

Decision

IN THE MATTER OF
HACHMEISTER, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7008. Complaint, Dec. 26, 1957—Decision, Sept. 3, 1958

Order dismissing—due to lack of a compelling public interest, removal of the product from the market, and change in formula prior to issuance of complaint—complaint charging manufacturers in Pittsburgh, Pa., with representing falsely, on labels and in promotional literature distributed to dealers and by use of a "hallmark," that their adhesives for the installation of clay tile sold under the name "Hako No. 600 Ceramic Tile Cement" complied with the specifications set forth in Commercial Standard 181-52 promulgated by the U.S. Department of Commerce.

Edward F. Downs and Garland S. Ferguson, Esqs., in support of the complaint.

Dickie, McCamey, Chilcote & Robinson, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

On December 26, 1957, the Federal Trade Commission, pursuant to authority vested in it by the provisions of the Federal Trade Commission Act, issued its complaint which, in charging the respondents with certain acts and practices violative of the aforesaid Act, recited that a proceeding by it would be in the public interest, specifically charging respondents with falsely representing that their product, known as "Hako No. 600 Ceramic Tile Cement," being an adhesive used for the installation of clay or ceramic tile, complied with the requirements of Commercial Standard 181-52 promulgated by the United States Department of Commerce and, in furtherance of said false representations, charged that respondents made use of a designated "hallmark," indicative of compliance with said Commercial Standard as authorized and prescribed by said standard for use upon, and to properly identify, such products as do in fact comply with the standard requirement.

A hearing for the purpose of receiving testimony and evidence was held in Philadelphia, Pa., on May 12, 1958, stenographically reported, reduced to writing and filed in the office of the Federal Trade Commission in Washington, D.C., as required by law.

The Commission on its behalf offered the testimony of three witnesses, one being an officer of the respondent corporation and the remaining two being technical experts who testified to the incapacity of respondents' product to meet the requirements of the Commercial Standard aforesaid. The testimony of the officer witness stands unrefuted and unchallenged of record and is devoid of any evidence which could be construed to substantiate the charges of the complaint and thus to form a basis for an order to cease and desist; the testimony of the two technical witnesses, upon direct and cross-examination, was, upon motion of the attorney for the respondents, stricken from the record. The attorney representing the complaint did not close his case-in-chief. No testimony or other evidence was received on behalf of the respondents. Thus stands the record.

On June 19, 1958, the attorney in support of the complaint filed a "Motion to Dismiss Complaint Without Prejudice," copy of which was duly served upon counsel for the respondents as provided by rule 3.8 of the Commission's Rules of Practice, which rule further provides, *inter alia* (c) :

Within ten days after service of any written motion * * * the opposing party shall answer or be taken to have consented to the granting of the relief asked for in the motion. * * *

On July 10, 1958, respondents not having answered or otherwise opposed the granting of said motion, an order was passed and filed in the formal record of this proceeding, ordering the dismissal of the complaint as moved, upon the grounds set forth in the aforesaid motion and, in conformity with the provisions of rule 3.8(e) this initial decision is made, confirming and finalizing said order.

In moving for dismissal Commission counsel cites (1) the *de minimis* aspect of respondents' sales, (the record disclosing such to be \$1,675.50 in the year 1956; \$1,890.75 in 1957, none in 1958), thus implying the absence of a compelling public interest in the subject matter of this proceeding; (2) that the product has been removed from the market; (3) that prior to the issuance of the complaint herein respondents changed the formula of their product which they now contend meets the requirements of the Commercial Standard aforementioned so that they are now in compliance and, finally, (4) that the Commission has no evidence presently available to rebut this latter contention of the respondents, the tests upon which the Commission intended to rely having been made upon the product prior to the change in formula.

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The undersigned being fully advised in the premises, because of his familiarity with the entire record, and the reasons assigned in the motion being substantiated by the record.

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to issue a new complaint or to take such further action against the respondents at any time in the future as may be warranted by then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 3d day of September 1958, become the decision of the Commission.

IN THE MATTER OF
RAYCO MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7101. Complaint, Mar. 28, 1958—Decision, Sept. 3, 1958

Consent order requiring manufacturers in Patterson, N.J., to cease representing falsely in advertising materials furnished to retail stores for their use and in advertisements in newspapers, by radio, television, etc., that their auto seat covers and tops had been awarded the Fashion Academy seal for beauty and styling and the U.S. Testing seal for durability; that exaggerated fictitious prices were their regular prices; that their franchised retail dealers were having a "Close-Out" of 4,000 sets of seat covers at sacrifice prices; that their ready-made products were "custom fitted" for the individual buyer; and that purchasers of their convertible tops received the complete top for the advertised price.

Mr. Michael J. Vitale for the Commission.

Mr. Joseph L. Kelin, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain representations in connection with automobile seat covers and convertible tops sold by them. An agreement providing for disposition of the proceeding by means of a consent order has now been entered into by respondents Rayco Manufacturing Company, Inc., Joseph Weiss and Julius Stern and their attorney and counsel supporting the complaint. The agreement contemplates dismissal of the complaint as to respondent Burton B. Weiner, and the term "respondents" as used hereinafter will not include this individual.

The agreement provides, among other things, that all of said respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered