

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 November 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

SIEGMUND WERNER, INC., ET AL.

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

Docket 7961. Complaint, June 17, 1960—Decision, Nov. 17, 1960

Consent order requiring manufacturers in Bloomfield, N.J., to cease pre-ticketing their sleeping bags with fictitious and excessive prices represented falsely thereby as the usual retail prices, and to cease misrepresenting the sizes of various of said bags by setting out on attached labels "cut size", "full size", etc., dimensions almost invariably larger than the actual sizes of the finished product.

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 Siegmund Werner, Inc., a corporation, and Siegmund Werner, Harry Douty and Hedy Werner, 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 Siegmund Werner, 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 225 Belleville Avenue, in the City of Bloomfield, State of New Jersey. Said corporation operates branches in Los Angeles, California and Chicago, Illinois.

Respondents Siegmund Werner, Harry Douty and Hedy Werner are individuals and officers of said corporate respondent. They

formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address 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 manufacture, distribution, sale and advertising, among other things, of sleeping bags.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey and from branches in Los Angeles, California and Chicago, Illinois to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in their said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have engaged in the practice of using fictitious prices in connection with their said products by attaching or causing to be attached thereto, tags upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and customary retail prices of said sleeping bags when, in truth and in fact, said stated amounts are fictitious and in excess of the usual and regular retail prices of said sleeping bags, in the trade areas where the representations are made.

PAR. 5. By the aforesaid practice respondents place in the hands of retailers and other purchasers of their products, the means and instrumentalities by and through which they may mislead the public as to the usual and customary retail prices of said sleeping bags.

PAR. 6. Respondents, in connection with the sale of their sleeping bags, have engaged in misrepresenting the sizes of various of said bags on tags sewn or attached thereto and in advertisements of said bags. Respondents' size descriptions are stated as "cut size," "full cut size," "full size" and "size." The dimensions following such descriptions are almost invariably larger than the actual size of the bags in question. The terms "cut size," "full cut size," "full size" and "size," when used in the manner as stated above, are confusing and tend to indicate that sizes following such descriptions are the actual sizes of the finished product. In truth and in fact, this is almost never the case, as the actual sizes of the finished product are substantially smaller than the sizes set out on the labels and as advertised.

PAR. 7. In the course and conduct of their business at all times mentioned herein, respondents have been engaged in substantial

competition in commerce, with corporations, firms and individuals in the sale of sleeping bags.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices, 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' products 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.

PAR. 9. The aforesaid acts and practices of 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.

Mr. Charles W. O'Connell for the Commission.

Mr. Irving Mandelbaum, of Newark, N.J., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 17, 1960, charging Respondents with violation of the Federal Trade Commission Act, by using fictitious prices in connection with the sleeping bags which they manufacture, distribute, sell and advertise, and by misrepresenting the sizes of various of said bags.

Thereafter, on September 19, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Acting Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on September 29, 1960, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Siegmund Werner, Inc., as a New York corporation, with its office and principal place of business located at 225 Belleville Avenue, Bloomfield, New Jersey, and individual Respondents Siegmund Werner, Harry Douty and Hedy Werner as officers of the corporate Respondent, stating further that Respondents Siegmund Werner and Harry Douty formulate, direct and control the acts and practices of the corporate Respondent, their address being the same as that of the corporate Respondent.

The agreement contains a recommendation that the complaint be dismissed as to Respondent Hedy Werner in her individual capacity

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Order

for the reasons set forth in the affidavit which is attached to the agreement and made a part thereof.

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.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and 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. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist, finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered. That Respondent Siegmund Werner, Inc., a corporation, and its officers, and Respondents Siegmund Werner and Harry Douty, individually and as officers of said corporation, and Respondent Hedy Werner, as an officer of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the 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;

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2. Misrepresenting the size of such products on tags or advertising or in any other manner;

3. Representing, by preticketing or in any other manner, that a certain amount is the retail price of merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold at retail in the trade area where the representation is made;

4. Furnishing any means or instrumentality to others by and through which they may mislead the public as to any of the matters referred to in Paragraphs 1, 2 and 3.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Respondent Hedy Werner in her individual capacity.

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 17th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Siegmund Werner, Inc., a corporation; Siegmund Werner and Harry Douty, individually and as officers of said corporation; and Hedy Werner, as an officer 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