

IN THE MATTER OF
ROYAL OIL CORP. ET AL.

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

Docket 6702. Complaint, Jan. 8, 1957—Decision, Apr. 7, 1958

Order requiring a concern in Baltimore, Md., engaged in reclaiming used oil obtained from drainings of motor crankcases and in selling it, as such or blended with new oil, to dealers for resale to the purchasing public in containers similar to those used for new oil with the single word "Re-Processed" to indicate its nature, to cease selling reclaimed oil without disclosing such prior use in advertising and sales promotional material and by a clear and conspicuous statement on the containers.

Mr. John W. Brookfield, Jr., supporting the complaint.

Mr. Harry D. Kaufman and Mr. Joseph S. Kaufman of Baltimore, Md., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint, issued January 8, 1957, charged respondents with the violation of the Federal Trade Commission Act through the sale of reclaimed used motor oil without disclosure that the oil had been previously used. The complaint further alleges that the oil is sold in containers of the same general size, kind and appearance as those used for new oil; that while the containers are labeled "Re-Processed" the use of this term does not constitute a disclosure that the oil is reclaimed, used oil.

The answer admits the corporate setup and that the corporate respondent is engaged in "commerce" in the sale and distribution of used reprocessed lubricating oil. Little else is admitted.

Hearings were held in Baltimore, Md., Raleigh and Salisbury, N.C., for the purpose of hearing evidence in support of the allegations of the complaint. Counsel supporting the complaint rested his case-in-chief at the end of the hearing in Salisbury. Respondents then filed motion to dismiss with supporting brief, which was opposed by counsel supporting the complaint who filed answering brief. The motion to dismiss was denied. Respondents then rested their case without offering any additional evidence. The matter is now before the hearing examiner for an initial decision upon the record including proposed findings as to the facts, conclusions of law and order filed by both sides. All proposed findings and conclusions not found or adopted herein are hereby specifically rejected.

FINDINGS OF FACT AND CONCLUSIONS

1. Respondent Royal Oil Corp. is a corporation organized and existing under the laws of the State of Maryland and having its

principal place of business located at 2100 Gable Avenue, Baltimore, Md. Respondents Alden C. Jocelyn (called Jocelin in the complaint), Joseph A. Inciardi, and Irving H. Weil are individuals and the officers of the corporate respondent. Respondents Jocelyn and Inciardi devote their full time to the business and are responsible for the policies, acts and practices of the corporate respondent, but respondent Irving H. Weil is not responsible for such policies, acts, or practices.

2. The corporate respondent for more than 2 years last past has, among other things, been engaged in the business of buying previously used motor oil, drained from the crankcases of automobiles, treating it at their plant in Baltimore, Md. and selling and distributing such oil to dealers in other states for resale to the purchasing public. The corporate respondent sells and has sold and shipped such oil from its plant in Baltimore, Md. to dealers in North and South Carolina, Virginia, and Georgia. Sales of the corporate respondent of such oil to dealer customers in other states during each of the years 1954, 1955, and 1956 was approximately \$120,000 per year.

3. In the course and conduct of its business the corporate respondent is engaged in competition with other concerns selling and distributing motor oil in commerce between and among the states named.

4. The corporate respondent sells said oil in sealed cans under two brand names, "Jet" and "Lubex." It is put up and sold in quart cans bearing the following wording on the cans of lubex oil:

RE-PROCESSED MOTOR OIL (In letters ½ inch high)

1 U.S. Quart

Lubex Motor Oil

The Royal Oil Corporation

Baltimore 30, Maryland

Lubex's Protection

*

High Viscosity Index

*

Sludge Free

*

Longer Wear

*

Less Carbon

*

Gas Saving

*

Faster Starting

S.A.E. 30

Findings

54 F.T.C.

5. The cans of Jet Oil bear the following wording:

Contents 1 U.S. Quart

JET RE-PROCESSED MOTOR OIL (In letters $\frac{1}{2}$ inch high)

Jet Motor Oil
Refinery Sealed
For Your
Protection

*

High heat resistance,
low cold test and
fast starting
makes Jet Motor Oil
economical, safe and
dependable

*

Royal Oil Corporation
Baltimore 30, Maryland
S.A.E. 30

6. There is no difference between "Jet" and "Lubex" oil. The contents of the cans are identical. The cans themselves are not distinctive in shape from cans in which motor oil made from crude oil that has not been previously used, is sold.

