

Decision

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

Docket 6449. Complaint, Nov. 18, 1955—Order, Sept. 26, 1958

Order dismissing for lack of jurisdiction, pursuant to the opinion of the U.S. Supreme Court in the *National Casualty Company* and *The American Hospital and Life Insurance Company* cases (357 U.S. 560), complaint charging a stock casualty company in Reading, Pa., with false advertising concerning the terms and conditions, and failure to reveal limitations of coverage, on its accident and sickness insurance policies.

Mr. John W. Brookfield, Jr., and Mr. William R. MaHanna for the Commission.

Mr. M. Thomas Valaske, General Counsel, of Reading, Pa., and *Stevens & Lee*, by *Mr. John D. Glase*, of Reading, Pa., 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 respond-

ent 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 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 stock casualty insurance company duly organized, existing and doing business under the laws of the State of Pennsylvania, with its office and principal place of business in Reading, Pa. It procures its business through the American Agency System, it being represented and doing business in the several jurisdictions wherein it is licensed, by licensed agents who operate their own business and who are also free to represent other insurers. The respondent is duly licensed in all of the States (including the newly admitted State of Alaska), the District of Columbia and Puerto Rico. During the time covered by this proceeding, respondent casualty-insurance company never sent any advertising by mail 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 such material locally and at their own expense.

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

Order

55 F.T.C.

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 by order issued September 9, 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
BENJAMIN P. CANIGLIA
TRADING AS INTERNATIONAL COMPANY

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

Docket 6813. Complaint, June 3, 1957—Decision, Sept. 30, 1958

Order requiring a furrier in Fullerton, Calif., to cease violating the Fur Products Labeling Act by removing required labels from fur products before delivery to the ultimate consumer; by failing to disclose on labels that certain products contained secondhand used fur, and failing to comply with other labeling and invoicing requirements by advertisements in letters falsely stating that enclosed credit checks reduced the prices of fur products; and by offering products for sale at purported reduced prices without maintaining adequate records as a basis for such pricing claims.

Mr. Harry E. Middleton, Jr., and Mr. John J. McNally for the Commission.

No appearance on behalf of respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On June 3, 1957, the Federal Trade Commission issued its complaint against Benjamin P. Caniglia (erroneously referred to in the complaint as Benjamin B. Caniglia), an individual trading as International Company, charging him with violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act. From the record it appears that the complaint could not be served by mail and personal service was made on July 11, 1957. The complaint, so served, contained a notice that a hearing would be held on August 14, 1957, in Fullerton, Calif., on the charges set forth therein. The Hearing Examiner issued an order on August 7, 1957, postponing the initial hearing to September 16, 1957, which could not be served upon respondent. However, the hearing examiner's notice of April 7, 1958, scheduling the initial hearing on April 28, 1958, in Los Angeles, Calif., was personally served on the respondent by leaving the same at his last known address.

On April 28, 1958, the initial hearing was held, as scheduled, at which hearing counsel supporting the complaint was present but the respondent was not present, either in person or by coun-