

Decision

IN THE MATTER OF

NORTH AMERICAN NUT CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 7050. Complaint, Jan. 27, 1958—Decision, May 31, 1958*

Consent order requiring distributors in New York City of vending machines and vending machine supplies, to cease representing falsely in advertising in newspapers, periodicals, letters, etc., and through promotional material furnished their salesmen and agents, that they offered employment to selected persons who would operate their vending machines and must have working capital for the purchase of merchandise to be dispensed therefrom, that such investment was secured and without risk and would earn excessive profits, that they would provide supervisory and financial assistance, and that they were representatives of a large New York company.

Mr. Terral A. Jordan for the Commission.

Mr. Jac M. Wolff, of New York, N.Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 27, 1958, charges the respondents North American Nut Co., Inc., a corporation, Nut-O-Matic Co., Inc., a corporation, and Martin Richmond and George Weinstein, individually and as officers of said corporations, the office and principal place of business of all respondents being located at 27 William Street, New York, N.Y., with violation of the provisions of the Federal Trade Commission Act in the advertising, selling and distributing of vending machines and vending machine supplies.

After the issuance of the complaint, said respondents 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 said 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 record herein may be taken as if the Commission had made findings of

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jurisdictional facts in accordance with the allegations, and that said agreement disposes of all of this proceeding as to all parties.

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 provide 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, North American Nut Co., Inc., a corporation, and Nut-O-Matic Co., Inc., a corporation, and their officers, and Martin Richmond and George Weinstein, individually and as officers of each of the aforesaid corporations, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, vending machine supplies or similar kinds of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered either generally or to specially selected persons either by respondents or by any other person, firm or corporation;

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2. Persons will be selected to operate and service vending machines owned by respondents;
3. Persons must own an automobile or furnish references in order to purchase respondents' vending machines;
4. The cash investment required to purchase respondents' said vending machines is to provide working capital for the purchase of an inventory of merchandise to be dispensed in said vending machines;
5. The cash investment required to purchase respondents' vending machines is secured by an inventory of merchandise worth the amount invested or there is no risk of losing said investment;
6. Persons purchasing respondents' said vending machines will not be required to engaged in selling or soliciting;
7. The earnings or profits derived from the operation of respondents' said vending machines will be of any greater amount than that usually and customarily earned by operators of respondents' said vending machines;
8. Profitable or satisfactory vending machine locations will be secured, the said vending machines will be installed in profitable or satisfactory locations or the vending machine routes of purchasers will be otherwise established or supervised to assure their profitable or satisfactory operation;
9. The sale of merchandise by respondents' vending machines is a permanent business or is unaffected by economic depression;
10. Respondents are the agents or representatives of or affiliated with the A. L. Bazzini Co., Inc., New York, N.Y., or any other person, firm or corporation when such is not the fact.

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 31st 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.

IN THE MATTER OF
ADVANCE SPECTACLE CO., INC., ET AL.¹

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

Docket 6285. Complaint, Jan. 10, 1955—Decision, June 3, 1958

Consent order requiring a Chicago firm to cease representing falsely in advertising that eyeglasses made according to prescriptions furnished by customers using its "14 LENS SAMPLE CARD" and other devices would correct defects in vision of all persons.

Mr. William A. Somers for the Commission.

Froelich, Grossman, Teton and Tabin, of Chicago, Ill., by *Mr. Alfred B. Teton*, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 10, 1955, charges the respondents Advance Spectacle Co., Inc., a corporation, and Michael M. Egel, individually and as an officer of Advance Spectacle Co., Inc., located at 537 South Dearborn Street, Chicago, Ill., with violation of the provisions of the Federal Trade Commission Act in the sale of eyeglasses.

After the issuance of the complaint, said respondents 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 said 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 record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations,

¹ This order "clarifies", by insertion of the words "or reducing" before the last word ("lenses") of paragraph 1, the otherwise identical order to cease and desist issued on May 22, 1955, 51 F.T.C. 1216, in this proceeding. That order was vacated and set aside October 11, 1957, and the case remanded for the reason that respondents asserted a misunderstanding on their part as to the scope of the order agreed to and it appeared to the Commission that the discussion on the record at the time of submittal of the agreement containing the order indicates a possible basis for the respondents' misunderstanding.