

IN THE MATTER OF
AMERICAN HOME PRODUCTS CORP.

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

Docket 6755. Complaint, Mar. 28, 1957—Decision, May 2, 1958

Consent order requiring a manufacturer in New York City to cease representing falsely in advertising that its drug products "Infra Rub" and "Heet" were effective treatments for, and would afford complete relief of, the pains and discomforts of all kinds of arthritis, rheumatism, backache, and muscle aches; that they penetrated below the skin and had a substantial effect upon the underlying body structures, etc.

Mr. Morton Nesmith and Mr. Berryman Davis, Counsel Supporting the Complaint.

Mr. Vincent A. Kleinfeld, Washington, D.C., Counsel for Respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that American Home Products Corp.,¹ a corporation, hereinafter referred to as respondent, violated the provisions of the Federal Trade Commission Act by the use of alleged false advertisements in newspapers, radio and television broadcasts concerning the efficacy of two preparations sold and distributed by respondent, "Infra Rub" and "Heet," as being adequate and effective treatments for the aches and pains of arthritis, rheumatism, backaches, muscular aches, and discomforts thereof.

Respondent filed an answer in which it denied in substantial part the allegations set out in the complaint. After the disposition of several preliminary motions, hearings were held and the receipt of testimony in support of the complaint was completed. Thereafter, hearings were held and oral testimony was received on behalf of respondent. However, before the completion of the oral testimony for respondent, counsel for the parties and the respondent corporation entered into an agreement for a consent order pursuant to the provision of section 3.25 of the rules of practice and procedure. The order disposes of the matters complained about. The agreement has

¹ On February 21, 1958, pursuant to a motion filed by counsel supporting the complaint, the examiner ordered that the complaint be amended by substituting American Home Products Corp. as respondent in lieu of and in place of Whitehall Pharmacal Co., the original respondent.

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been approved by the director and assistant director of the Bureau of Litigation.

The pertinent provisions of the agreement are as follows: Respondent admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondent waives further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondent waives any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent American Home Products Corp. is a corporation organized and doing business under the laws of the State of Delaware with its office and principal place of business located at 22 East 40th Street, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, American Home Products Corp., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the drug preparations "Infra Rub" and "Heet," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the

United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) That Infra Rub is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of arthritis, rheumatism, backache, or the congestion or pressure thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof or the discomforts caused by such aches or pains.

(b) That Heet is an adequate, effective, or reliable treatment for or will afford complete relief of, any kind of arthritis, rheumatism or backache; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof or the discomforts caused by such aches or pains.

(c) That InfraRub or Heet:

(1) Penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting respondent from representing that these products, or either of them, affords temporary relief of the minor aches and pains arising in structures underlying the area of application.

(2) Provides any relief of pain for many hours or for any specific number of hours.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said drug preparations, or either of them, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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 2d day of May 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Decision

IN THE MATTER OF
WINDSOR PEN CORP. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6939. Complaint, Nov. 15, 1957—Decision, May 2, 1958*

Consent order requiring three associated enterprises in New York City engaged in selling, principally to wholesalers and jobbers, pens, pencils, tie clasps, cuff links, watches, and other merchandise, to cease representing excessive, fictitious amounts as the regular retail prices of their products on price tags and in brochures and display sheets placed in the hands of their purchasers, and using the words "Advertised In Life" misleadingly in the same way; and to cease failing to disclose that gold-appearing bezels on certain watch cases were actually composed of base metal.

*Kent P. Kratz, Esq., for the Commission**Martin J. Forgang, Esq., for respondents*

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued November 15, 1957, charges the respondents Windsor Pen Corp., Windsor Pen Manufacturing Co., Inc., and Manor Merchandise Corp., all corporations existing and doing business under and by virtue of the laws of the State of New York, and Morris Fink, individually and as an officer of said corporations, with violation of the Federal Trade Commission Act in connection with the sale and distribution of pens, pencils, tie clasps, cuff links, watches or other merchandise. The office and principal place of business of all the respondents is located at 111-119 West 19th Street, New York, N.Y.

After the issuance of said complaint respondents, on February 10, 1958, 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