

Decision

IN THE MATTER OF
MASTER FURRIERS, INC., ET AL.¹

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

Docket 6895. Complaint, Sept. 26, 1957—Decision, Sept. 6, 1958

Consent order requiring furriers in New York City to cease violating the Fur Products Labeling Act by representing that fictitious prices on labels affixed to fur products were the regular retail selling prices; by failing to comply with invoicing requirements; by advertising in newspapers which represented falsely that fur products were being sold "below cost" and were reduced from regular prices which were in fact fictitious, and which used comparative prices and percentage savings claims not based on usual retail prices; and by failing to keep adequate records as a basis for such pricing claims.

Before: *Mr. John Lewis*, hearing examiner.

Mr. Charles W. O'Connell supporting the complaint.

Newman & Bisco, by *Mr. John E. Higgiston, Jr.*, of New York, N.Y., for Frank-Cunningham Stores Corporation and other respondents named individually and as officers of said respondent.

INITIAL DECISION AS TO REMAINING RESPONDENTS

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 1957, charging them with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared by their respective counsel and filed their answers thereto. Thereafter respondent Master Furriers, Inc. and certain individual respondents affiliated with it entered into an agreement with counsel supporting the complaint providing for the entry of a consent order to cease and desist as to said respondents. The undersigned filed his initial decision based thereon on April 22, 1958, which decision became the Decision of the Commission on June 10, 1958. Thereafter the respondent Frank-Cunningham Stores Corporation, on June 23, 1958, entered into

¹ The case against respondents Master Furriers, Inc., Ernest E. Marx, Erwin C. Bein, and M. J. Swartz was settled by consent order, identical with that above, dated June 10, 1958, 54 F.T.C. 1774. At the same time, the charges were dismissed as to Sally Marx.

an agreement containing a consent order to cease and desist purporting to dispose of all of this proceeding as to said respondent and as to the remaining respondents named in the complaint individually and as officers of said corporate respondent. Said agreement, which has been signed by respondent Frank-Cunningham Stores Corporation, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The signatory respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that said respondent waives 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by the signatory respondent that it has violated the law as alleged in the complaint.

Submitted with the aforesaid agreement containing consent order, and as a part thereof, is an affidavit of respondent I. David Israel, president of respondent Frank-Cunningham Stores Corporation, sworn to June 17, 1958, attesting to the fact that while said respondent and the other respondents named individually and as officers of said corporate respondent do formulate and control the policies and practices of the corporate respondent in their respective capacities as officers and directors of said corporation, none of said individual respondents formulated, directed, controlled or participated in the acts and practices charged in the complaint. It has been agreed in the aforesaid agreement containing consent order that the complaint may be dismissed

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as to respondents I. David Israel, Harry Israel, Oscar Israel, Oscar Balamut and Martin Israel.

This proceeding having now come on for final consideration as to respondents Frank-Cunningham Stores Corporation, I. David Israel, Harry Israel, Oscar Israel, Oscar Balamut, and Martin Israel on the complaint, the aforesaid agreement containing consent order and the affidavit of I. David Israel attached to and made a part of said agreement, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to the parties above named, said agreement and affidavit are hereby accepted and are ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Frank-Cunningham Stores Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 8 West 30th Street, in the city of New York, State of New York.

Respondent Frank-Cunningham Stores Corporation operates a retail store in Washington, D.C. under the name of L. Frank Company. Respondent Master Furriers, Inc. during all of the times mentioned in the complaint herein conducted a retail fur business in said store under a license or lease agreement with respondent Frank-Cunningham Stores Corporation and in accordance therewith said fur business was operated as though it were a department of the lessor's store.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent Frank-Cunningham Stores Corporation. The complaint states a cause of action against said respondent under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Frank-Cunningham Stores Corporation, a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, offering for sale, transportation

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or distribution, of fur products, in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped or received in commerce as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing on labels affixed to fur products, or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which respondent usually and customarily sells such products in the recent regular course of its business.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

(b) That the fur product contains or is composed of used fur, when such is the fact.

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is the fact.

(e) The name and address of the person issuing such invoice.

(f) The name of the country of origin of any imported furs contained in the fur product.

(g) The item number or mark assigned to a fur product.

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly in the sale or offering for sale of fur products, and which:

1. Represents, directly or by implication:

(a) That retail prices of fur products were reduced or were being sold "below cost" or "below wholesale cost," when such is not the fact;

(b) That respondent's regular price of any fur product is any

amount which is in excess of the price at which respondent has regularly or customarily sold fur products of similar grade and quality in the recent course of its business.

2. Makes use of comparative prices and percentage savings claims in advertisements unless such compared prices and percentage savings claims are based on the regular and usual retail prices charged by the respondent for fur products of similar grade and quality in the recent regular course of its business.

D. Making pricing claims or representations in advertisements respecting comparative prices, percentage savings claims, or claims that prices are reduced from regular or usual prices, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That the complaint herein be dismissed as to respondents I. David Israel, Harry Israel, Oscar Israel, Oscar Balamut, and Martin Israel, individually and as officers of said Frank-Cunningham Stores Corporation.

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 6th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Frank-Cunningham Stores Corporation, a corporation, and its officers, 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
JAMES E. TRUE ET AL.
TRADING AS TIMED ENERGY

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

Docket 7123. Complaint, Apr. 16, 1958—Decision, Sept. 9, 1958

Consent order requiring distributors in New York City of a vitamin and mineral preparation designated "Vita-Timed Capsules" to cease representing falsely in advertisements in newspapers, circulars, etc., that vitamins purchased in drugstores frequently were stale and therefore had lost potency; that use of their capsules would contribute to perfect health and safeguard against a variety of serious degenerative diseases; that some vitamin products were coated with insoluble substances and would pass through the system without releasing the contents; that the "Timed-Release" feature of "Vita-Timed Capsules" made them more effective nutritionally than competitive products; and that there was no Federal law preventing sellers from making unjustified claims for excessive dosages of vitamins and minerals or insuring the effectiveness or potency of any preparation.

Mr. Ames W. Williams for the Commission.

Bass & Friend, by *Mr. Solomon H. Friend*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violating the provisions of the Federal Trade Commission Act by disseminating false advertisements of their vitamin and mineral preparation, designed as "Vita-Timed Capsules."

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies Respondents James E. True, Charles H. Ruby, Patricia M. Gallehr and Leon Weiss as copartners trading as Timed Energy, with their office and principal place of business located at 419 Fourth Avenue, New York, N.Y.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint,