

IN THE MATTER OF  
SMITH-FISHER CORPORATION ET AL.

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

*Docket 8169. Complaint, Nov. 8, 1960—Decision, Mar. 30, 1961*

Consent order requiring Owosso, Mich., manufacturers of electric fence chargers designed to prevent farm animals from straying, to cease representing falsely in advertisements in trade journals and newspapers and otherwise, that their "Super-Atom Fence Charger" would confine farm animals under all conditions without the use of insulators; would charge 50 miles of fence without insulators; was 20 times more short resistant than all other chargers and would not be shorted by green grass or brush, rain, or ice; adjusted automatically to climatic conditions; and was guaranteed for two years.

On July 25, 1961 (59 F. T. C. —), this matter was disposed of by separate consent order as to the remaining individual.

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 the Smith-Fisher Corporation, a corporation, and Jack D. Smith and Frank Fisher, 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 Smith-Fisher Corporation is a corporation organized, existing and doing business under and by virtue of

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the laws of the State of Michigan. Its office and principal place of business is located at 1426 North Michigan, Route 47, Owosso, Michigan.

Individual respondents Jack D. Smith and Frank Fisher are officers of said corporation. They formulate, direct and control the policies and practices of the corporate respondent. The individual respondents' 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 manufacturing, offering for sale and selling fence chargers known as "Super Atom Charger".

In the regular and usual course and conduct of their business, respondents cause, and have caused, said fence charger, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other States of the United States.

Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their said product, respondents have made certain statements concerning said product in advertisements inserted in trade journals and newspapers and by means of circulars and other advertising material circulated among prospective customers in various states. Among and typical, but not all inclusive, of said statements are the following:

## NEW SUPER-ATOM FENCE CHARGER

Staple fence wire to wood posts—No insulators.  
Brush, Weeds, Crops, Rain, Ice — Won't short it.  
Works just as good—Bone Dry or Soaking Wet.  
Neon Fence Tester—Free  
Operates on 10¢ Per Month.  
20 day Trial Period.  
2 year Parts Warranty.  
ALL THIS AND SAFER TOO

SUPER-ATOM, the new scientifically designed fence charger offers these outstanding features:  
Charges felt strongly by animal stock without fear of injury to humans.  
20 times more short resistant than other leading fence charges.  
Will not be shorted by green grass or brush;  
rain or ice.  
Wire can be nailed to wood posts without insulators.  
Charges 50 miles of fence.  
Automatically adjusts to both wet and dry weather.

PAR. 4. Through the use of the statements hereinabove set forth, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that:

1. Respondents' said product is effective in confining farm animals in an enclosure under all fencing and climatic conditions without the use of insulators.

2. Respondents' product is twenty times more short resistant than all other fence chargers.

3. Green grass, brush, rain or ice will not cause a short.

4. Respondents' fence charger will effectively and safely charge fifty miles of fence without insulators.

5. Respondents' fence charger has a mechanism that automatically adjusts it to the various climatic conditions under which it will be operated.

6. Said product is guaranteed for two years as to parts.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Respondents' fence charge is not effective as an enclosure for farm livestock under many fencing and climatic conditions when insulators are not used.

2. Said product is not more short resistant than many other fence chargers.

3. Green grass, brush, rain or ice that contacts the fence may cause a short.

4. Respondents' product will not effectively and safely charge fifty miles of fence under normal climatic conditions in many sections of the country, with or without the use of insulators. Using insulators, said product could not be expected to be effective and safe for more than ten miles. Without the use of insulators, because of current leakage caused by various factors such as green, wet and rotted posts, it is not possible to accurately state the length of fence that will be safely and effectively charged by said product.

5. There is no mechanism in respondents' fence charger that automatically adjusts it to the various climatic conditions under which fence chargers are operated.

6. The manner in which respondents will perform under their guarantee is not set out.

PAR. 6. In the conduct of their business respondents are in substantial competition, in commerce, with corporations, firms and individuals in the sale of fence chargers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the

public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce a substantial number thereof to purchase respondents' said fence chargers as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 8. 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.

Before *Mr. Walter K. Bennett*, Hearing Examiner.

*Mr. William A. Somers* supporting the complaint.

*Jennings, Younger, Parsons, Keyworth & Warren* by *Mr. Jack W. Warren* of Lansing, Mich., for respondents Smith-Fisher Corporation, and Jack D. Smith.

INITIAL DECISION AS TO RESPONDENTS SMITH-FISHER CORPORATION AND JACK D. SMITH, INDIVIDUALLY AND AS AN OFFICER OF SAID CORPORATION

The Federal Trade Commission issued its complaint against Smith-Fisher Corporation and Jack D. Smith (hereinafter sometimes referred to as respondents) and against Frank Fisher on November 8, 1960. The complaint charged respondents with making false representations concerning the guarantee of, and the effectiveness of, a device for charging wire fences electrically to prevent cattle from straying. Said representations were charged to be unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning, and in violation, of the Federal Trade Commission Act.

On January 19, 1961, Counsel submitted to the undersigned hearing examiner an agreement dated January 10, 1961, among respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a cease and desist 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;

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, so far as it relates to respondents Smith-Fisher Corporation and Jack D. Smith, 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 Smith-Fisher Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan; respondent Jack D. Smith, an individual and officer of said corporate respondent, directs and controls the policies, acts and practices of the corporate respondent. Respondents' office and principal place of business is located at 1426 North Michigan, Route 47, Owosso, Michigan.

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

## ORDER

*It is ordered,* That respondents Smith-Fisher Corporation, a corporation, and its officers, and Jack D. Smith, an individual and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a fence charger known as Super Atom Charger, or any other charger of substantially the same construction or operation, do forthwith cease and desist from representing, directly or indirectly that:

1. Their product is effective in confining farm animals in an enclosure under all climatic or fencing conditions without the use of insulators.

2. Their product is twenty times, or any other number of times, more short resistant than other fence chargers.

3. Green grass, brush, rain or ice will not cause a short in the operation of said product.

4. Their product will effectively or safely charge more than 10 miles of fence with insulators or will effectively or safely charge any stated number of miles of fence without insulators.

5. Their product has a mechanism that adjusts it to the various climatic conditions under which it will be operated.

6. Their product is guaranteed unless the nature and extent of the guarantee and the manner in which respondents will perform thereunder are clearly set forth.

## 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 March 1961, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents Smith-Fisher Corporation and Jack D. Smith 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

DIALAND ELECTRIC SALES CORPORATION TRADING  
AS DIAMOND ELECTRIC COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket 8195. Complaint, Nov. 29, 1960—Decision, Mar. 30, 1961*

Consent order requiring two affiliated Rochester, N. Y., distributors of electric supplies and equipment to cease representing falsely that they manufactured products which were actually made in Japan, by such practices as advertising as an "Elkee Corp. Product" their "Evercel Plastic Electrical Tape", on the inside surface of the spool of which was a small sticker with the words "Made in Japan" in small print; advertising as "... Stock No. . . . S.B.C. 30 . . . Mfgr. . . . Elkee Corp." their "Solderless Service Connectors" which also carried the word "Japan" in obscurely printed and virtually indistinguishable letters; and by the indiscriminate mingling of domestic and foreign goods in their advertising catalogs.

## 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 Dialand Electric Sales Corporation, a corporation, trading as Diamond Electric Company, and Elliott Landsman and Morris Diamond, individually and as officers of said corporation, and Elkee Corporation, a 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 Dialand Electric Sales corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, said Dialand Electric Corporation trades and does business under the name of Diamond Electric Company. Its principal office and place of business is located at 1230 Lyell Avenue, in the City of Rochester, State of New York.

Respondent Elkee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is the same as that of the said Dialand Electric Sales Corporation.

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Respondents Elliott Landsman and Morris Diamond are individuals and are officers of the said Dialand Electric Sales Corporation. Said individual respondents formulate, direct and control the acts and practices of each of the aforementioned corporate respondents. Their address is the same as that of the said Dialand Electric Sales Corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of electric supplies and equipment to distributors and jobbers and to retailers 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 York to purchasers thereof located in various other states of the United States and in the District of Columbia, 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, as aforesaid, and for the purpose of inducing the sale of their said electrical supplies and equipment, respondents have made certain statements and representations with respect to the origin and manufacture of said products. Typical and illustrative of such statements and representations are the following:

With respect to plastic electrical tape respondents' advertising states:

Evercel Plastic Electrical Tape . . . an Elkee Corp. Product, Rochester, New York.

The container in which said tape is offered for sale reads in part:

Evercel Plastic Electrical Tape . . . Elkee Corporation, Rochester, New York.

Each package contains one roll of tape. The tape is further wrapped with a clear cellophane-like material. On the inside surface of the spool on which said tape is wrapped is a small sticker with the words in small print, "Made in Japan".

In advertising "Solderless Service Connectors" for sale, the following representations are typical of those made:

Solderless Service Connectors . . . Stock No. . . . S.B.C. 30 . . . Mfgr. . . . Elkee Corp.

In the publication in which said connectors are advertised and offered for sale are the products of many domestic manufacturers of electrical equipment such as General Electric, Westinghouse, and

others. The listing in which said connectors are offered for sale contains the name of well-known domestic manufacturers such as the Burndy Corporation. Said service connectors are branded with a stock number such as "SBC 30" and the word "Elkee". Obscurely printed in small and virtually indistinguishable letters is the word "Japan".

PAR. 5. (1) