

Decision

IN THE MATTER OF
OPTI-RAY, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7235. Complaint, Aug. 21, 1958—Decision, May 6, 1959*

Consent order requiring a Brooklyn, N.Y., assembler of sunglasses to cease representing falsely in sales brochures, counter display cards, and other promotional material supplied to jobbers and dealers, and on attached tickets and labels, that lenses in their sunglasses had a diopter curve of 6 and were imported from Europe; to cease attaching to certain of their sunglasses, labels or tickets bearing fictitious and excessive prices represented thus as usual retail prices; and to disclose clearly and conspicuously by markings or labels on the product that certain sunglasses were manufactured in Japan.

Mr. Morton Nesmith and Mr. John J. Mathias supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 21, 1958, charging them with having violated the Federal Trade Commission Act by making deceptive and misleading statements with respect to the sunglasses which they distribute and sell.

After being served with the complaint respondents entered into an agreement, dated December 19, 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 assistant director and the acting 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 con-

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clusions 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 consist solely of the complaint and said 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 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, that said order to cease and desist 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Opti-Ray, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 970 Kent Avenue, Brooklyn 5, N.Y.

2. Respondents Leo Goldgram and Irving Goldgram are officers of the corporate respondent. These individuals dominate, control and direct the acts, practices and policies of the corporate respondent. The address of these individual respondents is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein. The complaint states a cause of action under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents Opti-Ray, Inc., a corporation, and its officers, and Leo Goldgram and Irving Goldgram, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or

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through any corporate or other device, in connection with the offering for sale, sale or distribution of sunglasses and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner:

(a) That their sunglass lenses have a given diopter curve unless such is the fact.

(b) That merchandise made in whole or in part of components of domestic or Japanese origin is imported from Europe.

(c) That a certain amount is the regular and usual retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail.

2. Placing in the hands of jobbers, retailers, dealers, or others, a means and instrumentality by and through which they may deceive and mislead the purchasing public concerning merchandise in the respects set out in paragraph 1 above.

3. Offering for sale or selling any product the whole or any substantial part of which was made in Japan or any other foreign country without clearly disclosing the country of origin of said product or part thereof.

ORDER DENYING MOTION TO STAY DECISION

The hearing examiner, on February 26, 1959, having filed an initial decision in this proceeding accepting an agreement containing a consent order to cease and desist theretofore executed by the respondents and counsel in support of the complaint, service of which initial decision was completed on March 16, 1959; and

The corporate respondent, Opti-Ray, Inc., on April 8, 1959, having filed a motion requesting a stay of the date on which said initial decision otherwise would become the decision of the Commission, contending in effect that the practices prohibited by the order were discontinued as a result of the Commission's investigation and, further, that the same or similar practices are currently engaged in by a number of the respondents' competitors against whom there are at present no outstanding orders to cease and desist; and

The Commission having considered the matter and being of the opinion that neither the fact that the respondents may have discontinued the practices on the eve of the Commission's corrective action nor the circumstance that there may be others in

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the industry engaged in the same or similar practices provides justification for the requested stay:

It is ordered, That the respondent's motion be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Opti-Ray, Inc., a corporation, and Leo Goldgram and Irving Goldgram, 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 contained in said initial decision.

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IN THE MATTER OF
ADVERTISERS ASSOCIATES OF AMERICA, INC., ET AL.

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

Docket 7304. Complaint, Nov. 18, 1958—Decision, May 6, 1959

Consent order requiring three affiliated New York concerns to cease selling advertising promotional plans, including contests described as "A Millionaire's Weekend Trip to Las Vegas," "Juvenile Delinquency Essay Contest," and "Safety On the Highways Essay Contest," to radio and television stations and local merchants by means of a variety of misrepresentations as in the order below set forth.

Mr. Morton Nesmith for the Commission.

Mr. Norman D. Levy, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 18, 1958, charging respondents with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements and practices in connection with their business of offering for sale and selling advertising promotional plans to radio and television stations and to merchants in areas surrounding such stations, and entering into contracts with stations and merchants with respect to such plans, which included contests of various types and the awarding of prizes furnished by respondents to the winners.

Thereafter, on January 14, 1959, respondents, 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 respondents Advertisers Associates of America, Inc., and Teleradio Advertisers, Inc., as New York corporations; respondent United Publicity, Inc., as a New Jersey corporation; and respondent Arthur Hammel as an officer of said corporations, trading and doing business as Teleradio Advertisers; all respondents having their principal office and place of business located in the Empire State Building at 350 Fifth Avenue, New York, N.Y.