

Order

55 F.T.C.

IN THE MATTER OF
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6450. Complaint, Nov. 18, 1955—Order, Mar. 4, 1959

Order dismissing on jurisdictional grounds on the authority of the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (1958), complaint charging a New York City insurance company with false advertising concerning its policies providing indemnification for losses resulting from accidental injury and sickness.

Before Mr. Loren H. Laughlin, hearing examiner.

Mr. Donald K. King, Mr. J. W. Brookfield, Jr. and Mr. Eugene Kaplan for the Commission.

Mr. Haughton Bell and Mr. Arthur C. Kaiser, of New York City, for respondent.

FINAL ORDER

This matter having come on to be heard by the Commission upon the record herein and upon briefs in support of and in opposition to the appeal of counsel supporting the complaint from the initial decision of the hearing examiner finding in part that respondent's methods of advertising have been voluntarily abandoned and that such matters are *de minimis* and dismissing the complaint for lack of jurisdiction; and

The Commission having considered the initial decision and the appeal briefs, together with the stipulated facts of record, and having concluded that it disagrees with the initial decision to the extent that said decision is based upon the *de minimis* rule and the finding that respondent voluntarily abandoned its questioned advertising practices; but that it agrees the proceeding should be dismissed on jurisdictional grounds on the authority of the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (1958) :

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Order

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed.

It is further ordered, That respondent's request for oral argument before the Commission be, and it hereby is, denied.

Opinion

55 F.T.C.

IN THE MATTER OF
ROUX DISTRIBUTING CO., INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6636. Complaint, Sept. 14, 1956—Order, Mar. 4, 1959

Order dismissing for failure of proof, complaint charging a New York City distributor of beauty preparations for the hair with requiring its wholesale customers to restrict their sales to a limited class of accounts.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Jerome Garfinkel and *Mr. Lewis F. Depro* for the Commission.

Mr. William J. Hayes, of New York City, for respondent.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

This matter has come before the Commission upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision dismissing the complaint for failure of proof. The complaint charges that respondent has required its wholesale customers to agree to restrict their sales to a limited class of accounts and that the practices involved are in violation of Section 5 of the Federal Trade Commission Act. The issue before us is whether the examiner properly dismissed for insufficiency of evidence.

The essential facts as to the method of distribution employed by respondent are not in dispute. Respondent, Roux Distributing Co., Inc. (sometimes hereinafter referred to as Roux), is now and has been engaged in the sale and distribution of beauty preparations for the hair in interstate commerce. Its customer accounts include direct retailers, beauty schools, drug wholesalers and beauty supply dealers.

On March 18, 1953, Roux notified all its wholesale accounts that a new discount schedule of 25% off trade price (it was then 35%) would be initiated April 1, 1953. The following classifications were set up:

1. Jobber—one who subjobs, sells to, trades or exchanges Roux products with drug wholesalers or beauty supply dealers or other jobbers.