

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
NATIONAL TELEVISION TUBE, INC., ET AL.

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

Docket 8124. Complaint, Sept. 26, 1960—Decision, Mar. 1, 1961

Consent order requiring a Saddle Brook, N. J., manufacturer to cease representing falsely on labels and otherwise that its rebuilt television picture tubes which contained used parts were new in their entirety, and to clearly disclose that such tubes were rebuilt.

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 National Television Tube, Inc., a corporation, and John Sansone, individually and as an officer 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 National Television Tube, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Route 46 and 6th Street, Saddle Brook, New Jersey.

Respondent John Sansone is an individual and officer of said corporation. He formulates, controls and directs the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to distributors who sell to others for resale to the public.

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 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 said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents made certain statements concerning their products on labels and by other media. Among and typical of such statements is the following:

PREMIER
Television Picture Tube
* * *
This Is A NEW FULLY
GUARANTEED TUBE

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PAR. 5. Through the use of the aforesaid statement, respondents represented that certain of their television picture tubes were new in their entirety.

PAR. 6. Said statement and representation was false, misleading and deceptive. In truth and in fact, the television picture tubes represented as being "new" are not new in their entirety.

PAR. 7. The television picture tubes sold by respondents are rebuilt and contain used parts. Respondents do not disclose on the tubes, or on invoices, or in an adequate manner on the cartons in which they are packed, or in any other manner, that said television picture tubes are rebuilt and contain used parts.

When television picture tubes are rebuilt containing used parts, in the absence of any disclosure to the contrary, or in the absence of an adequate disclosure, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 8. By failing to disclose the fact as set forth in Paragraph Seven, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

PAR. 9. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statement and representation and the failure of respondents to disclose on their television picture tubes, on invoices, and in adequate manner on the cartons in which they are packed, or in any other manner, that they are rebuilt containing used parts, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of respondents' tubes 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. 11. 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. Michael J. Vitale supporting the complaint.

Mr. William M. Ivler, of New York, N. Y., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, deceptive and misleading statements concerning certain rebuilt television picture tubes containing used parts, which are manufactured and sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated December 19, 1960, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by the respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Associate Director, and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and 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.

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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 upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent National Television Tube, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Route 46 and 6th Street, Saddle Brook, New Jersey.

Respondent John Sansone is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent. His 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 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.

ORDER

It is ordered, That respondents National Television Tube, Inc., a corporation, and its officers, and John Sansone, individually and as an officer of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of rebuilt television picture tubes containing used parts, 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 said television picture tubes are new.
2. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices, and in advertising, that said tubes are rebuilt and contain used parts.
3. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

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 1st day of March, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That 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
WEST-WARD, INC., ET AL.

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

Docket 8141. Complaint, Oct. 13, 1960—Decision, Mar. 1, 1961

Consent order requiring New York City distributors of drugs to retailers, hospitals, the U.S. Government, etc., to cease representing falsely in advertisements in catalogs and periodicals, letters and other mail that they employed a "quality control system"; that assays and quantitative analyses were made of each of their numerous preparations and in their own laboratories; and that the stability of certain of their enteric coated tablets had been established as to potency and disintegration characteristics.

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 West-ward, Inc., a corporation, and Samuel G. Goldstein, individually and as an officer 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 West-ward, 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 745 Eagle Avenue in the City of New York, State of New York.

Respondent Samuel G. Goldstein is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

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tices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution to retail druggists and pharmacists, hospitals, institutions and the United States Government, of preparations containing ingredients which come within the classification of drugs and food as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

Among, but not all inclusive of, the said preparations are those designated as follows. In certain instances the therapeutic importance of such preparations and their principal uses, as shown in respondents' literature, are set out.

1. *Designation:* All-The Vitamins and Minerals
2. *Designation:* Ammonium Chloride Tablets—E.C.
3. *Designation:* Sodium Salicylate Tablets—E.C.
4. *Designation:* Amphetamine (5 mg.) with Amobarbital (32 mg.) Tablets
Uses: For Dysmenorrhea, Fatigue, Obesity and as Vasoconstrictors.
5. *Designation:* Digoxin Tablets, 0.25 mg. U.S.P.
Uses: For Cardiac Insufficiency. * * * Indicated in all clinical conditions in which the cardio-tonic effect of digitalis is indicated, and prompt action is required.
6. *Designation:* Hydrocortisone Tablets, 20 mg.
Uses: For Allergy, Arthritis, Dermatitis, Eczema.
7. *Designation:* Methyl Testosterone Tablets—C.T.
Uses: As Androgens and for Hypogonadism (Male) Lactation (Suppression), Uterine (Functional) Bleeding.
8. *Designation:* Niacinamide Tablets, U.S.P.
Uses: For Pellagra and chronic alcoholism.
9. *Designation:* Penta-erythritol Tetranitrate with Phenobarbital Tablets.
Uses: A long lasting oral vasodilator for prophylaxis in angina pectoris.
10. *Designation:* Phenobarbital Tablets
Uses: For Anxiety and Apprehensive States, Convulsions and as Sedatives.
11. *Designation:* Secobarbital Sodium Capsules
Uses: For Anxiety and Apprehensive States, Convulsions, Nausea and as Sedatives.
12. *Designation:* Thyroid Tablets
Uses: For Abortion (Habitual and Threatened) and Obesity.