7. In Raleigh and Salisbury, N.C., witnesses were called who testified that they preferred new oil over oil made from previously used motor oil that had been reprocessed or reclaimed. There was no testimony to the contrary. This testimony is sufficient to establish a prima facie case of public preference for new oil over oil made from previously used oil that has been reprocessed or reclaimed. Respondents do not challenge its sufficiency for that purpose.

8. The quality of "Jet" and "Lubex" oil is not an issue in the case. If there is a public preference for new oil over oil made from previously used oil the public is entitled to get what it chooses, regardless of the reasons for the choice.¹

9. This case therefore turns on the question of whether the labeling on the cans of "Jet" and "Lubex" oil has the capacity and tendency to deceive a substantial portion of the purchasing public into thinking that the oil was made from oil that had not been previously used. Respondents contend that the word "Re-Processed" on each can of oil is sufficient to apprise purchasers and prospective purchasers that the oil is made from previously used oil.

10. Counsel supporting the complaint, over the objection of respondents, introduced testimony of witnesses at the hearings in Raleigh and Salisbury to show that the word "Re-Processed" on the cans of

¹ F.T.C. v. *Algoma Lumber Co., et al*, 291 U.S. 67.

"Jet" and "Lubex" oil was not sufficient to apprise them of the fact that the oil was made from previously used motor oil. Such testimony was not necessary.²

11. The State of North Carolina, one of the States into which the corporate respondent ships its "Jet" and "Lubex" oil has a statute passed in 1953 defining re-refined and reprocessed oil as lubricating oil for use in internal combustion engines which has been re-refined or reprocessed in whole or in part from previously used lubricating oil. This same statute makes it a misdemeanor to offer for sale, sell, or deliver in the State of North Carolina re-refined or reprocessed oil as above defined in a sealed container unless the container bears a label on which shall be expressed the brand or trade name of the oil and the words "Re-Processed Oil" in letters at least one-half inch high; the name and address of the person, firm, or corporation who has re-refined or reprocessed said oil or placed it in the container; the S.A.E. viscosity number and the net contents of the container.

12. Prior to the passage of the North Carolina Act mentioned above, the corporate respondent had been selling its "Jet" and "Lubex" oil in North Carolina and elsewhere without the cans being labeled "Re-Processed." Immediately after the act became effective the corporate respondent recalled from North Carolina all its cans of oil and replaced them with cans labeled "Re-Processed Oil" in letters one-half inch high. Said respondent in its new labeling of its cans made every effort to comply with the North Carolina statute and has continued to sell in North Carolina with no complaint from the North Carolina authorities.

13. From the effective date of the North Carolina statute all "Jet" and "Lubex" oil sold by the corporate respondent in other states has been sold in containers labeled like those in which the oil is sold in North Carolina.

14. Respondents contend that because the statute of North Carolina defines "Re-Processed" oil and how it shall be labeled, the Commission has no power to pass on the question of whether such labeling reveals that "Jet" and "Lubex" oil is made from previously used oil.

15. If respondents' oil was made in and sold only in North Carolina and did not cross State lines the Commission would have no power to inquire as to whether it was properly labeled. The fact that the oil is sold and shipped from one state to another gives the Commission the authority for the present inquiry. The fact that North Carolina has such statute is merely a circumstance to be considered, along with other circumstances in determining whether respondents' label-

² *Zenith Radio Corp. v. F.T.C.*, 143 F. 2d 29.

ing has the capacity and tendency to deceive. Respondent also sells in South Carolina, Virginia, and Georgia. While it is not decisive of this case the State of Georgia has a statute requiring such oil to be labeled "used and reclaimed." Some other States have statutes on the subject and some do not. These are all circumstances to be considered by the Commission.

