

IN THE MATTER OF
STEWART & STEVENSON SERVICES, INC., ET AL.

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

Docket 7002. Complaint, Dec. 19, 1957—Decision, May 23, 1959¹

Consent order requiring five franchised wholesale distributors of General Motors diesel engines and replacement parts to cease conspiring to fix or maintain prices, terms, and conditions of sale for such replacement parts.

Before *Mr. Frank Hier*, hearing examiner.

Mr. F. C. Mayer, Mr. W. W. Rogal, and Mr. F. A. Snyder for the Commission.

Fulbright, Crooker, Freeman, Bates & Jaworski, by *Mr. W. N. Arnold, Jr.*, of Houston, Tex., for Stewart & Stevenson Services, Inc.

Taylor, Costen & Taylor, by *Mr. Hillman Taylor*, of Memphis Tenn., for Lewis Diesel Engine Company (Inc.) of Memphis, Tenn., and Lewis Diesel Engine Company (Inc.) of Little Rock, Ark.

Monnet, Hayes, Bullis, Grubb & Thompson, by *Mr. Coleman Hayes*, of Oklahoma City, Okla., for Diesel Power Company.

Adams & Reese, by *Mr. W. Ford Reese*, of New Orleans, La., for George Engine Company, Inc.

INITIAL DECISION AS TO CERTAIN RESPONDENTS

Pursuant to the provisions of Section 5 of the Federal Trade Commission Act, the Federal Trade Commission on December 19, 1957, issued and subsequently served its complaint in this proceeding against respondents Stewart & Stevenson Services, Inc.; Lewis Diesel Engine Company (Inc.), of Memphis, Tenn.; Lewis Diesel Engine Company (Inc.), of Little Rock, Ark.; Diesel Power Company; and George Engine Company Inc.

On March 10, 1959, there were submitted to the undersigned hearing examiner separate agreements by the above-named respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreements, the signatory respondents admit all the jurisdictional facts al-

¹ A similar order as to three other wholesalers was issued Nov. 20, 1959, 56 F. T. C. ____, at which time the complaint was dismissed as to Kennedy Marine Engine Co., Inc.

leged 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 agreements, signatory 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 these agreements.

Such agreements further provide that they dispose of all of this proceeding as to said 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 these agreements; that the latter shall not become a part of the official record unless and until they become a part of the decision of the Commission; that these agreements are for settlement purposes only and do not constitute an admission by the signatory 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 said 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 agreements and proposed orders, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding as to the signatory respondents, the agreements are hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Stewart & Stevenson Services, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 1718 Congress Street, Houston, Tex.

Respondent Lewis Diesel Engine Company (Inc.), of Memphis, Tenn., is a corporation existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 92 West Carolina Street, Memphis, Tenn.

Respondent Lewis Diesel Engine Company (Inc.), of Little Rock, Ark., is a subsidiary of Lewis Diesel Engine Company

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(Inc.), of Memphis, Tenn., and is a corporation existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 3021 East Broadway, in North Little Rock, Ark.

Respondent Diesel Power Company is a corporation existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal place of business located at 1801 Northeast 9th Street, Oklahoma City, Okla.

Respondent George Engine Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 630 Destrehan Avenue, Harvey, La.

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 Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tenn., and Diesel Power Company, their officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution of General Motors replacement parts for diesel engines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents named in the above-entitled proceeding, or, with any other party, to do or to perform the following:

Establish, fix, or maintain prices, terms, or conditions of sale of General Motors replacement parts for diesel engines, or adhere to any prices, terms, or conditions of sale so fixed or maintained.

Further ordered, That the respondents Lewis Diesel Engine Company (Inc.), of Little Rock, Ark., and George Engine Company, Inc., their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution of General Motors replacement parts for diesel engines in commerce, as "commerce," is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combina-

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tion, or conspiracy between or among any two or more of said respondents named in the above-entitled proceeding, or with any other party, or between any one or more of them and others not parties hereto to do or to perform the following:

Establish, fix, or maintain prices, terms, or conditions of sale of General Motors replacement parts for diesel engines, or adhere to any prices, terms, or conditions of sale so fixed or maintained.

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 as to respondents Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tenn., Lewis Diesel Engine Company (Inc.), of Little Rock, Ark., Diesel Power Company, and George Engine Company, Inc. did, on the 23d day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That said respondents 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.

IN THE MATTER OF
BERNARD J. SIMMONS

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

Docket 7348. Complaint, Jan. 6, 1959—Decision, May 26, 1959

Consent order requiring a seller of contact lenses in Philadelphia, Pa., to cease advertising falsely that his lenses were imported from Germany, were never irritating, could be worn all day with complete comfort by all, stayed in place under all conditions including violent exercise and swimming, were unbreakable, better than eyeglasses, were a new type of contact lenses and could not damage the eye; and that his summary of an Army Medical Research Laboratory Report set out all the disadvantages of contact lenses contained therein.

Mr. Kent P. Kratz supporting the complaint.

Mr. I. Raymond Kremer, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on January 6, 1959, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising the origin, effectiveness, wearing comfort and safety of the contact lenses sold by him. After being served with said complaint respondent appeared by counsel and entered into an agreement, dated April 2, 1959, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Com-