

Findings

IN THE MATTER OF
MORRIS LOBER & ASSOCIATES, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7003. Complaint, Dec. 19, 1957—Decision, Aug. 14, 1958*

Order requiring two associated corporations in New York City to cease misrepresenting prices of the power lawn mowers they sold to dealers and others for resale to the public, by suggested list prices far in excess of the actual selling prices, disseminated in newspaper advertisements and reprints of customers' advertising, on distributors' price sheets furnished their retail customers, and on shipping cartons.

Mr. Eugene Kaplan for the Commission.
Segan & Culhane, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

On December 19, 1957, complaint herein was issued by the Commission charging respondents with violation of the Federal Trade Commission Act in the use of fictitious prices in the sale of its lawn mowers by furnishing retailers and resellers the means and instrumentalities whereby the retailers may mislead and deceive members of the purchasing public as to the regular and usual prices of their lawn mowers. Answer was filed and thereafter four hearings were held at which testimony and other evidence was received in support of the allegations of the complaint. Respondents presented no evidence by way of defense relying instead on a number of motions to strike or dismiss, all of which, save one, were denied. The record consists of 297 pages of transcript and 41 exhibits. At the close of the hearings counsel for the Commission submitted proposed findings of fact, although counsel for respondents did not. Upon the entire record, as so constituted, and from his observation of the witnesses, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Respondents Morris Lober & Associates, Inc., and Handy Andy Products, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business for-

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merely at 730 Fifth Avenue, New York 19, N.Y., and currently at 7 Central Park West, New York, N.Y.

Respondents Morris Lober, Leona Lober and Marcia Wilner (subsequently married and presently Marcia Wilner Pava) are president and treasurer, vice president, and secretary, respectively, of both corporations. The individual respondent Morris Lober formulates, directs and solely controls the policies, acts and practices of the corporate respondents. His address is the same as that of the corporate respondents.

Leona Lober and Marcia Wilner Pava are vice president and secretary in name only and do not formulate, direct or control the policies, acts and practices of the corporate respondents.

2. Respondents are now, and have been for several years last past, engaged in the sale and distribution of power lawn mowers to various dealers and others for resale to the public.

In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused, their products, when sold, to be transported from places in the States of Ohio and Indiana, among others, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various states of the United States and the District of Columbia. Respondents' volume of business in said power lawn mowers in said commerce is, and has been, substantial.

3. Respondents at all times mentioned herein have been in competition with other corporations, firms and individuals engaged in the sale of power mowers in commerce between and among the various States of the United States and the District of Columbia.

4. In the course and conduct of their business as outlined and for the purpose of inducing the purchase and promoting the sale of their power lawn mowers in commerce, respondents have placed in the hands of their purchasing retailer customers, who resell these power lawn mowers to the public, a means and instrumentality whereby such retailers or resellers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their lawn mowers.

5. These instrumentalities consist of newspaper advertise-

ments placed by the respondents in various newspapers for circulation and dissemination in the trade, all of which carry the manufacturer's list prices or suggested list prices. Typical of these is an advertisement placed by respondents in *Retailing Daily*, Thursday, October 18, 1956, as follows:

Big New '57 Models with 4-Cycle Clinton Engines. Recoil Starters.

19" Mower, 1¾ H.P. Suggested list \$109.95 can retail with full markup for only \$59.95.

21" Mower, 2½ H.P. Suggested list \$139.95 can retail with full markup for only \$69.95

23" Mower, 2¾ H.P. Suggested list \$154.95 can retail with full markup for only \$79.95.

6. Second among these instrumentalities disseminated by the respondents are glossy prints picturing respondents' power mower, each of which contains suggested list prices for the respective mowers far in excess of the actual selling price of these mowers.

7. Third among these instrumentalities disseminated by respondents are reprints of retail store advertisements placed in local newspapers by customers of respondents containing a suggested list price together with the actual selling price in each advertisement. These advertisements or copies thereof, and tear sheets, are apparently collected by respondents for dissemination to new customers indicating what respondents' other customers are doing in the sale of respondents' power lawn mowers.