16. Respondents however challenge the right of the Commission to consider any statute on the subject not in evidence claiming it to be contrary to the Federal rules of civil procedure. This challenge was also made during the hearing. Of course the Commission is not bound by the Federal rules of civil procedure. However research indicates that the courts of the United States take judicial notice of the laws of any state of the Union whether depending upon *statute* or judicial opinion.³ Since no Federal rule has been cited in support of the position taken and some of the court decisions taking judicial notice of the statute of a State have been since the adoption of the current Federal rules of civil procedure, the point is decided against respondents. As stated above the statutes of other states are not decisive of the case, but may be considered by the Commission.

17. In the passage of the Wool Products Labeling Act of 1939, Congress did not think that the term "re-processed" should be used to describe wool made from fibers that were part of a wool product that had been previously used. The term "reused wool" is required to describe such product.

18. The hearing examiner has been unable to find a dictionary that gives the definition of re-processed as a separate word. "Process" is defined by Webster's New International Dictionary, 2d edition, unabridged, as "a series of actions, motions or occurrences; progressive act or transaction; continuous operation or treatment; as the process of vegetation or decomposition; a chemical process * * *." There are also other definitions but the definition of a chemical process is one that seems most applicable to the question presented. Similarly, while there are other definitions of the word "re" the only applicable one is that of a prefix illustrated as follows: "Again, used chiefly to form words, especially verbs of action, denoting in general repetition (of the action of the verb) or restoration (to a previous state) * * *." From these definitions, "reprocessed" as applied to oil may mean oil that has been put through a chemical process again, which we know without resorting to the dictionary. For all the labeling on the can tells us the product may have been used in between the two processings or it may not. Advertisements which are capable of two

³ *Lamar v. Micou* 114 U.S. 218, 223; *Southern Ry. v. O'Dell* 252 F. 540, 543; *Jackman v. Union Pac. R. Co.* 4 F.R.D. 172 (1944); *Fleming et al. v. Wabash R. Co.*, 8 F.R.D. 419 (1948)

meanings, one of which is false, are misleading.⁴ With public knowledge of the extra refining of gasoline to increase its power "re-processed" oil may mean to some purchasers and prospective purchasers that this oil had had extra processing without ever having been used.

19. The Commission has in previous cases insisted upon a form of advertising clear enough so that in the words of the prophet Isaiah "Wayfaring men though they be fools, shall not err therein." Further, that the law was made "for the protection of the public—that vast multitude which includes the ignorant, the unthinking, and the credulous."⁵ Respondents' labeling of their cans does not meet this standard of clarity.

20. Another defense raised by respondents is that an order to cease and desist from the practices complained of would be inconsistent with the findings of the hearing examiner in the *Pennsylvania Oil Terminal* case, reported in 48 F.T.C. decisions at page 356 and the initial decision in the matter of *Mohawk Refining Corp., et al.*, docket No. 6588. In neither of those cases did the cans of oil have any labeling different from the labeling on cans of oil made from crude oil that had not been previously used.

21. The orders to cease and desist in each of those cases required labeling on the cans to disclose to purchasers and prospective purchasers that the oil was made from previously used oil. Here the finding is that the word "Re-Processed" on the cans of oil in this case is not sufficient to disclose to a substantial portion of purchasers and prospective purchasers that the oil was made from previously used oil. In a recent initial decision by Hearing Examiner Pack, he found that the labeling of such cans of oil with the words "Guaranteed Re-Refined" was not sufficient to apprise the public that the oil was made from previously used oil.⁶

22. The aforesaid acts and practices of the corporate respondent and of the individual respondents Alden C. Jocelyn and Joseph A. Inciardi, who control the acts and practices of the corporate respondent, and their failure to adequately disclose that their oil has been reclaimed from previously used lubricating oil, have had and now have the tendency and capacity to mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that their said oil was made from new and unused oil and to induce the purchasing public to purchase substantial quantities of respondents' said product because of such erroneous and mistaken

⁴ *Rhodes Pharmacal Co. v. F.T.C.* 208 F. 2d 382, 387; *U.S. v. 95 Barrels of Vinegar* 265 U.S. 438, 442.

⁵ *Charles of the Ritz v. F.T.C.*, 143 F. 2d 676-680; *General Motors Corp. v. F.T.C.*, 114 F. 2d 33.

⁶ In the Matter of *Salzer Refining Co., Inc., et al.*, docket No. 6339, initial decision issued September 3, 1957.

Order

54 F.T.C.

belief. As a result thereof substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce. Furthermore, the said acts of said respondents serve to place in the hands of dealers a means and instrumentality whereby such persons may mislead the purchasing public with respect to the nature and origin of respondents' said product.

23. The aforesaid acts and practices of said respondents as hereinabove set forth are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.⁷

ORDER

It is ordered, That respondent Royal Oil Corp., a corporation, and its officers, and respondent Irving H. Weil as an officer of said corporate respondent, and respondents Alden C. Jocelyn (erroneously referred to in the complaint as Alden C. Jocelin) and Joseph A. Inciardi, individually and as officers of said corporate respondent, and respondents' 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 lubricating oil, do forthwith cease and desist from:

(1) Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container;

(2) Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed, or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent Irving H. Weil in his individual capacity.

⁷ For other related Commission cases, see: *Westville Refining Inc.*, docket No. 4370; 36 F.T.C. decisions 402; *Penn Lube Oil Products Co.*, docket No. 4524; 34 F.T.C. decisions 1049; *Dabrol Products Corp., et al.*, docket No. 5656; 47 F.T.C. decisions 791; *High Penn Oil Co., Inc.*, docket No. 6492, not yet in bound volume; *Double Eagle Refining Co., et al.*, docket No. 6432, not yet in bound volume.

OPINION OF THE COMMISSION

By Anderson, Commissioner:

This is an appeal by the respondents from an initial decision of the hearing examiner holding that the respondents named in that decision's order to cease and desist have violated the Federal Trade Commission Act by failing to disclose that the motor oil which they distribute in commerce is oil made from previously used oil.

The respondents purchase crankcase drainings discarded by motorists at service stations when changing their oil. These and other waste oils are subjected to processing for removing their impurities at the respondents' plant in Baltimore. The oil then is sold to dealers and others under the brand names Jet and Lubex, which products are identical, and shipped in commerce in metal cans similar in size and shape to those customarily used for displaying virgin or new oils to the public at filling stations and garages. Respondents have been selling substantial amounts of oil to purchasers located in North Carolina; and after that State enacted legislation in 1953 pertaining to the marketing of oils made from previously used lubricants, the respondents added the text "Re-processed Motor Oil" to letters one-half inch high to the containers for their Jet product and "Re-processed Oil" in the like sized lettering was imprinted on the Lubex containers. The foregoing matters are not in dispute. All oil currently shipped by the respondents carries these labels; and those for Lubex oil include the words "Longer Wear," "Less Carbon," "Gas Saving." Those for Jet oil state it is "Refinery Sealed For Your Protection."

The hearing examiner held that, notwithstanding the labels' inclusion of the word "re-processed," such labels are ambiguous and confusing in their import and have not served to adequately disclose to the public that the respondents' lubricants are made from previously used oil. In excepting thereto and to the initial decision's related findings that the containers have the capacity and tendency to induce purchasers of respondents' product under mistaken beliefs that it is new or virgin oil, respondents argue that a clear understanding as to the nature of respondents' oil was evinced by members of the public called by counsel supporting the complaint. One of the public witnesses testified to his belief that the word "re-processed" signified used oil which has been reworked. On the other hand, it is equally clear that others had not shared in that understanding and their confusion as to the meaning of "re-processed" as descriptive

for a motor oil is plainly evident from the record. The appeal's contention that the overall import of the testimony of those witnesses attested to a clear understanding as to the nature of respondents' oil is not tenable.

Included among the record matters supporting the hearing examiner's findings that the labeling practices have the capacity to mislead and deceive is the record's clear showing that a marked preference exists among a substantial segment of the purchasing public for oils refined from crude over those processed from waste lubricants. Oils refined from crude have long been accepted by the consuming public. The public's awareness that great technological advances are being achieved in the fields of the applied sciences, including that dealing with the refining and treating of petroleum products for meeting the demands of today's high compression motors, is, of course, common knowledge. Hence the labels may serve to suggest and imply that respondents' oil is new oil which has been subjected to additional processing for enhancing its performance and lubricating qualities. We think that the record supports informed determinations that the containers reasonably represent and imply to a substantial segment of the consuming public that respondents' oil is oil processed from crude instead of oil made from waste lubricants. Respondents' contentions that the hearing examiner erred in reaching conclusions similar to those noted above are without merit; and it is our view also that the hearing examiner was correct in additionally holding that the respondents have placed in the hands of dealers a means and instrumentality whereby they may mislead the purchasing public with respect to the nature and origin of the product.

The appeal also argues that public interest is lacking in this proceeding inasmuch as the respondents' product affords excellent lubrication. The quality of that oil is not an issue here. Substitution is unlawful, even though a qualitative equivalence be shown, and the consumer is prejudiced if on giving an order for one thing he is supplied with something else. *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 216 (1933); *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 77 (1934). Furthermore, where the appearance of a product is such that the consuming public is unable to or finds it difficult to distinguish it from competing merchandise which is the subject of marked consumer preference, the public interest requires that such simulative wares be properly labeled by producers to prevent distributors from exercising deception in their resale. *Mary Muffet, Inc. v. Federal Trade Commission*, 194 F. 2d 504, 505 (C.A. 2, 1952).

Respondents have shipped their products to purchasers located in North Carolina, South Carolina, Virginia, and Georgia.⁸ Respondents contend that the fact that their labeling is in conformity with the requirements of the North Carolina statute forecloses determinations that they have not adequately disclosed the nature of their oil. The hearing examiner held, however, that the standard approved under that act was but one circumstance to be considered. Deemed relevant and considered by him also was the fact that the States of South Carolina and Virginia have not legislated on the subject and that the State of Georgia has enacted a statute⁹ requiring oil derived from previously used oil to be labeled "used and reclaimed." We think the hearing examiner correctly held that the standards of local North Carolina law and respondents' conformity thereto, while relevant, were not necessarily controlling, and that decision here as to impressions reasonably engendered by respondents' containers was to be made with due regard to all relevant record facts.

Respondents further argue that approval of the hearing examiner's order would impose regulatory requirements contrary to the laws of a sovereign state and, hence, would be erroneous. While the several states have plenary power to regulate interstate commerce within their boundaries, it is established constitutional doctrine that Congress has exclusive jurisdiction over interstate commerce. *Gibbons v. Ogden*, 9 Wheat. 1; *Robbins v. Taring District*, 120 U.S. 489. Under the organic act, Congress has empowered the Commission to prevent the use in commerce of unfair methods of competition and unfair and deceptive acts and practices; thus, the Commission has authority to act in this proceeding. Furthermore, the initial decision's order would not preclude the respondents' continued use of the word "re-processed" on their containers if clear disclosure were otherwise made as to the oil being processed from previously used oil. The

⁸ Respondents contend a failure of proof respecting sales in Georgia, but the hearing examiner's conclusions as to such sales have sound record basis. Respondent Alden C. Jocelyn, president of the corporate respondent, testified that sales had been made in Georgia and subsequently explained that the company had customers in Georgia, although selling to no brokers there; and respondent Joseph A. Inciardi, vice president of the corporate respondent, testified that both Lubex and Jet oil had been sold in that State and named Georgia Oil Co., Atlanta, as a customer.

⁹ The appeal urges error by the hearing examiner in recognizing the existence of the Georgia enactment inasmuch as no documentary or oral evidence relating to it was introduced into the record. This exception has no merit. The courts of the United States may take judicial notice of the laws of any State of the Union. *Lamar v. Misco*, 114 U.S. 218, 223 (1885); *Fleming, et al. v. Wabash R. Co.*, 8 F.R.D. 419 (1948). Furthermore, respondents' brief contains no showing that the interpretation accorded by the hearing examiner to the Georgia law was erroneous or showing of other prejudice to them.

exceptions¹⁰ presented under this aspect of the appeal are without merit.

Rejected also is respondents' contention that the initial decision must be regarded as erroneous because inconsistent with the Commission's decision in the matter of *Pennsylvania Oil Terminal, Inc.*, 48 F.T.C. 356 (decided Oct. 4, 1951). The appeal construes that case to hold that the word "re-processed" constitutes an adequate disclosure as to the nature of the reclaimed products being distributed there. Assuming the appeal's interpretation to be correct, decisions subsequently issued by the Commission do not reflect that view. Furthermore, the orders adopted in them nowise countenance "re-processed" as an adequate designation of oil made from previously used lubricants. In the matters of *High Penn Oil Co., Inc., et al.*, docket No. 6492 (decided Sept. 14, 1956); and *Salyer Refining Co., Inc., et al.*, docket No. 6339; *Frank A. Kerran, et al.*, docket No. 6432; and *Mohawk Refining Corp., et al.*, docket No. 6588 (all decided Feb. 14, 1958).

We also have considered the order contained in the initial decision. Its requirement that a disclosure be set forth on the respondents' containers as to their oil being processed in whole or part from previously used oil is appropriate and has sound record basis. We deem it deficient, however, in failing to require that the facts in that respect be similarly disclosed in advertising and promotional matter additional to that appearing on the containers, if used in the future conduct of respondents' business. In the matters of *Salyer Refining Co., et al.*; *Frank A. Kerran, et al.*; and *Mohawk Refining Corp., et al., supra*.

The respondents' appeal is denied and the initial decision, modified as noted above, is adopted as the decision of the Commission.

Commissioner Kern did not participate in the decision herein.

FINAL ORDER

This matter having been heard by the Commission upon the respondents' appeal from the initial decision of the hearing examiner and the Commission having determined, for reasons stated in the accompanying opinion, that said appeal should be denied and that the order contained in the initial decision should be modified:

¹⁰ A related argument, likewise based on North Carolina's having adopted legislation, asserts error by the hearing examiner in permitting citizens of that State to testify in alleged attempted impeachment of that statute's definition. That enactment imposes criminal penalties for its violation. That a statute invoking civil sanctions and a criminal statute bearing on a related subject may impose different standards of conduct does not impugn the legislative standards of either. The testimony of the challenged witnesses was relevant to the issues of this proceeding; and being members of the public of the United States, their testimony was competent and properly received.

1292

Order

It is ordered, That the appeal from the initial decision be, and it hereby is, denied.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent Royal Oil Corp., a corporation, and its officers, and respondent Irving H. Weil as an officer of said corporate respondent, and respondents Alden C. Jocelyn (erroneously referred to in the complaint as Alden C. Jocelin) and Joseph A. Inciardi, individually and as officers of said corporate respondent, and respondents' 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 lubricating oil, do forthwith cease and desist from:

(1) Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container;

(2) Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent Irving H. Weil in his individual capacity.

It is further ordered, That the respondents 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 contained in the said initial decision, as modified.

It is further ordered, That the initial decision of the hearing examiner, as modified hereby, be, and the same hereby is, adopted as the decision of the Commission.

Commissioner Kern not participating.

IN THE MATTER OF
MERRILL HAIR & SCALP CONSULTANTS, INC., ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6803. Complaint, May 16, 1957¹—Decision, Apr. 11, 1958

Order dismissing—for the reason that the two principal respondents had moved to Australia and were not available as witnesses and the two remaining had not been associated with the corporate respondents for many months, and such corporations were no longer operating—complaint charging two affiliated companies with misrepresenting the benefits of their hair and scalp preparations.

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder* for the Commission.

Mr. Richard M. Welling, of Charlotte, N.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Counsel in support of the complaint have filed a motion to dismiss the complaint in the above-entitled proceeding, and, in support of said motion, state that:

1. The two principal individual respondents, William L. Keele and Jimmie Merrill Keele, have moved to Australia and are not available as witnesses;
2. Only one of the two principal respondents, William L. Keele, was served with the complaint;
3. The one principal respondent served with the complaint in this matter, William L. Keele, was also named in docket 6589 involving substantially the same charges, and will undoubtedly be subject to any cease-and-desist order issued in such case;
4. It appears that the two remaining individual respondents, Glenn O. Abbott and John Benton Saunders, have not been associated with either of the corporate respondents for many months; and
5. Counsel supporting the complaint are now advised that the two corporate respondents named in this proceeding are not now operating in the United States.

No evidence having been presented in this proceeding, and it appearing that said motion is reasonable and proper under the circumstances stated,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action as circumstances may warrant.

¹ Amended September 12, 1957.