

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

findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondents Windsor Pen Corp., Windsor Pen Manufacturing Co., Inc., and Manor Merchandise Corp., are all corporations existing and doing business under and by virtue of the laws of the State of New York. The complaint charges that respondent Morris Fink is an individual and as president of each of the respondent corporations exercises a substantial degree of authority and control over the policies, affairs and activities of each corporation. The office and principal place of business of all respondents is located at 111-119 West 19th Street, New York, N.Y.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and, without further notice to respondents, is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all the respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

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Decision

ORDER

It is ordered, That respondents Windsor Pen Corp., a corporation, Windsor Pen Manufacturing Co., Inc., a corporation, Manor Merchandise Corp., a corporation, and their officers, and Morris Fink, individually or as an officer of any of these corporations and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of pens, pencils, tie clasps, cuff links, watches or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain amounts are the usual and regular retail prices of merchandise when such amounts are in excess of the prices at which such merchandise is usually and regularly sold at retail.

2. Representing, directly or by implication, that any item of merchandise has been advertised in Life magazine, or any other advertising medium, or has been advertised at a stated price, when such is not a fact.

3. Engaging in any practice or plan which would provide retailers of their merchandise with means of misrepresenting the usual and regular retail prices or the extent of the advertising of such merchandise.

4. Failing to reveal the true metal content of watch cases or portion thereof which has the appearance of a different metal.

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 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
THE MENTHOLATUM CO., INC.

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

Docket 6754. Complaint, Mar. 28, 1957—Decision, May 3, 1958

Consent order requiring a manufacturer in Buffalo, N.Y., to cease advertising falsely that its "Mentholatum Rub" drug preparation was an effective treatment for, and would afford complete and permanent relief of, the aches and discomforts of all kinds of arthritis, rheumatism, bursitis, neuralgia, and disorders of the muscles and joints; provided a new type of relief, different and more extensive than that provided by other products, etc.

Mr. Morton Nesmith and *Mr. Berryman Davis* supporting the complaint.

Mr. Samuel D. MaGavern of *MaGavern, MaGavern, Lowe & Gorman*, of Buffalo, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the Mentholatum Co., Inc., a corporation, hereinafter referred to as respondent, violated the provisions of the Federal Trade Commission Act by the use of false advertising in newspapers, magazines and through the medium of radio and television broadcasts concerning the effectiveness of its preparation "Mentholatum Deep Heat Rub" for the treatment of arthritis, rheumatism, bursitis, neuralgia, and disorders of muscles and joints.

After issuance and service of the complaint, the respondent and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said 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