

This matter having come on to be heard upon respondents' request in the nature of a motion to dismiss the complaint herein and the answer thereto filed by counsel supporting the complaint; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that the complaint should be dismissed:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant.

IN THE MATTER OF
WORTH CLOTHES, INC., ET AL.

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

Docket 7484. Complaint, May 6, 1959—Decision, Nov. 10, 1959

Consent order requiring New York City distributors of wearing apparel through two subsidiaries which operated retail stores in Peoria, Ill., and Akron, Ohio, respectively, to cease such false advertising in newspapers as that "\$90,000 Stock of New Apparel" was "Sacrificed"; and misrepresenting the customary retail price of suits through use of the abbreviation "Reg." in connection with amounts set out.

Mr. John J. Mathias for the Commission.

Hays, Sklar & Herzberg, by *Mr. Stephen B. Sobel*, of New York, N. Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with the use, in their advertising, of false, misleading and deceptive statements and representations as to the usual and customary retail prices of their wearing apparel, in violation of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Acting 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 Worth Clothes, 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 275 Seventh Avenue, in the City of New York, State of New York; that respondents Leon Lewis, Morris Lewis and David Lewis are officers of the corporate respondent; that respondent Abraham H. Lewis is an individual who acts in an executive capacity for the corporate respondent, and formulates, directs and controls the acts and practices thereof; and that the address of the individual respondents is the same as that of the corporate respondent.

It is recommended in the agreement that the complaint, insofar as it relates to respondents Leon Lewis, Morris Lewis, and David Lewis, individually, be dismissed, since the evidence discloses no circumstances, other than the normal control exercised by officers of a corporation, which would warrant charging these respondents as individuals.

The agreement provides, among other things, that respondents 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; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this 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 the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; 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; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps 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.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Worth Clothes, Inc., a corporation, and its officers, and Leon Lewis, Morris Lewis and David Lewis, as

officers of said corporation, and Abraham H. Lewis, an individual, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of wearing apparel or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the usual and customary retail price of a stock of merchandise is any amount which is in excess of the price at which such stock of merchandise is usually and customarily sold at retail;

2. That any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price at which said merchandise has been customarily and usually sold by respondents in the recent, regular course of their business.

It is further ordered, That the complaint herein, insofar as it relates to respondents Leon Lewis, Morris Lewis and David Lewis, individually be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may then warrant.

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 10th day of November, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Worth Clothes, Inc., a corporation, and Leon Lewis, Morris Lewis, and David Lewis, as officers of said corporation, and Abraham H. Lewis, an individual, 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

BART SCHWARTZ INTERNATIONAL TEXTILES, LTD.,
ET AL.