PAR. 3. Respondents cause their said preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in periodicals and catalogs, letters and other mailing pieces, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations by retail druggists and pharmacists, hospitals, institutions and the United States Government; and have disseminated, and caused the dissemination of, advertisements concerning said preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

* * * enclosed is a copy of the West-ward Catalog, 1960 edition, which lists approximately 400 pharmaceutical products only under the generic name . . . and every product listed is subjected to West-ward's rigid quality control system. This control is your professional assurance that when you dispense a West-ward product, your patron receives the very best at the most reasonable price.

* * * Our prices are * * * . . . consistent with the costs of maintaining a rigid, complex and intensive control system so that we can provide the profession with quality controlled, generic name products of unvarying excellence and uniformity; this is your professional assurance for recommending West-ward products.

(Direct mailing to pharmacists over name
Earl J. Buchanan, Vice-Pres. Sales).

Since quality control is such an important factor in the pharmaceutical profession, Mr. Buchanan of our sales department, has asked me to write you about the West-ward quality control system.

As the chief chemist of West-ward's laboratories, I give you my professional assurance that the standard operational procedures comprising the West-ward quality control system, guarantee the reliability and consistently high quality of West-ward products. I state categorically, that no West-ward product leaves our plant without being subjected to this system.

Briefly, our quality control system is divided into five operational phases; raw materials, products-in-process, finished products, labels and packaging. In each phase there are many intermediate steps of checks and balances too numerous to mention here; however, one of the most important, and of greatest interest to you, is the actual assay of the finished product illustrated by the enclosed assay card. This card outlines all official tests (U.S.P., NF

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and NND (which are performed by our own chemists and technicians, in our own laboratories under my personal supervision.

(Direct mailing to pharmacists over name
Henry Kubicki, Chief Chemist).

West-ward's Ammonium Chloride Tablets enteric coated, are of a superior quality. Infinite care is taken to assure that each and every tablet meets the most exacting specifications for potency and stability. In addition West-ward's enteric coating is standardized for * * * disintegration time * * *. (West-ward 1960 Catalog).

West-ward's Sodium Salicylate Tablets, enteric coated, are of a superior quality. Infinite care is taken so that each and every tablet meets the most exacting specifications for potency and stability. In addition West-ward's enteric coating is standardized for * * * disintegration time * * *. (West-ward 1960 Catalog).

PAR. 6. Through the use of said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. By stating that they have "quality control", a "quality control system" and a "control system", that they employ an adequate control system.

2. By stating that assays are performed on every preparation offered for sale and sold by them, that quantitative analyses are made of each preparation which assure the amount of each of the active ingredients therein.

3. That the stability of certain of respondents' enteric coated tablets as to potency and disintegration characteristics has been established.

4. That the assays they allegedly perform on all of their preparations are performed in their own laboratories.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. Respondents do not have an adequate control system.

2. Respondents do not perform assays on some of their preparations and make no quantitative analyses thereof. With respect to some other preparations the purported assays are inadequate to assure that the amount of each active ingredient claimed to be therein is, in fact, present in the amount claimed.

3. The stability of certain of respondents' enteric coated tablets has not been established either as to potency or as to disintegration characteristics.

4. Many of the preparations offered for sale and sold by respondents are manufactured for them by service contractors. When so

manufactured, many of such assays as may be performed are performed only by said service contractors in their own laboratories.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Berryman Davis supporting the complaint.

Mr. Carson Gray Frailey of Washington, D. C., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 13, 1960 charging them with the dissemination of false advertisements constituting unfair and deceptive acts and practices in commerce within the intent and meaning and in violation of the Federal Trade Commission Act.

On December 15, 1960, counsel submitted to the undersigned Hearing Examiner an agreement, dated December 9, 1960, among respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The Hearing Examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

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(2) Further procedural steps before the Hearing Examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of 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.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the Hearing Examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent West-ward, 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 745 Eagle Avenue in the City of New York, State of New York.

2. Respondent Samuel G. Goldstein is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents, West-ward, Inc., a corporation, and its officers, and Samuel G. Goldstein, individually and 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 drugs or food do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement:

(a) Uses the terms "quality control", "quality control system" or "control system", or any other words or terms of similar import or meaning; or

(b) Represents, directly or indirectly:

(1) That respondents have an adequate control system, or misrepresents the nature or extent of the procedures used by them in the manufacture, preparation or distribution of drugs or food.

(2) That a quantitative analysis is made of each of respondents' preparations to determine the amount of each of the active ingredients contained therein.

(3) That respondents have established the stability as to potency or disintegration characteristics of their enteric coated tablets, unless such is the fact.

(4) That respondents perform assays in their own laboratories on all of the preparations offered for sale and sold by them.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the terms or representations prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed January 10, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that through inadvertence the word "from" erroneously appears in the seventh line of the preamble of the order contained in the initial decision; and

The Commission being of the opinion that this departure from the agreement of the parties should be corrected:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by striking from the seventh line of the preamble of the order contained in said initial decision the word "from" as it appears immediately following the word "desist".

It is further ordered, That the initial decision, as so modified, shall, on the 1st day of March, 1961, become the decision of the Commission.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this decision, 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 contained in the aforesaid initial decision, as modified.

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IN THE MATTER OF

ALFRED MIELZINER TRADING AS MIELZINER FURS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 8179. Complaint, Nov. 23, 1960—Decision, Mar. 1, 1961

Consent order requiring a Cleveland, Ohio, furrier to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Alfred Mielziner, an individual trading as Mielziner Furs, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Alfred Mielziner is an individual trading as Mielziner Furs with his office and principal place of business located at 13129 Shaker Square, Cleveland, Ohio.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which had been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects: