

Decision

IN THE MATTER OF
ATLAS ROSE FARMS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6896. Complaint, Sept. 27, 1957—Decision, Dec. 18, 1958*

Consent order requiring Brooklyn, N.Y., sellers of rose bushes which had been used in the commercial greenhouse production of cut flowers under forced growing conditions, to cease representing falsely in newspaper advertising and in statements on packages that their roses were strong first-grade plants, certified as vigorous and tested for proven merit by a State agency, and packed by one of America's leading nurseries; to cease representing falsely, through use of the word "Farms" in their corporate name that they grew the roses they sold; and to cease representing falsely, by labels attached to the individual rose bushes and packages containing them, that each rose was of a particular variety and that the bloom would be of the color specified.

Mr. Charles W. O'Connell and Mr. John W. Brookfield, Jr.,
for the Commission.

Samuel Bonom and Philip Wolfson of Brooklyn, N.Y., by
Mr. Philip Wolfson, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 27, 1957, charging respondents with making false representations, in connection with the sale and distribution of rose bushes, that such roses were strong, first-grade plants; that each rose bush had been inspected by a State agency and certified as vigorous and tested for proven merit; and that said rose bushes had been packed by one of America's leading nurseries. Respondents were further charged with failing to reveal that the rose bushes sold and distributed by them had been used for two to three years in the commercial production of cut flowers in greenhouses under forced growing conditions, which material fact was not disclosed in respondents' newspaper advertising, nor in printed statements on the packages in which said rose bushes were packed for sale by respondents. Respondents were also charged with falsely representing, through the use of the word "Farms" as part of the respondent corporation's name, that they maintain a farm on which they grow the rose bushes offered for sale and sold by them; and, further, that they have misrepresented said rose bushes by

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placing on the packages thereof labels bearing flower illustrations and text which were not indicative of the variety or color of the bloom which would be produced by such bushes. The complaint further alleged that the use by respondents of the aforesaid representations, and their failure to disclose material facts in connection with their sale and distribution of rose bushes in commerce, constitute unfair and deceptive acts and practices and unfair methods of competition, in violation of the Federal Trade Commission Act.

Thereafter, on October 9, 1958, respondents Atlas Rose Farms Inc., Lee Atlas and Elias Abolafia, individually and as officers of said corporation, their counsel, and counsel supporting the complaint herein 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 submitted to the hearing examiner for consideration.

The agreement identifies Respondent Atlas Rose Farms, Inc., as a New York corporation, with its office and principal place of business located at 8930 Avenue D Street, Brooklyn, N. Y., and individual respondents Lee Atlas, Elias Abolafia, and Robert Abolafia as president, vice president and secretary-treasurer, respectively, of said corporate respondent, and having the same address as the corporate respondent. All parties signatory to the agreement, however, agreed that, inasmuch as respondent Robert Abolafia was only a nominal officer of the respondent corporation, has never been actually active in the dealings thereof and has no voice in its management, the complaint herein should be dismissed as to him.

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.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and 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. All parties agree 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 agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the

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decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Atlas Rose Farms, Inc., a corporation, and its officers, and respondents Lee Atlas and Elias Abolafia, individually and as officers of said corporation, and respondents' representatives, agents, 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 rose bushes which have been used in the commercial greenhouse production of cut flowers, do forthwith cease and desist from:

1. Representing, directly or by implication, that such rose bushes are:

- (a) Strong, vigorous or first-grade plants;
- (b) Individually inspected or tested; or
- (c) Packed by a nursery;

2. Misrepresenting the variety or color of the bloom;

3. Failing to tag or label such rose bushes so as to clearly and conspicuously disclose that such rose bushes had been previously used in the commercial greenhouse production of cut flowers, and to clearly and conspicuously set out in advertising and sales promotional matter relating to such rose bushes that they had been so used;

4. Failing to clearly and conspicuously reveal in the same manner and in close conjunction with the disclosure made pursuant to 3. that such rose bushes when planted outdoors will not thrive and blossom or that they will thrive and blossom only if

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given special treatment and attention, during and after their replanting, if such is the fact.

It is further ordered, That respondent Atlas Rose Farms, Inc., a corporation, and its officers, and respondents Lee Atlas and Elias Abolafia, individually and as officers of said corporation, 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 rose bushes or other nursery products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using, in its corporate name, or in any other manner, the word "farm," or any word or words of like import and meaning, in connection with such products that have not been grown by them.

It is further ordered, That the complaint herein be dismissed as to respondent Robert Abolafia.

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 18th day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Atlas Rose Farms, Inc., a corporation, and Lee Atlas and Elias Abolafia, individually and as officers 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.

Complaint

IN THE MATTER OF
KEYSTONE MANUFACTURING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7118. Complaint, Apr. 10, 1958—Decision, Dec. 18, 1958

Consent order requiring a large Philadelphia jewelry chain which acted as buyer also for several affiliated stores, to cease violating the Federal Trade Commission Act by knowingly inducing and receiving discriminatory advertising allowances from respondents' suppliers in connection with the sale of the latter's home movie equipment, slide projectors, and related items; specifically inducing said suppliers to grant reimbursements in amounts in excess of the 5% of the amount of purchases and of 50% of the cost of a given advertisement allowed customers generally.

The matter as to Keystone supplier respondents was settled by consent order Mar. 5, 1959, p. 1391, herein.

COMPLAINT

The Federal Trade Commission, having reason to believe that Keystone Manufacturing Company, Inc., a corporation, and Keystone Camera Company, Inc., a corporation, have violated and are now violating the provisions of subsection (d) Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, and the Commission having further reason to believe that Associated Barr Stores, Inc., a corporation, and Myer B. Barr, as an individual and as President of Associated Barr Stores, Inc., have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondents Keystone Manufacturing Company, Inc., and Keystone Camera Company, Inc., hereinafter sometimes referred to as respondents Keystone Companies, are corporations organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with their principal offices and places of business located at Hallet Square, Boston 24, Mass.

PAR. 2. Respondent Keystone Manufacturing Company, Inc.,