

Decision

IN THE MATTER OF
GUILD MOCCASIN ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6860. Complaint, Aug. 13, 1957¹—Decision, Oct. 17, 1958*

Consent order requiring manufacturers in Los Angeles, Calif., to cease representing factory-made moccasins and handbags falsely as Indian products and, through use of the word "Guild" in their corporate and trade names, that their business was an association of Indian craftsmen.

Mr. Kent P. Kratz for the Commission.

Mr. Casimir A. Miketta, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The amended complaint, which was substituted for the original complaint by order of the hearing examiner, alleges that respondents have used, in various advertising media, certain false, misleading and deceptive statements, symbols and depictions, representing directly and by implication that their moccasins, handbags and other related items were Indian products made by Indians.

The amended complaint further alleges that respondents, by the use of the word "Guild" as part of the corporate name and of the names under which they have traded, and in their advertising, have falsely represented that their business is an association or guild.

The amended complaint charges that the use by respondents of said false and misleading representations constitutes unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of the Federal Trade Commission Act (15 U.S.C. 41, et seq.; more specifically, 15 U.S.C. 45).

After the issuance of the amended 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 as follows:

¹ Amended Nov. 8, 1957.

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Respondent Guild Moccasin is a California corporation, with its office and principal place of business located at 219-227 South Central Avenue, Los Angeles, Calif. This corporation also trades under the name Guild Moccasin Corporation.

Individual respondent Lewis Podus is, and has been for several years last past, president of the corporate respondent, and has, and has had, complete or a substantial degree of control and direction over the affairs, policies, acts and practices of said corporation. He is also, and has been for several years last past, a partner trading under the name of Podus of California.

Individual respondent Morris Podus was for several years, immediately prior to January 1956, an officer of respondent corporation. During that period he had substantial control and direction over the affairs, policies, acts and practices of said corporation. Also, for several years immediately prior to April 1954, he was a partner trading under the name of Podus of California.

Individual respondent William Podus is, and has been for several years last past, a partner trading under the name of Podus of California. He is not now nor has he ever been an officer of corporate respondent Guild Moccasin.

Individual respondent Henry Podus was for several years, immediately prior to April 1955, a partner trading under the name of Podus of California.

For the purposes of the agreement, the address of individual respondents is the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the amended complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the amended complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the amended complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the amended complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

The agreement states that the term "Indian" as used in the amended complaint and in the order hereinafter set forth refers to the American Indian.

Respondents waive 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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the amended complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That Guild Moccasin, a corporation, its officers, and Lewis Podus, individually, as an officer of Guild Moccasin, and as a partner trading under the name Podus of California, or trading under any other name, Morris Podus, individually and as a former officer of Guild Moccasin and as a former partner trading under the name Podus of California, or trading under any other name, and William Podus and Henry Podus, individually and as partners or former partners trading under the name Podus of California, or trading under any other name, respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of moccasins, handbags, or any other similar or related products, do forthwith cease and desist from:

(a) Representing, through the use of tribal or Indian names, derivations of Indian names, Indian symbols or Indian illustrations, or in any manner, directly or by implication, that their products are Indian products or Indian made;

(b) Representing, through use of the word "Guild," or otherwise, that their products are products of a Guild, or that their business is anything other than a commercial enterprise organized for profit; provided, however, that this shall not be construed as proscribing use of the word "Guild" as part of the name "Guild Moccasin Corporation" so long as the word "Guild" is of the same type as, and is given no greater prominence than, the other words in said name and the said name, wherever used, is accompanied

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by a clear disclosure that the products are machine made or factory made.

It is further ordered, That the complaint hereby be and is dismissed as to William Podus as a former officer of Guild Moccasin.

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 17th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents except William Podus as a former officer of Guild Moccasin 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.

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IN THE MATTER OF
ATLAS ENTERPRISES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7122. Complaint, Apr. 16, 1958—Decision, Oct. 17, 1958*

Consent order requiring sellers in Hopkins, Minn., of vending machines for cigarettes and other products, to purchasers including disabled, retired, and inexperienced individuals, to cease making, in newspaper advertising and by their agents, purported offers of employment to develop leads for sales; and to cease representing falsely the net profits to be expected by purchasers, and help given in locating and securing profitable locations, disposing of machines for dissatisfied customers, etc.

Mr. Brockman Horne supporting the complaint.

Mr. Eugene C. Wann, of New Prague, Minn., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 16, 1958, charging them with having violated the Federal Trade Commission Act as set forth in said complaint.

After being served with the complaint respondents entered into an agreement, dated August 20, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director and acting assistant director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall