

Decision

IN THE MATTER OF
LUMBERMENS MUTUAL CASUALTY COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6448. Complaint, Nov. 18, 1955—Order, Sept. 17, 1958

Order dismissing for lack of jurisdiction, following the Supreme Court's reversal of the Commission's desist orders in the *National Casualty Company* and *The American Hospital and Life Insurance Company* cases (357 U. S. 560), complaint charging a life insurance company in Chicago with misrepresenting the benefits and coverage of its health and accident policies.

Mr. John W. Brookfield, Jr., for the Commission.

Mr. Chase M. Smith and *Mr. Lowell D. Snorf, Jr.*, of Chicago, Ill., and *Kirkland, Fleming, Green, Martin & Ellis*, of Chicago, Ill., and Washington, D. C., by *Mr. Hammond E. Chaffetz*, *Mr. Perry S. Patterson* and *Mr. Frederick M. Rowe*, for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Federal Trade Commission Act as affected and amended by the McCarran-Ferguson Act, 15 U.S.C., §§1011-1015 inclusive, the complaint charging the respondent corporation, in substance, with having transmitted in interstate commerce certain alleged false, misleading and deceptive advertising concerning its individual health-and-accident insurance policies. Group health-and-accident insurance is not involved. The complaint is dismissed herein for lack of jurisdiction by the Commission over the subject-matter thereof, pursuant to the recent decision of the Supreme Court of the United States, relating to that subject.

The Supreme Court, in one *per curiam* opinion issued on June 30, 1958, decided two cases, entitled *Federal Trade Commission v. National Casualty Company* (No. 435) and *Federal Trade Commission v. The American Hospital and Life Insurance Company* (No. 436), 357 U.S. 560 (1958). The Supreme Court accepted jurisdiction of these cases on writs of certiorari, from the Courts of Appeals for the Sixth and Fifth Circuits, respectively, to review their "interpretation of an important federal statute". It affirmed the judgment of each of such Circuits in setting aside the Commission's cease-and-desist orders against the said

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respondent insurers. In the course of its opinion, the Supreme Court rejected all contentions of the Federal Trade Commission purporting to sustain its jurisdiction; and, in affirming the said judgments of said Courts of Appeals, held that the Commission is prohibited by the McCarran-Ferguson Act from regulating the practices complained of by it within those states having statutes authorizing the regulation of such practices.

With particular pertinence to the case at bar, the Supreme Court, covering in the one case a casualty-insurance company and in the other a life-insurance company, held:

Respondents, the National Casualty Company in No. 435 and the American Hospital and Life Insurance Company in No. 436, engage in the sale of health and accident insurance. National is licensed to sell policies in all States, as well as the District of Columbia and Hawaii, while American is licensed in fourteen States. Solicitation of business for National is carried on by independent agents who operate on commission. The company's advertising material is prepared by it and shipped in bulk to these agents, who distribute the material locally and assume the expense of such dissemination. Only an insubstantial amount of any advertising goes directly by mail from the company to the public, and there is no use of radio, television, or other means of mass communication by the company. American does not materially differ from National in method of operation.

* * * There is no question but that the States possess ample means to regulate this advertising within their respective boundaries.

* * * Each State in question has enacted prohibitory legislation which proscribes unfair insurance advertising and authorizes enforcement through a scheme of administrative supervision.

In footnote 6 of its opinion, the Supreme Court said:

At the time the complaints were filed thirty-six States had enacted the "Model Unfair Trade Practices Bill for Insurance." Eight others had statutes essentially the same in effect as the "Model Bill."

The opinion of the Supreme Court is sweeping and general in its language. It does not attempt to cite the numerous statutes of the several States which constitute the entire regulatory plan of each of such States. And to do so herein is wholly unnecessary; suffice it to say that official notice is taken that all States, by statute, provide for the licensing and regulation of all types of insurance agents; that all the States now have legislative acts providing more or less specifically for the regulation of life-insurance companies' business of health-and-accident insurance, including the advertising thereof; and that, with respect to the business of casualty-insurance companies, nearly all of the States have specific regulatory statutes, but in each of the remaining few, the general regulatory powers of the Insurance Department are

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sufficiently broad, when coupled with the criminal and other statutes of the State, to provide a system of regulation of any unfair advertising by such companies and their agents, which the Supreme Court apparently deems adequate to regulate such business in such States. It holds, in effect, that under the McCarran-Ferguson Act each State is given latitude to enact such laws and provide such regulatory processes as each State deems proper within its own jurisdiction, and that the degree of actual law enforcement, if any, in the several States is wholly immaterial.

In the instant proceeding, the complaint was issued on November 18, 1955. Respondent subsequently joined issue, and, among other pleas, adequately raised the issue of the Commission's jurisdiction over the subject-matter. The record is fairly voluminous, but, in view of the conclusion reached herein, only a few undisputed facts need be stated. While at the conclusion of the proceeding each of the parties submitted extensive and detailed proposed findings of fact as well as conclusions of law, and a proposed order, some of which proposed findings and conclusions are quite proper, for brevity all such proposals have been rejected.

The respondent is a mutual casualty-insurance company duly organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill. It is duly licensed to do business in the District of Columbia and forty-eight States (but not in the newly admitted State of Alaska). Its business is done in each jurisdiction through agents duly licensed therein. During the period of time covered by this proceeding, the respondent casualty company never sent any advertising by mail directly from its home office to the public generally, and did not use radio, television or other mass media of communication to the public. It sent all advertising material directly to its agents, who distributed it locally at their own expense.

This proceeding, therefore, falls squarely within the principles enunciated by the Supreme Court in its said decisions. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed for lack of jurisdiction.

FINAL ORDER

The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended

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by order issued September 10, 1958, until further order of the Commission; and

The Commission having now determined that said initial decision is adequate and appropriate in all respects:

It is ordered, That the initial decision of the hearing examiner duly providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

Decision

IN THE MATTER OF
ETTINGER MANUFACTURING COMPANY ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6806. Complaint, May 20, 1957—Decision, Sept. 23, 1958*

Order requiring manufacturers in Chicago to cease labeling as "All wool filled," bed comforters the filling of which contained a substantial amount of fibers other than wool and when the only batting they purchased from their sources of supply was either "reprocessed wool" or "Wool Shoddy felt"; and to cease representing falsely by means of advertising streamers, flyers, and inserts enclosed in the individual containers as well as by other advertising circulated to the retail trade, that their products had been moth-proofed and bacteria-proofed, that certain of them had been manufactured by Pepperell Manufacturing Co., that the filling in some was composed of all wool, and that the amount of \$24.95 or other specified price was the usual retail price.

Mr. William A. Somers, for the Commission.

Mr. Lawrence A. Jacobson, of Chicago, Ill., for himself and other respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN,
HEARING EXAMINER

This proceeding involves charges that respondents have, in numerous particulars, violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations of the Commission promulgated thereunder by manufacturing and selling in commerce certain wool products which were misbranded. This initial decision finds generally that the allegations of the complaint are amply sustained upon the whole record by a preponderance of the reliable, probative and substantial evidence as required by §7(c) of the Administrative Procedure Act and the Commission's Rules of Practice for Adjudicative Proceedings adopted pursuant thereto and that respondents have violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder as alleged in the complaint. A cease and desist order is issued herein appropriate to the findings and conclusions which are hereinafter set forth.

This case was instituted by the filing of a complaint on May 20, 1957, regular service of which was duly had on each of the