

IN THE MATTER OF
GARAY & CO., INC., ET AL.

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

Docket 7836. Complaint, Mar. 21, 1960—Decision, Aug. 30, 1960

Consent order requiring New York City distributors to cease using the term
“Copy Calf” and picture of a calf in advertising in newspapers and advertising material furnished their retailers and on attached tags, to describe ladies’ plastic handbags.

Complaint

57 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Garay & Co., Inc., a corporation, and Arnold Garay and Aaron Jarvis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Garay & 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 office and place of business located at 33 East 33d Street, New York, N.Y. Individual respondents Arnold Garay and Aaron Jarvis are officers of said corporation. They formulate, direct and control the policies of the corporate respondents. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of ladies' handbags, including a handbag sold under the name of "Copy Calf," to retailers for resale to the public.

PAR. 3. In the course and conduct of their business respondents cause and have caused said handbags, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states, and maintain, and have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents in the conduct of their business have been, and are, engaged in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of ladies' handbags.

PAR. 5. Respondents in the course and conduct of their said business, and for the purpose of inducing the purchase of their ladies' handbags have placed advertisements in newspapers of general circulation, and have furnished advertising matter to retailers of their products for placement in newspapers of general circulation. Among and typical, but not all inclusive, of the statements appearing in said newspaper advertisements are the following:

(The picturization of a calf surrounded by ladies' handbags.)

"I've been compromised—My hide's intact, but oh—my pride. Me, they, put inside the bag while Copy Calf* glows out in front. It's so soft and supple

with the rich gloss that comes from easy living. Ah to be a Garay Copy Calf instead of the real live thing."

(At the bottom of the page the following appears: "** Garay's Calf-grained plastic.")

Respondents also attach tags to their said handbags upon which the name "Copy Calf" is printed.

PAR. 6. By and through the use of the aforesaid statements respondents represented and now represent that their "Copy Calf" handbags are composed of leather.

PAR. 7. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, the said handbags do not contain leather and are composed largely of plastic.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were true, and into the purchase of substantial quantities of the aforesaid products, because of said mistaken and erroneous belief. As a result thereof, trade in commerce has been unfairly diverted to the respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, 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.

Garland S. Ferguson, Esq., for the Commission.

Sol Siegel, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 21, 1960, charging them with having violated the Federal Trade Commission Act by misrepresenting the ladies' handbags they sell. Respondents appeared by counsel and entered into an agreement, dated June 27, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the appropriate officials of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner

herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 said 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§ 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Garay & 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 office and place of business located at 33 East 33d Street, New York, N.Y. Individual respondents Arnold Garay and Aaron Jarvis are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

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Complaint

It is ordered, That respondents Garay & Co., Inc., a corporation, and its officers, and Arnold Garay and Aaron Jarvis, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale of ladies' plastic handbags, or any other plastic product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the term "Copy Calf" or any other words or terms of similar import in connection with said products;

(2) Representing in any manner, directly or by implication, that said products are leather.

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 30th day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Garay & Co., Inc., a corporation, and Arnold Garay and Aaron Jarvis, individually and as officers of said corporation, 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

MANGOLD DISTRIBUTING COMPANY ET AL.