8. Fourth among these instrumentalities are cartons in which respondents' power lawn mowers are shipped, imprinted with the model number or the cutting width, and respondents' corporate names together with the suggested list price, which again is far above that at which the mowers are in fact sold or to be sold.

9. The fifth means used by respondents to disseminate their fictitious prices was by way of distributor's price sheets and other literature each of which conveys the suggested list prices to potential resellers.

10. The testimony of several purchasers from respondents, who were officials of department stores, indicates that the individual respondent Morris Lober on sales visits discussed suggested list prices as well as actual resale prices indicating clearly knowledge of the use to which his suggested list prices were being put and for which they were designed to be used by him.

11. The testimony of the buyers who appeared as witnesses is unanimous, with the exception of one or two instances, that

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respondents' power lawn mowers were never sold at or anywhere near these suggested list prices. These exceptions were new sample models which were sold at the full suggested price off the floor by happenstance.

12. In most instances, purchasers for resale of respondents' mowers used respondents' suggested list prices to compare with the price at which they actually resold the mowers. It matters not that several others shaved the suggested list price to a figure different and lower than that of respondents' suggested list price. The resultant figure was, nevertheless, far higher than the sale price advertised.

13. The testimony is also unanimous that the use of these fictitious suggested list prices disseminated by respondents was a potent sales aid in moving these power lawn mowers into the hands of the consumer. It is also clear from the record that the normal markup for power lawn mowers runs from 25 to 40 percent above purchase cost depending upon seasonal demand and that respondents were well aware of this. In any event respondents' suggested list price was far in excess not only of the actual consumer sales price, but also of this normal markup in the trade. Thus, a mower bought from respondents for \$47 and resold for \$77 at the start of the season, and at \$68 as a close-out price at the end of the season, nevertheless, carried respondents' suggested list price of \$154.95. This was typical of these price relationships throughout several years in a number of stores and localities.

14. Respondents' suggested list prices are fictitious and exaggerated constituting a powerful inducement and enticement to the consumer public to buy at what they think therefrom is a great bargain, and the consumer public is as a result repeatedly deceived and misled thereby.

15. Use by the respondents of the aforementioned false, misleading and deceptive representations and statements has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of a substantial number of respondents' power mowers because of said erroneous and mistaken belief that they are acquiring such mowers at great bargains.

CONCLUSIONS

1. It is immaterial whether or not respondents' suggested list

prices represented, in comparison with other competitive lawn mowers, the value or true value of respondents' lawn mowers. (*Ma-Ro Hosiery Co., Inc.*, Docket No. 6436.)

2. It is likewise immaterial that respondents' purchasers were free to use or not use respondents' suggested list prices. (*Orloff Company, Inc.*, Docket No. 6184.)

3. This proceeding is in the public interest.

4. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Morris Lober & Associates, Inc., Handy Andy Products, Inc., corporations, and Morris Lober, individually and as an officer of said corporations, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of power mowers, or other merchandise in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the regular and usual retail prices of their power mowers, or other merchandise, when such amounts are in excess of the prices at which such products are regularly and usually sold at retail.

2. Putting any plan into operation whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Leona Lober and Marcia Wilner Pava individually and as officers of the corporate respondents.

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 14th day of August 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Morris Lober & Associates, Inc., and Handy Andy Products, Inc., corporations, and Morris Lober, individually and as officer of said corporations, shall, within

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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
GERSHCOW FUR COMPANY ET AL.

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

Docket 7047. Complaint, Jan. 21, 1958—Decision, Aug. 14, 1958

Consent order requiring a furrier in St. Paul, Minn., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or that some products contained artificially colored or cheap fur, and which named animals other than those producing certain furs; and by failing to maintain adequate records as a basis for pricing claims in advertising.

Mr. William A. Somers for the Commission.

Milton Gray, Esq., for *Gray & Gray*, of St. Paul, Minn., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 21, 1958, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On June 17, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of June 9, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Gershcov Fur Company is a corporation, existing and doing business under and by virtue of the laws of the