

IN THE MATTER OF
EDWIN LEASK DOING BUSINESS AT E. LEASK ET AL.

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

Docket 7426. Complaint, Feb. 26, 1959—Decision, Feb. 18, 1960

Order requiring a lumber dealer in Sydney, Australia, and his American sales representative in Palo Alto, Calif., to cease describing—in sales orders, letters, invoices, and by oral statements—as “Tasmanian Oak” or “Australian Oak,” wood flooring which was not a species of oak, the most popular type of hardwood used for flooring in the United States, but was of the genus Eucalyptus which sold at a lower price than genuine oak.

Mr. Edward F. Downs supporting the complaint.

Mr. Arthur D. Neuron, of San Francisco, Calif., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Edwin Leask, an individual trading and doing business as E. Leask, and Charles A. Ferrari, an individual, hereinafter called respondents, violated the provisions of the Federal Trade Commission Act by misrepresenting the species of wood flooring which the respondents sell and distribute.

The respondents, through their attorney, answered the complaint, admitting some but denying most of the allegations. A hearing was held at which time counsel for the parties offered testimony in support of and against the allegations set forth in the complaint. Counsel supporting the complaint has filed proposed findings of fact, conclusions, and order. Respondents, although afforded an opportunity to do so, did not file proposed findings of fact, conclusions and order. All proposed findings of fact not specifically found herein are rejected. Upon the basis of the entire record, the undersigned hearing examiner makes the following findings of fact, conclusions of law, and issues the following order:

FINDINGS OF FACT

1. The respondent Edwin Leask, an individual, sometimes doing business under the name of E. Leask and resides in Sidney, Australia. His present address is 33 McQuarie Place, Sidney, Australia. Mr. Leask is in the business of offering for sale, selling and distributing wood flooring, some of which is sold and shipped to persons in the United States. Mr. Leask has a United States mailing address at Post Office Box 176, Palo Alto, California.

2. The respondent Charles A. Ferrari is an individual who resides at 1385 College Avenue, Palo Alto, California. Mr. Ferrari is an agent, sales representative, and lumber broker in the United States for Mr. Leask.

3. Mr. Ferrari, as representative or broker for the respondent Leask, obtains orders for wood flooring from contractors and distributors in the United States and forwards the orders to Mr. Leask in Australia. Mr. Leask then fills the orders by shipping the wood flooring directly from Australia to the purchaser in the United States. The complaint in this proceeding involves sales and shipments of wood flooring from Australia to the United States which is described in sales orders, letters, invoices, and oral statements originated by the respondents and addressed to the trade as "Tasmanian Oak."¹ Through the use of such statements, representations

¹ Some of the exhibits received in evidence describe the wood flooring as "Australian Oak" instead of "Tasmanian Oak." Tasmania is a part of Australia and the description of "Tasmanian Oak" and "Australian Oak" are used interchangeably.

Conclusions

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and descriptions in their sales orders, invoices, letters and other written memoranda describing said wood flooring as "Tasmanian Oak" or "Australian Oak," the respondents have represented that said wood flooring is a species of oak imported from Tasmania. The evidence and testimony show conclusively that said wood products are not a species of oak but are of the genus *Eucalyptus*. Oak is of the genus *Quercus*. Indeed, this is admitted by respondents in their answer. The evidence shows that oak is the most popular type of hardwood used for flooring in the United States. Respondents' "Tasmanian Oak" sells at a lower price than genuine oak used for the same purpose in the United States. By the aforesaid practices, respondents place in the hands of distributors and purchasers of their wood flooring a means and instrumentality by and through which they may mislead the public as to the true species thereof. By reason of respondents' designation and description of their wood flooring as "Tasmanian Oak" or "Australian Oak" to their customer purchasers, said purchasers, in turn, have no other name by which to describe said products to their customer purchasers. Accordingly, such purchasers sell it under the same name to their customers.

4. In the course and conduct of their business, and at all times mentioned herein, the respondents have maintained a substantial course of trade in said wood flooring products and have been in substantial competition in commerce, with corporations, firms and individuals in the sale of wood flooring, including oak flooring. The use by the respondents of the above descriptions of their wood flooring as oak are false, misleading, and deceptive, and 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.

CONCLUSIONS

The aforesaid acts and practices of respondents, as herein found, 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. The Commission has jurisdiction over the respond-

ents and over their acts and practices as herein found, and this proceeding is in the public interest. Therefore,

It is ordered, That respondents Edwin Leask, an individual trading as E. Leask, or trading under any other name or names, and Charles A. Ferrari, an individual, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of lumber, wood or wood products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the terms "Tsamanian Oak," "Australian Oak" or otherwise or placing in the hands of others the means of representing that lumber, wood or wood products which are not of the genus *Quercus* are a species of oak.

2. Misrepresenting or placing in the hands of others the means of misrepresenting in any manner the genus or species of any lumber, wood or wood products.

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 18th day of February, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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

CHIPS DISTRIBUTING CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE