

Decision

IN THE MATTER OF
OUTDOOR SUPPLY CO., INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7482. Complaint, May 6, 1959—Decision, Aug. 9, 1960*

Order requiring a manufacturer of outdoor supply equipment in Long Island City, N.Y., to cease misrepresenting the size of its sleeping bags by labels and advertising describing as "cut size 36 x 72", etc., bags the finished size of which was some five inches shorter and three inches narrower than the "cut size".

Mr. Charles W. O'Connell supporting the complaint.
Respondent, *Pro Se*.

SECOND INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On May 6, 1959 the Commission issued its complaint in this matter charging respondent with using false, misleading and deceptive statements to describe sleeping bags which it made and sold. A letter from Sidney W. Henschel, vice president of respondent, was received and treated as an answer. In this answer it was asserted that the statements charged to be unfair and unlawful were required to be used in labelling under the regulations of the State of California. It was also asserted that many of respondent's competitors used the same descriptive statements.

A hearing was held and the hearing examiner filed his initial decision on September 15, 1959. Thereafter, the Commission remanded the matter to the hearing examiner for the purpose of receiving additional evidence. Additional evidence has now been taken and counsel supporting the complaint has filed additional proposed findings of fact and order which are adopted herein. An official of respondent who appeared for it has not filed any proposed findings of fact and order.

Upon consideration of the whole record the following findings as to the facts are made.

1. Respondent, Outdoor Supply, 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 27-01 Bridge Plaza North, Long Island City, N.Y.

2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, sale and advertising of sleeping bags and various other types of outdoor supply equipment.

3. In the course and conduct of its business respondent now causes, and for some time last past has caused, its said products, when sold,

to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in its said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Respondent, in connection with the sale of its sleeping bags, has represented the size of such bags by use of the descriptions "cut size 36 x 72" or "full cut size 36 x 72" and has prefaced other dimensions with the terms "cut size" and "full cut size". The sizes following such descriptions are invariably larger than the actual size of the bags in question. The finished size is approximately five inches shorter than the "cut size" and approximately three inches narrower than the "cut size".

5. Bags carrying size descriptions as set out above are placed in the hands of retailers by respondent.

6. In the course and conduct of its business at all times mentioned herein, respondent has been engaged in substantial competition in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondent.

7. Respondent by use of labels and advertising carrying the description "cut size" or "full cut size", has represented the size of their sleeping bags through the instrumentality of having such labels and advertising placed in the hands of retailers who deal directly with the public.

8. Respondent's practice of marking sleeping bags so as to show the cut sizes thereof has the tendency and capacity to mislead the public into believing that such dimensions are the actual dimensions of the finished product.

9. Respondent's advertising and labeling of the "cut sizes" of its sleeping bags instead of their actual or finished sizes has a tendency to lead to the purchase of substantial quantities of these products and may result in a diversion of business from competitors who clearly disclose the actual sizes of their sleeping bags.

10. It appears that bedding regulations of at least one state require labels of sleeping bags to show the cut size of the material forming the outer layer of the bag. Apparently this requirement was considered to be reasonably informative and this assumption and the assumption that it is commonplace in the industry to advertise and label the cut size rather than the finished or actual size have been considered in arriving at the conclusion that such repre-

sentations are half-truths and misleading. See *Royal Oil Corporation, et al. v. F.T.C.*, 262 F. 2d 741. The same State also requires that "the size stated on labels of articles of bedding other than comforters and sleeping bags shall be the minimum finished size". (Page 57 of Respondent's Exhibit 2.) The record does not explain why these regulations permitted comforters and sleeping bags to be labeled differently from other bedding articles. It is concluded that in order to prevent purchasers from being misled it is important that the finished size be shown either in addition to, or instead of, the "cut size", if any size is stated.

The conclusion is inescapable that there is an element of deception in the practice of advertising or labeling the cut sizes without stating, with at least equal prominence, the finished size. It is difficult to understand the reason for informing prospective customers for this product of the cut size of the material used in its production. In the matter of size it is the size of the finished product that is of primary importance to the consumer just as it is with articles of wearing apparel. In a sense a sleeping bag is worn and one that is too small is less suitable and more uncomfortable than most articles of apparel. There is no doubt that this practice can cause considerable inconvenience and monetary loss to users and is a deceptive practice. It may be as respondent contends that the practice is widely followed in this industry but there is no reason to believe that the buying public is aware of the significance of the term cut size or of the amount the finished size is reduced from the cut size. This difference will vary depending upon the thickness of the insulation used, tufting and the amount of the outside material folded before sewing. Many buyers of camping equipment are young people or their fathers, neither of whom are notorious for careful buying, and they are more easily misled than are housewives who may be familiar with cutting and sewing fabrics.

It also appears probable that uninformed or careless retail clerks would be likely to state the cut size as the actual or finished size to customers.

Respondent has not falsely represented its product but its practice does have the capacity to mislead or deceive and places in the hands of retailers the means to mislead or deceive. A substantial number of the witnesses were misled and deceived by the terms "cut size" and "full cut size". It is reasonable to assume that the use of these terms in reference to sleeping bags has the tendency and capacity to mislead and deceive purchasers into believing that they are the actual dimensions of the finished products.

Decision

57 F.T.C.

CONCLUSION

The acts and practices of the respondent, as hereinabove found, were and are, to the prejudice and injury of respondent's competitors and to the public, and constituted, and now constitute, unfair acts and practices and an unfair method of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Outdoor Supply Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale or distribution of sleeping bags or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, labeling or otherwise representing the "cut size" or dimensions of materials used in their construction, unless such representation is accompanied by a description of the finished or actual size, with the latter description being given at least equal prominence;
2. Misrepresenting the size of such products on labels or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on September 16, 1959, having filed an initial decision in this proceeding and the Commission having determined upon its review thereof that the record as then constituted did not support the hearing examiner's conclusions, by order dated October 27, 1959, vacated the initial decision and remanded the matter for the purpose of receiving additional evidence; and

The matter now coming before the Commission upon its review of the hearing examiner's second initial decision, filed June 15, 1960; and

The Commission having considered the entire record and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That the hearing examiner's second initial decision, filed June 15, 1960, shall, on the 9th day of August, 1960, become the decision of the Commission.

