

IN THE MATTER OF

BACHMANN BROS., INC., ET AL.

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

Docket 7789. Complaint, Feb. 24, 1960—Decision, June 16, 1960

Consent order requiring Philadelphia distributors to cease representing falsely that imported products were made in the United States through such practices as printing "Manufactured by Bachmann Bros., Inc., * * *" on display cards attached to their Japanese-made "Champion" sunglasses, and through failing to mark cases enclosing the sunglasses with the country of origin.

Mr. Frederick McManus, supporting the complaint.

Mr. Charles A. Wolfe, of *Montgomery, McCracken, Walker & Rhoads*, of Philadelphia, Pa., for respondents.

INITIAL DECISION OF LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding, filed and issued on February 24, 1960, alleges that respondents violated the Federal Trade Commission Act by marketing certain products in interstate commerce, including sunglasses, without properly labelling said products to show their country of origin. Specifically, the complaint charges respondents with selling in interstate "commerce," as that term is defined in the Federal Trade Commission Act, sunglasses which are made in Japan, but are so labelled as to give the deceptive impression that said sunglasses are manufactured by respondents in the United States of America. A true copy of said complaint was served upon respondents as required by law. Thereafter respondents appeared by counsel and entered into an agreement dated April 11, 1960, which purports to dispose of all of this controversy as to all respondents, without the necessity of a formal hearing. Said agreement has been executed by or on behalf of all of the respondents, respondents' counsel, and counsel supporting the complaint. The agreement has been approved by the Director, Associate Director, and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. The agreement contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this controversy. On April 19, 1960, the agreement was submitted to the undersigned hearing examiner for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

In and by the agreement respondents admit all the jurisdictional facts alleged in the complaint, and further 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 waive: (a) Any further procedural steps before the hearing examiner and the Federal Trade Commission; (b) the making of findings of fact or conclusions of law; and (c) all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

In the agreement of April 11, 1960, the parties agree: That the record on which the initial decision shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become part of the official record unless and until it becomes a part of the decision of the Commission; that the order to cease and desist entered pursuant to said agreement shall have the same force and effect as if entered after a full hearing; that said order may be altered, modified or set aside in the manner provided for other orders; and that the complaint filed herein may be used in construing the terms of such order to cease and desist. 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed at the time that this decision becomes the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The hearing examiner accordingly, makes the following jurisdictional findings and enters the following cease and desist order:

JURISDICTIONAL FINDINGS

1. Respondent Bachmann Bros., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1400-38 East Erie Avenue, Philadelphia, Pennsylvania.

Respondents J. Chester Crowther, Walter F. Newby, Albert H. Redles, and Bayard H. Crowther are officers of the corporate re-

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spondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents hereinabove named.

3. The complaint filed herein states a good cause of action against the respondents under the Federal Trade Commission Act, and this proceeding is in the public interest.

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents Bachmann Bros. Inc., a corporation, and its officers, and J. Chester Crowther, Walter F. Newby, Albert H. Redles and Bayard H. Crowther, individually and as officers of said corporation, and respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sunglasses or other merchandise 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 a product manufactured in a foreign country is manufactured in the United States.

2. Representing, directly or by implication, that respondents, or any of them, manufacture a product, when it is manufactured by others.

3. Offering for sale or selling any product which is in whole or substantial part of foreign origin, without clearly and conspicuously disclosing on such product, and if such product is enclosed in a package or container, on the package or container, or if displayed on cards, upon such cards, in a manner that it will not be hidden or readily obliterated, the country of origin thereof.

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 16th day of June, 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.

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IN THE MATTER OF

ROBERTS RECORD DISTRIBUTING COMPANY, INC.,
ET AL.

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

Docket 7800. Complaint, Mar. 2, 1960—Decision, June 16, 1960

Consent order requiring a St. Louis, Mo., distributor of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have its records broadcast frequently in order to increase sales.

Mr. John T. Walker and Mr. James H. Kelley for the Commission. Rassieur, Long & Yawitz, by Mr. Milton Yawitz, of St. Louis, Mo., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on March 2, 1960, issued its complaint herein, charging the above-named respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public. Respondents were duly served with process.

On May 9, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by respondents, their counsel and counsel supporting the complaint, under date of May 2, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative