

Decision

IN THE MATTER OF
ZOYSIA FARM NURSERIES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7130. Complaint, Apr. 23, 1958—Decision, Dec. 2, 1958*

Consent order requiring Baltimore mail order sellers to cease advertising falsely the rate of growth of their "Amazoy" and "Green Beauty" Zoysia grass, U.S. Government and Department of Agriculture approval of the grasses, endorsement by official experts as superior to other grasses, as providing a carefree lawn, requiring less watering or fertilization than other grasses, etc.

Mr. Frederick McManus and Mr. Robert E. Vaughan, for the Commission.

Gordon, Feinblatt & Rothman, by Mr. Donald N. Rothman, of Baltimore, Md. for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 23, 1958, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On October 10, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents Zoysia Farm Nurseries, Inc., Herbert L. Friedberg, Sidney M. Friedberg, Sylvia Friedberg Nachlas, and R. Stuart Armiger and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive 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. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless

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and until it becomes a part of the decision of the Commission; 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 complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered it shall have the same force and effect as if entered after a full hearing, and 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.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Zoysia Farm Nurseries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with a main office and principal place of business located at 602 N. Howard Street, Baltimore, Md. Individual respondents Herbert L. Friedberg, Sidney M. Friedberg and Sylvia Friedberg Nachlas are officers and directors of said corporate respondent and R. Stuart Armiger is general manager of said corporation. These individuals formulate, direct and control the acts, practices and policies of said corporate respondent. Their business address is 610 N. Howard Street, Baltimore, Md.

Respondent Green Beauty Zoysia Company, a corporation formerly organized, existing and doing business under and by virtue of the laws of the State of Maryland with its main office and principal place of business located at 223-225 West Monument Street, Baltimore, Md., has since been merged into respondent Zoysia Farm Nurseries, Inc., as shown by copy of the articles of merger attached to such agreement.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Zoysia Farm Nurseries, Inc., a corporation, and its officers, Herbert L. Friedberg, Sidney M. Friedberg and Sylvia Friedberg Nachlas, individually and as officers of said corporation, and R. Stuart Armiger, individually

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and as general manager of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of their Zoysia grass under the names of Amazoy and Green Beauty or under any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Their Amazoy grass has been approved by the United States Government.

(b) Tests by impartial public official experts have proved respondents' Amazoy to be superior to other lawn grass, unless such is the fact.

(c) Each plug of Amazoy multiplies itself fifty times in a few months or misrepresenting in any manner the rate of growth of Amazoy or Green Beauty grass.

(d) The United States Department of Agriculture recommends that only plugs be used for planting in existing lawns.

(e) Amazoy provides a carefree lawn or requires less watering or fertilization, unless clearly limited to Amazoy that has become well established.

(f) An Amazoy lawn is weed free unless clearly limited to summer weeds.

(g) Their Green Beauty grass has been proved by the United States Department of Agriculture to be clean, healthy and uncontaminated.

(h) Sprigs of Zoysia grass will produce a more satisfactory lawn than plugs.

2. Failing to clearly reveal that Amazoy and Green Beauty will not retain their green color during the period from the first killing frost until growth is resumed in the spring.

It is further ordered, that complaint be, and it hereby is, dismissed as to respondent Green Beauty Zoysia Company.

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 2d day of December, 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Zoysia Farm Nurseries, Inc.,

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a corporation, and Herbert L. Friedberg, Sidney M. Friedberg and Sylvia Friedberg Nachlas, individually and as officers of Zoysia Farm Nurseries, Inc., and R. Stuart Armiger, individually and as general manager of said corporation, 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
TOP FORM MILLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7166. Complaint, May 29, 1958—Decision, Dec. 2, 1958

Consent order requiring manufacturers of women's slips and other wearing apparel in New York City to cease setting out excessive and fictitious amounts as "Value" and "Special purchase" in advertising mats and other promotional material supplied to retailers and dealers, on tickets attached to the garments prior to sale, and in advertisements in Vogue, Harpers Bazaar, and Mademoiselle magazines.

Mr. Morton Nesmith and Mr. John J. Mathias, for the Commission.

Mr. David Sklaire of Ostrow, Goldman & Sklaire, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars. In accordance with the stipulation of the parties, the title of this proceeding has been amended by deleting therefrom the following language: "also known as SEYMOUR TOPOLOFF."

On October 7, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents signatory thereto, their counsel, and counsel supporting the complaint, under date of September 30, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Top Form Mills, Inc., is a corporation organized,