

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of November, 1959, become the decision of the Commission.

IN THE MATTER OF

ALLCHEM MANUFACTURING CO., INC., ET AL.

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

Docket 7502. Complaint, June 2, 1959—Decision, Nov. 7, 1959

Order requiring New York City sellers of their "Kill Flame" fire extinguisher to door-to-door salesmen and others for resale, to cease representing falsely on containers and in advertising that said product was safe and non-toxic when used to extinguish a fire, and that it was effective in extinguishing all types of fires.

Mr. Thomas F. Howder supporting the complaint.
Respondents, *Pro Se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint in this matter was issued on June 2, 1959 and served on each respondent on June 10, 1959. The initial hearing was held on August 12, 1959 pursuant to notice served on August 5, 1959. Each of the respondents failed to serve answer to the complaint and each respondent failed to appear at the hearing held. At the hearing counsel supporting the complaint moved that respondents be held in default and that the hearing examiner find the facts to be as alleged in the complaint. This motion was granted and the respondents being in default both in filing answers and the entering of an appearance at the hearing the examiner finds the facts to be as alleged in the complaint, such facts being as follows:

FINDINGS AS TO THE FACTS

1. Respondent Allchem Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 15 West 39th Street, in the City of New York, State of New York.

2. Respondent Mark Schrier is president of the corporate respondent, and respondent Charles Goldberg is the principal stockholder thereof. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

3. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of a fire extinguisher, known as "Kill Flame," to door-to-door salesmen and others for resale to the public.

4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the course and conduct of their business, and for the purpose of inducing the sale of their said fire extinguisher, respondents have made certain statements with respect to said product on the containers thereof and in the advertising of said product. The following are typical:

SAFE

NON-TOXIC

SAFE

positively does not contain carbon-tetrachloride, chloro-bromomethane (CB) or any other hazardous, toxic or possibly injurious ingredient.

6. Through the use of said statements, respondents represented and now represent that their said product is safe and non-toxic when used to extinguish a fire.

7. Said statements and representations were and are false, misleading and deceptive. In truth and in fact, said product is not safe and non-toxic when used to extinguish a fire. The chemical components of "Kill-Flame" are Freon 11 and Freon 12. These chemicals tend to and do decompose in a flame and on hot surfaces yielding highly toxic substances such as chlorine, phosgene, carbon

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monoxide, hydrochloric acid and hydrofluoric acid. In a closed room or when no ventilation is provided, these decomposition products may form harmful or lethal mixtures.

8. Respondents have likewise made certain statements with respect to said product on the cans containing said product and in the advertising thereof such as:

Protects against ALL types of fires—electrical, grease, oil, gasoline, etc.

Makes all other fire extinguishers obsolete, old-fashioned. Stops every kind of fire—electrical, grease, gasoline, etc. at the source!

9. Through the use of the aforesaid statements, respondents represented and now represent that their said product is effective in extinguishing all types of fires.

10. Said statements and representations were and are false, misleading and deceptive. In truth and in fact, said product is not effective in extinguishing sub-surface or deeply seated fires in ordinary combustible materials such as wood, cloth and paper.

11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of fire extinguishers of the same general kind and nature as that sold by respondents.

12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

CONCLUSION

The acts and practices of respondents, as set out above, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Allchem Manufacturing Co., Inc., a corporation, and its officers, and Mark Schrier, individually and as officer of said corporation, and Charles Goldberg, individually, 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 the fire extinguisher "Kill-Flame," or any other product of substantially similar composition, whether sold under the same name or under any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said product is safe, non-toxic, or otherwise non-injurious to health, when used to extinguish a fire.
2. Representing that said product is effective in extinguishing all types of fires, or otherwise misrepresenting the fire extinguishing capabilities of said product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on August 18, 1959, having filed his initial decision in this proceeding, service of which was completed as to all of the respondents on October 7, 1959; and

The Commission, on October 22, 1959, having entered its order denying a request of respondent Charles Goldberg that the matter be reopened, and having determined that the initial decision is appropriate in all respects to dispose of the proceeding:

It is ordered, That the aforesaid initial decision shall, on the 7th day of November, 1959, become the decision of the Commission.

It is further ordered, That the respondent, Allchem Manufacturing Co., Inc., a corporation, Mark Schrier, individually and as an officer of said corporation, and Charles Goldberg, individually, 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.

IN THE MATTER OF

BOOTH-KELLY LUMBER COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 8
OF THE CLAYTON ACT