taken under advisement.

Upon due consideration of the whole record herein and the hearing examiner being fully advised in the premises, it is found as follows:

1. Respondent Old York Distributors, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at 5940 Old York Road, Philadelphia 41, Pa.

Respondent Kolman Freedman is an individual and president and coowner of the respondent corporation. Respondent's business address is 5940 Old York Road, Philadelphia 41, Pa.

Respondent Henry Perkins is an individual and secretary-treasurer and coowner of the respondent corporation. Respondent's business address is 5940 Old York Road, Philadelphia 41, Pa.

The individual respondents Kolman Freedman and Henry Perkins direct and control the acts, practices, and policies of respondent corporation.

Respondents are now and have been for several years last past engaged in the sale and distribution of vending machines and candies in interstate commerce. Said machines are sold in lots of 15 at a

price of \$690 per lot. When sales are made, respondents ship or cause said products to be shipped and transported from their place of business in Philadelphia, Pa., across State lines to the purchasers thereof, many of whom are located in States of the United States other than the State of Pennsylvania. Respondents have during all the time herein mentioned carried on a constant and recurring course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are now and have been at all times herein mentioned in substantial competition in commerce with other corporations and with firms and individuals engaged in the sale and distribution of like products.

In the course and conduct of their business as herein described, to induce the purchase of their products, respondents, by the use of newspapers and other means of advertising, have made certain representations with reference to their vending machines and candies, of which the following is typical:

HERSHEY CANDY ROUTES

Excellent opportunity to become associated with the finest name in the candy industry refilling and collecting from our 5¢ candy machines. Established routes—no selling. This can be done in your spare time with the possibility of taking over full time. To qualify for work you must have car, references, \$690 cash—secured by inventory. Devoting 6 hours a week to business. Your end on percentage collections will net up to

\$300 MONTHLY SPARE TIME

By and through the use of the statements in the aforesaid advertisement, and others of the same import not specifically set out herein, respondents represented, directly or by implication:

1. That the offer is an offer of employment;
2. That the route the prospective purchaser would be servicing was an established Hershey Chocolate Corp. route;
3. That to qualify for the offer the prospect must have a car and furnish references;
4. That the investment of \$690 in respondents' products will result in monthly earnings of up to \$300;
5. That the \$690 invested is secured by inventory.

The individual respondents, and salesmen employed by them and the corporate respondent, in the course of the solicitation for the sale of said machines have orally made additional statements to prospective purchasers of which the following are typical but not all inclusive, that:

1. Respondents' salesmen represent the Hershey Chocolate Corp.;

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2. Purchasers will be representatives of the Hershey Chocolate Corp.;
3. Machines sold will be located in choice locations;
4. The respondents are represented by a number of qualified placement men;
5. Purchasers will be allowed to order additional candy and machines on credit;
6. Salesmen or placement men will return in a few weeks after the machines are placed to be sure that everything is satisfactory and that the machines are properly located;
7. Freight or express charges on the initial shipment are paid by the respondents;
8. The candy dispensed by respondents' machines cannot be bought in local stores at retail;
9. Respondents pay all taxes and licenses on the machines sold by them;
10. Respondent Old York Distributors, Inc., has had 43 years of experience in the vending machine business;
11. Purchasers are under company jurisdiction for one year and have to operate up to the company's standards or lose his or her license;
12. In the event purchasers ever desire to sell their machines, the respondents will assist them in finding a buyer;
13. Purchasers can obtain a refund of the \$690 at any time he or she so desires;
14. Purchasers are given exclusive franchises for his or her area;
15. The amount of \$690 is in the nature of a surety bond which amount will be refunded in case purchasers cease doing business with respondents.

The aforesaid statements made in the advertising matter and orally by the individual respondents and their salesmen were false, misleading and deceptive. In truth and in fact:

1. The offer was not an offer of employment but was made for the purpose of obtaining purchasers for respondents' products;
2. The routes to be serviced were not Hershey Chocolate Corp. routes;
3. It was not necessary for a prospect to have a car or to furnish references in order to qualify for the offer. The only necessary qualification was the purchase price of said products;
4. Earnings of \$300 per month were and are greatly in excess of the earnings that will result from an investment of \$690 in respondents' products;

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5. While purchasers have the products purchased as evidence of such purchase, they are, by no means, security for the amount invested.

6. Neither the respondents nor their salesmen have ever represented the Hershey Chocolate Corp., nor do the purchasers of their products represent said corporation;

7. The respondents do not place the machines sold by them in choice locations from the standpoint of producing revenue to the purchasers but are placed wherever the owners of businesses will permit;

8. The men employed by respondents to place machines purchased are not qualified or experienced candy route men;

9. Purchasers are not allowed to order additional candy and machines on credit;

10. Neither respondents' salesmen nor their placement men render assistance of any kind to purchasers after the machines are located;

11. Respondents do not pay freight or express charges on the products sold;

12. The candy dispensed by respondents' machines can be bought locally;

13. Respondents do not pay any taxes or licenses on machines sold by them;

14. Respondent, Old York Distributors, Inc., was organized in 1956 and is not the successor of any organization that had been engaged in the vending machine business;

15. The purchaser of respondents' machines is not under company jurisdiction for any time;

16. Respondents do not assist a purchaser to dispose of his machines in the event he desires to sell;

17. Respondents do not refund the purchase price of machines, in any event;

18. Purchasers are not given exclusive franchises in his or her area;

19. The amount of \$690 is the purchase price of respondents' machines and is not refunded under any circumstances.

The use of said false and misleading statements, as set out hereinbefore, has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements were and are true and to cause substantial numbers of the purchasing public to purchase substantial quantities of respondents' products. As a result thereof, trade has been and is now being unfairly diverted to respondents from their competitors and injury has been and is now being done to competition in commerce.

The aforesaid acts and practices, as herein alleged, were and are all

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to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSIONS OF LAW

There being jurisdiction over the person of respondent Kolman Freedman, upon the findings hereinbefore made, the allegations of the complaint, and the presentation of counsel supporting the complaint, the hearing examiner upon the whole record makes the following conclusions of law:

1. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices hereinbefore found to be unlawful.

2. The public interest in this proceeding is clear, specific, and substantial.

3. The aforesaid acts and practices of respondent Kolman Freedman, as hereinbefore found, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act, as amended.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondent Kolman Freedman, individually and as an officer of said corporation, and his 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 candies, or both, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered when, in fact, the purpose of the offer is to obtain purchases of respondent's products.

2. The route the prospective purchaser would serve is in any way connected with or under the supervision or control of the Hershey Chocolate Corp., or that said route had been established prior to the time of the purchase of respondent's machines.

3. It is necessary for a purchaser to own a car or furnish references in order to qualify for respondent's offer, or misrepresenting in any manner the necessary qualifications.

4. The earnings or profits derived from the operation of respondent's machines are any amounts that are in excess of those which have been, in fact, customarily earned by operators of said machines.
5. The amounts invested in respondent's products are secured by inventory or otherwise.
6. Respondent's salesmen or the purchasers of his products represent the Hershey Chocolate Corp.
7. Respondent will place the machines sold by him in choice locations from a revenue producing standpoint.
8. Purchasers of respondent's machines and supplies are allowed to purchase additional machines and supplies on credit.
9. Salesmen or placement men render services to purchasers after the machines purchased are located.
10. Freight, express or other delivery charges on the initial shipment are paid by respondent.
11. Candy dispensed by respondent's machines cannot be bought in local stores at retail.
12. Respondent pays any or all taxes or licenses on machines sold by him.
13. Respondent corporation has had 43 years of experience in the vending machine business or for any period of time that is not in accordance with the facts.
14. Purchasers of respondent's machines are under his jurisdiction for any period of time or are required to operate in accordance with his standards.
15. In the event purchasers of the machines desire to sell the machines, respondent will assist them in finding buyers, unless such is a fact.
16. Respondent will refund the purchase price of machines.
17. Purchasers are given exclusive territorial franchises.
18. The amount paid for respondent's machines is a surety bond or anything other than the purchase price.

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 27th day of February 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Kolman Freedman 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.

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IN THE MATTER OF
L. M. CLOTHING CO., INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6889. Complaint, Sept. 27, 1957—Decision, Feb. 27, 1958*

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by falsely labeling as "All Wool" and "All Wool Exclusive of Ornamentation" men's sport coats which contained a substantial percentage of nonwoolen fibers; by failing to set forth separately on stamps, etc., the character and amount of constituent fibers contained in the interlinings; and by failing in other respects to conform to the requirements of the act.

Michael J. Vitale and *Alvin D. Edelson*, Esqs., for the Commission.
Green & Ettinger, by *Joseph Ettinger*, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued September 27, 1957, charges the respondents L. M. Clothing Co., Inc., a corporation, and Louis Motzkin and Bertha Motzkin, individually and as officers of the corporate respondent, and Donald Motzkin, individually, with violation of the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and of the rules and regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the introduction or manufacture for the introduction into commerce, or offering for sale, sale, transportation or distribution of men's sport coats in commerce, as "commerce" is defined in said acts.

After the issuance of said complaint respondents, on December 6, 1957, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations.