

Decision

IN THE MATTER OF
MID-TEX CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6788. Complaint, Apr. 30, 1957—Decision, May 8, 1958

Consent order requiring a corporation in Pittsburgh, Pa., one of several affiliated corporations charged in the complaint, to cease using bait advertising to obtain leads to prospective purchasers to whom they attempted to, and frequently did, sell much higher priced storm windows and screens, disparaging the advertised products to induce cancellation of purchase orders therefor and subsequent purchase of the higher priced products.

As to the remaining respondents, the matter was settled by a similar order dated Oct. 30, 1958, 55 F.T.C. —.

By *J. Earl Cox*, hearing examiner.

Mr. Edward F. Downs and *Mr. Thomas A. Sterner* for the Commission.

Mr. Maurice F. Baruth, of Pittsburgh, Pa., and *Mr. David Fisher*, of New York, N.Y., for respondents Famous Window Co. of Pennsylvania, Harold Brown and Jesse Kessler.

INITIAL DECISION AS TO RESPONDENTS DOLPH GREENE AND HERBERT ARMSTRONG INDIVIDUALLY AND AS TO FAMOUS WINDOW CO. OF PENNSYLVANIA, A CORPORATION, AND HAROLD BROWN AND JESSE KESSLER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

The complaint in this proceeding charges that the several respondents have violated the Federal Trade Commission Act through the use of false, misleading and deceptive advertising in connection with the sale and distribution of aluminum storm windows, screens, and doors. The respondents are charged with representing that certain of their products were available to the public and could be procured at the various low prices listed in newspaper, radio, and television advertisements, whereas, in fact, "respondents were not interested in selling and were not making a bona fide offer to sell" the advertised items, but wanted to obtain leads and information "on persons interested in purchasing" products of better quality and higher prices than those advertised.

Respondents Dolph Greene and Herbert Armstrong were not individually served with a summons and copy of the complaint, and the complaint should, therefore, be dismissed without prejudice, as to them.

Subsequent to the issuance of the complaint, respondents Famous Window Co. of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually and as officers of said corporation, entered into an agreement containing consent order to cease and desist, which agreement was duly approved by the Director and an Assistant Director of the Commission's Bureau of Litigation.

The other respondents named in the complaint herein have either opposed the allegations of the complaint; have rested their case following the presentation of evidence in support of such allegations; or are in default for answer and appearance. As to them, another and separate initial decision will hereafter be issued.

The agreement identifies respondent Famous Window Co. of Pennsylvania as a Delaware corporation, with its office and principal place of business located at 2757 Saw Mill Run Boulevard, Pittsburgh, Pa., and respondents Harold Brown and Jesse Kessler as individuals and officers thereof. Respondents signatory thereto admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. The agreement disposes of all of this proceeding as to the respondents signatory thereto, who waive any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The agreement provides, among other things, that insofar as respondents signatory thereto are concerned, the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint herein may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents signatory thereto that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

As to the respondents who entered into said agreement, the order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as

being in violation of the Federal Trade Commission Act. The hearing examiner, therefore, accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based; finds this proceeding to be in the public interest; and issues the following order, which conforms to the order set forth in said agreement except that it includes a provision dismissing the complaint as to the two other respondents hereinabove found not to have been duly served:

It is ordered, That respondent Famous Window Co. of Pennsylvania, a corporation, and its officers and respondents, Harold Brown and Jesse Kessler, individually and as officers of said corporation, 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 storm windows, screens, or any other home improvement products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that certain storm windows, screens, or any other home improvement products are offered for sale when such offer is not a *bona fide* offer to sell such storm windows, screens, or other home improvement products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed March 11, 1958, purporting to dispose of this proceeding as to the respondents, Famous Window Co. of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually and as officers of said corporation, and Dolph Greene and Herbert Armstrong, on the basis of an agreement containing a consent order to cease and desist theretofore executed by Famous Window Co. of Pennsylvania, Harold Brown and Jesse Kessler and counsel in support of the complaint; and

It appearing that the order contained in the initial decision departs from the order agreed upon by the parties in that it provides for dismissal of the complaint without prejudice as to Dolph Greene and Herbert Armstrong; and

The Commission being of the opinion that the initial decision should be corrected in this respect:

It is ordered, That the last paragraph in the order contained in the initial decision be, and it hereby is, eliminated.

It is further ordered, That the initial decision as so modified shall, on May 8, 1958, become the decision of the Commission.

It is further ordered, That the respondents, Famous Window Co. of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision as modified.

Decision

IN THE MATTER OF
GOLDRING'S INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6991. Complaint, Dec. 16, 1957—Decision, May 8, 1958

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by using fictitious prices in newspaper advertisements and on labels and failing to maintain adequate records as a basis for such advertised prices; by failing in advertising to reveal the names of fur-bearing animals, the country of origin of imported furs, or that certain furs were artificially colored; by mutilating attached labels; and by failing in other respects to comply with the labeling and invoicing requirements of the act.

Mr. S. F. House, counsel supporting the complaint.

Goldstein, Judd & Gurfein by *Mr. Saul A. Shames* of New York, N.Y. for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 16, 1957, the Federal Trade Commission issued a complaint charging Goldring, Inc.,¹ a corporation, hereinafter called respondent, with misbranding, falsely and deceptively invoicing and advertising fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

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

The pertinent provisions of said agreement are as follows: The 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

¹ Incorrectly identified in the complaint as Goldring's Inc.