

IN THE MATTER OF
HYBERN, INC., ET AL.

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

Docket 7037. Complaint, Jan. 14, 1958—Decision, May 7, 1958

Consent order requiring importers in Los Angeles, engaged in selling a wide variety of merchandise at retail through their retail stores and by mail order to customers direct, to cease advertising falsely that binoculars were selling at great price reductions and were identical or similar to U.S. Army issue; and to cease selling binoculars, telescopes, monoculars, and like products without clearly disclosing the Japanese origin.

Mr. Michael J. Vitale and Mr. Alvin D. Edelson for the Commission.
No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 14, 1958, charges the respondents Hybern, Inc., Hyfield, Inc., and Sepulanat, Inc., corporations, located at 4400 Sunset Boulevard, Los Angeles, Calif., and Hyman Fink and Bernard Field, individually and as officers of said corporations, located at the same address as the corporate respondents, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of optical equipment, binoculars, monoculars, telescopes, or other similar products, which respondents import from Japan and retail under the trade name "Akron," or other trade names.

After the issuance of the complaint, respondents Hybern, Inc., Hyfield, Inc., and Sepulanat, Inc., corporations, and Hyman Fink and Bernard Field, individually and as officers of said corporations, entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

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 said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the

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record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the 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 if made after a full hearing.

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 said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

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 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 the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Hybern, Inc., a corporation, Hyfield, Inc., a corporation, Sepulanat, Inc., a corporation, their officers, and Hyman Fink and Bernard Field, individually and as officers of the corporate respondents, and their 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 binoculars, monoculars, telescopes, or other merchandise, do forthwith cease and desist from:

1. Representing, directly or by implication, that any specific amount is the regular retail price of merchandise when such amount is in excess of the price at which such merchandise is customarily and usually sold at retail by the respondents in the normal course of their business.

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2. Representing, directly or by implication, that their binoculars are identical, or similar to U.S. Army issue binoculars; or identical or similar to any other type of binocular, when such is not the fact.

3. Offering for sale or selling any product, the whole or any substantial part of which was made in Japan, or in any other foreign country, without clearly and conspicuously disclosing the foreign origin of such product or part thereof.

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 7th day of May 1958, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

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IN THE MATTER OF
CROSSE & BLACKWELL CO.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT*Docket 6463. Complaint, Nov. 21, 1955—Decision, May 8, 1958*

Order requiring a producer of a wide variety of food products, with annual sales amounting to approximately \$14 million, to cease violating section 2(d) of the Clayton Act by making payments for advertising or other services in connection with the sale of its products to certain food chains without making such allowances available on proportionally equal terms to all their competitors.

Mr. Andrew C. Goodhope, Mr. Fredric T. Suss and Mr. Alvin D. Edelson for the Commission.

Niles, Barton, Yost & Dankmeyer, of Baltimore, Md. and Mr. James W. Cassedy, of Washington, D.C. for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER.

This proceeding began with complaint, which issued November 21, 1955, charging the respondent with having made payments of advertising allowances to some of its customers while neither offering or paying similar or proportionate advertising allowances to others of its customers competitively engaged with the recipients in the resale of respondent's products, all in violation of subsection (d) of section 2 of the Clayton Act (U.S. Title 15, sec. 13). Thereafter, initial hearing having been scheduled February 6, 1956, and subpoena duces tecum having been served upon respondent's appropriate official for production of books and records indicating the advertising payments alleged, respondent moved to quash said subpoena, which the undersigned denied on January 20, 1956, and thereafter on January 23, 1956, respondent filed a motion for a bill of particulars and dismissal of the complaint. Both of these motions were denied by the undersigned hearing examiner on January 25, 1956, whereupon respondent appealed the denial of its motion to quash subpoena duces tecum to the Commission, which appeal the Commission, on March 15, 1956, denied. On February 7, 1956, respondent filed its answer to the complaint, and hearing for the reception of testimony and evidence was again fixed for March 28, 1956, the subpoena previously served being made returnable at that time.

At this hearing the president of respondent appeared in response to the subpoena but refused to produce the documents, books and records