

Decision

IN THE MATTER OF
BLACK & CO., INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 6913. Complaint, Oct. 9, 1957—Decision, Apr. 29, 1958*

Order requiring two associated mail order sellers of general merchandise in Rockville Center, Long Island, N.Y., to cease representing falsely in advertising that they had in stock the merchandise advertised or that it was readily available and that they would deliver it within a reasonable time; that when it was out of stock and unobtainable, the customer's check would be returned promptly or the payment promptly refunded with complete satisfaction to the customer in all cases.

Mr. Charles S. Cox supporting the complaint.

Respondents appearing without Counsel.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On October 9, 1957, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that service of the complaint and of the order designating the undersigned as hearing examiner herein was obtained on December 3, 4, and 5, 1957.

On December 6, 1957, the hearing examiner, upon examination of the record found that no proof of service had been filed and cancelled the hearing set in the notice portion of the complaint for New York on December 19, 1957. Later on December 19, 1957, proof of the service obtained on December 3, 4, and 5, 1957 being in the record, the hearing examiner issued an order setting the initial hearing herein for 10 a.m. on January 13, 1958 in room 511-C, United States Court House, Foley Square, New York, N.Y.

The hearing was held at the time and place mentioned and respondents Leslie F. Black, Hans Jensen and John M. Zwicki (erroneously called Swicki in the complaint) appeared in person at said hearing in response to subpoenas served on them. None of the respondents were represented by counsel at said hearing.

At said hearing each of said individual respondents stated on the record that they admitted all the material allegations of the complaint. Subsequent to said hearing, it was ascertained that no service had ever been obtained on any of the respondents of the hearing examiner's

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order of December 19, 1957, setting the initial hearing for January 13, 1958.

In view of the circumstances set forth above, no initial decision was issued as a result of what transpired at said hearing.

On February 10, 1958, all respondents filed answer to the complaint herein, each admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the said facts.

In accordance with section 3.7(2) of the Commission's rules of practice the hearing examiner now makes the following findings as to the facts, conclusions and order:

FINDINGS AS TO THE FACTS AND CONCLUSIONS

PARAGRAPH 1. Respondents Black & Co., Inc. and Home Merchandise Co., Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, and individual respondents Leslie F. Black, Hans Jensen, and John M. Zwicki are president, vice president, and secretary-treasurer, respectively, of each of said corporate respondents. The individual respondents have dominant control of advertising policies and business activities of the corporate respondents, and all of the respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter set forth. The office and principal place of business of the corporate respondents is located at 125 Merrick Road, also described as Merrick Road and Sunrise Highway, Rockville Center, Long Island, N.Y. The address of the individual respondents are as follows: Leslie F. Black, 111 Horton Street, Malverne, Long Island, N.Y.; Hans Jensen, The Canterbury House, 15 Canterbury Road, Great Neck, Long Island, N.Y.; John M. Zwicki, 116-33 218th Street, Queens, Long Island, N.Y.

PAR. 2. Respondents for more than 2 years prior to the issuance of the complaint herein were engaged in the business of selling general merchandise through mail order catalogs, circulars, letters or other printed media. Respondents caused their said catalogs, circulars, letters or other printed media to be sent through the United States mails from their place of business in Rockville Center, Long Island, N.Y., to various members of the purchasing public located in the various States of the United States and in the District of Columbia. At all times mentioned herein various members of the purchasing public located in the various States of the United States and in the District of Columbia received said catalogs, circulars, letters, or other printed media and, as a result thereof, sent in to respondents at their

said place of business at Rockville Center, Long Island, N.Y., through the United States mails and otherwise, orders with accompanying checks or money orders for various articles of general merchandise listed therein. Respondents caused said ordered merchandise, when shipped, to be transported from their said place of business in Rockville Center, Long Island, N.Y., or from the factory producing or the warehouse storing same, by or through the United States mails or otherwise, to purchasers and other persons located in the various States of the United States and in the District of Columbia. Respondents at all times mentioned herein maintained a substantial course of trade in said general merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their said business in commerce, through the use of catalogs and other advertising media, respondents represented, directly or by implication, that they would have in stock the merchandise advertised therein during the period of time such catalogs or advertising were in effect, or that such merchandise was readily available and that they would obtain and deliver the same within a reasonable period of time. Respondents further represented in circulars, form letters and other printed matter circulated generally among purchasers and prospective purchasers that when merchandise ordered was out of stock and unobtainable, the customer's check would be returned promptly or the amount paid would be promptly refunded and that in all cases the order would be handled to the complete satisfaction of the customer.

PAR. 4. The foregoing statements and representations, direct and implied, were false, misleading, and deceptive. In truth and in fact, during the period of time said catalogs and other advertising were in effect respondents did not have many of the articles of merchandise listed therein in stock nor were they readily available. Further, in many instances, they did not obtain and deliver such articles within a reasonable period of time after they were ordered. In many other instances when the ordered merchandise was shipped, it was only after unreasonable delay. There were many cases where the ordered merchandise was not shipped and the money paid therefor was not refunded.

In those cases where the merchandise ordered was out of stock and unobtainable, respondents did not return the customer's check. It was their practice to cash all checks on receipt. If the merchandise was not shipped, respondents did not make refunds in many cases. In those cases where refunds were demanded, it was respond-

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ents' practice to send the customer a merchandise credit certificate, often after great delay.

Respondents represented that they would redeem the merchandise certificate for cash, when requested, upon receipt of the endorsed merchandise certificate. However, in fact, respondents in many instances failed to redeem the certificates. Also, in many instances, where the orders were filled, and the merchandise was not satisfactory to customers, respondents refused or neglected to make refunds or made them only after unreasonable delay.

When a complaint or demand for refund was made respondents requested the customer to return all papers evidencing the transaction. Thereafter, in many cases, they failed to answer inquiries and requests made by customers.

PAR. 5. The aforesaid acts and practices of respondents, as herein found, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents Black & Co., Inc., a corporation, Home Merchandise Co., Inc., a corporation, and their officers and Leslie F. Black, Hans Jensen, and John M. Zwicki, individually and as officers of said corporations and respondents' representatives, agents 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 any goods or merchandise do forthwith cease and desist from directly or indirectly:

1. Advertising goods or merchandise for sale that are not carried in stock or readily available for delivery to purchasers.
2. Accepting payment for ordered goods or merchandise which are not in stock or readily available for delivery to purchasers.
3. Failing to make prompt shipment of advertised goods or merchandise upon receipt of orders and payment therefor.
4. Failing to make prompt refund of the purchase money paid where the goods or merchandise ordered are not shipped.
5. Making refunds to customers in merchandise certificates without having obtained the prior consent of such customers.
6. Failing to promptly redeem merchandise certificates in cash, when requested, after having represented that they would do so.

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7. Failing to make refunds for unsatisfactory goods or merchandise after having represented that they would do so.

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 29th day of April 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
BERT GOODMAN ET AL. TRADING AS INTERSTATE
EXCHANGE CO.

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

Docket 6964. Complaint, Nov. 27, 1957—Decision, Apr. 29, 1958

Consent order requiring a Chicago real estate firm to cease telling would-be sellers that their property was undervalued and that the asking price should be increased, in order to increase listing fees collectible in advance; refusing to make promised refunds when the property was not sold; and representing falsely that it had prospective buyers interested in the purchase of sellers' specific properties, that its salesmen were bonded and insured, that it maintained a finance department and would finance the purchase of listed properties, and that it would furnish expert appraisers to evaluate listed properties.

Mr. John W. Brookfield, Jr., and Mr. Thomas A. Sterner for the Commission.

Mr. Milroy R. Blowitz, of Blowitz & Osmon, of Chicago, Ill., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents, Bert Goodman, and Melvin C. Crown, individually and as copartners trading as Interstate Exchange Co., with having violated the provisions of the Federal Trade Commission Act, in certain particulars. Respondents were duly served with process.

On February 26, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement containing consent order to cease and desist," which had been entered into by and between the respondents Bert Goodman and Melvin C. Crown, and attorneys for both parties, under date of February 20, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative pro-