

Decision

IN THE MATTER OF
ALLEGHANY PHARMACAL CORP. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7176. Complaint, June 27, 1958—Decision, Nov. 7, 1958

Consent order requiring distributors in New York City to cease representing falsely in newspaper advertisements and otherwise that their reducing drug preparation designated "Hungrex with P.P.A." was safe for use by all obese persons, and that such persons could expect to lose weight at the rate of five pounds a week.

Mr. Morton Nesmith and Mr. Berryman Davis for the Commission.

Mr. Milton A. Bass of Bass & Friend, of New York, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On June 27, 1958, the Federal Trade Commission issued its complaint against the above-named respondents charging them with the use of an unfair and deceptive act and practice in commerce in violation of the provisions of the Federal Trade Commission Act in the dissemination of false advertisements of a drug preparation designated "Hungrex with P.P.A." In lieu of submitting answer to said complaint, the respondents entered into an agreement for consent order with counsel supporting the complaint disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Bureau of Litigation. It was recommended in the agreement that the complaint be dismissed as to Harry Evans and Vincent J. Lynch as officers of Alleghany Pharmacal Corp., the respondent corporation, as they had resigned as such officers before the issuance of the complaint. In support of said recommendation, an affidavit by these individual respondents was attached to the agreement and by reference made a part thereof.

The reference to "respondents" herein is only to Alleghany Pharmacal Corp., a corporation, and Harry Evans and Vincent J. Lynch, individually.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that

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the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement expressly waived 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 this agreement.

It was further provided in said agreement that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed 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, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. The agreement also provided 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; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Alleghany Pharmacal Corp. is a corporation 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 16 West 61st Street, New York, N.Y. The address of the individual respondents is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and this proceeding is in the interest of the public.

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ORDER

It is ordered, That respondents, Alleghany Pahrmacal Corp., a corporation, and its officers, and Harry Evans and Vincent J. Lynch, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation "Hungrex with P.P.A.", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That said preparation is safe to use by all obese persons;

(b) That any predetermined weight reduction can be achieved by the taking or use of said preparation for a prescribed period of time.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Harry Evans and Vincent J. Lynch as officers of Alleghany Pharmacal Corp., a 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 7th day of November 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Alleghany Pharmacal Corp., a corporation, and Harry Evans and Vincent J. Lynch, individually, 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
NEAPCO PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 6891. Complaint, Sept. 17, 1957—Decision, Nov. 8, 1958

Consent order requiring a manufacturer of automotive products and supplies in Pottstown, Pa., to cease charging small independent wholesalers higher prices than it charged their heavier-buying independent competitors by means of its 2 percent to 10 percent rebate schedule based on total purchases, and by granting to group wholesalers rebates equal to 15 percent of net prices on aggregate purchases of the group while holding the independents to the 2 percent to 10 percent schedule.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Subsection (a), Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Neapco Products, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Cross and South Streets, Pottstown, Pa.

PAR. 2. Respondent is now, and for several years has been, engaged in the business of the manufacture, sale and distribution of automotive products and supplies including universal joints and components, power takeoff universal joints and chassis parts. Respondent's total sales in 1956 exceeded \$2,200,000.00.

Said products and supplies are sold by the respondent for use, consumption or resale within the United States and the District of Columbia, and respondent causes said products and supplies to be shipped and transported from the State of location of its principal place of business to approximately 3000 purchasers thereof located in States other than the State wherein said shipment or transportation originated.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products