

Decision

IN THE MATTER OF
NUT-DISTRIBUTORS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7335. Complaint, Dec. 15, 1958—Decision, May 21, 1959*

Consent order requiring White Plains, N.Y., sellers of peanut vending machines and electron tube testing devices and supplies and equipment used therewith, to cease making, in newspaper advertisements and through their salesmen, a variety of false offers of employment, sales assistance, investment required, profits, etc., as in the order below set forth.

Mr. Terral A. Jordan for the Commission.

Mr. Isaac Kaplan, of New York, N.Y., for respondents, except Pat Simone.

Respondent Pat Simone, for himself.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On December 15, 1958, the complaint herein was issued, charging respondents with the use of false, misleading and deceptive representations in connection with the advertising, offering for sale and sale in commerce of vending machines, electron tube-testing devices, machines or devices used in connection with the sale of merchandise, and the supplies and equipment used in connection therewith, which representations constitute unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

Thereafter, on March 31, 1959, respondents, their counsel, and counsel supporting the complaint 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.

Respondent I.E.M. Corp. is identified in the agreement as a New York corporation, of which individual respondent Margaret Hynes is president. The agreement identifies respondents Pat Simone and Michael Hynes as individuals, and states that the office and principal place of business of each of the respondents, except Pat Simone, is located at 19 Old Mamaroneck Road, White Plains, N.Y.; that the address of respondent Pat Simone is 58 Parkway South, Mount Vernon, N.Y.; and that the office and prin-

principal place of business of each of the respondents was formerly located at 100 West 72d Street, New York, N.Y.

All parties agree that the complaint may be dismissed with respect to respondent Nut-Distributors, Inc., a corporation, which has been dissolved, as set forth in a copy of a certificate by the Department of State of the State of New York, dated April 29, 1958, which certificate is incorporated into and made a part of the agreement; and that the complaint may likewise be dismissed with respect to respondent Paul Conant, who was merely an officer of convenience while an employee of the I.E.M. Corp., made no sales or representations in that capacity, owns no stock and has no interest therein, and has not formulated, directed or controlled the acts, practices or policies thereof, as set forth in an affidavit also incorporated into and made a part of the agreement.

Respondents signatory to the agreement 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.

In the agreement, respondents signatory thereto waive any further procedure 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 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 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 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 re-

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spondents 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 respondents I.E.M. Corp., a corporation, and its officers, and Margaret Hynes, individually and as an officer of said corporation, and Pat Simone and Michael Hynes, individuals, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of machines or devices which vend or dispense merchandise or which are accessory to the vending or dispensing of merchandise or the supplies and equipment used in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered either by respondents or by any other person, firm or corporation;
2. Established and profitable routes of said machines or devices are offered for sale;
3. Respondents will locate or relocate said machines or devices to assure desirable, suitable or profitable locations therefor;
4. Any amount of money is the total amount required to purchase or establish a route of said machines or devices which does not include all of the charges or expenses incident thereto;
5. The earnings or profits derived from the operation of respondents' said machines or devices will be any amount greater than that usually and customarily earned by operators of respondents' said machines or devices;
6. The cash investment required to purchase respondents' said machines or devices is secured;
7. Persons purchasing respondents' said machines or devices will not be required to engage in selling or soliciting;
8. The sale of merchandise by, through, or in connection with respondents' said machines or devices is a permanent business or is unaffected by economic depression;
9. Respondents will repurchase or find purchasers for or otherwise assist in the sale or disposition of said machines or devices sold by them;
10. Surveys or any other kind of investigations have been conducted by respondents to ascertain the feasibility of establishing a route of said machines or devices in any locality or that

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arrangements have been completed to establish a route of said machines or devices.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Nut-Distributors, Inc., and Margaret Hynes and Pat Simone as officers of said Nut-Distributors, Inc., and Paul Conant.

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 21st day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents I.E.M. Corp., a corporation; Margaret Hynes, individually and as an officer of said corporation; and Pat Simone and Michael Hynes, individuals, 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.

Decision

IN THE MATTER OF
HENRY KLOUS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 7371. Complaint, Jan. 23, 1959—Decision, May 21, 1959

Consent order requiring a manufacturer in Lawrence, Mass., to cease violating the Wool Products Labeling Act by labeling as "Wool," bales of wool stock which contained a substantial quantity of reprocessed wool, and by failing to label other wool products as required.

Mr. Alvin D. Edelson for the Commission.

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents Henry Klous Company, Inc., a corporation, and Aylward W. Corcoran, individually and as an officer of said corporation, and counsel supporting the complaint 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 transmitted to the hearing examiner for consideration.

The agreement states that respondent Henry Klous Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business at 500 Merrimack Street, Lawrence, Mass., and that individual respondent Aylward W. Corcoran is president of the said corporate respondent and maintains a business address at the same address as the corporate respondent.

The agreement disposes of all of this proceeding as to all parties save respondent G. Ernest Chiras, as to whom it is recommended therein that this proceeding be dismissed, for reasons set forth in an affidavit attached to the agreement.

The agreement provides, among other things, that the respondents signatory thereto admit all the jurisdictional facts alleged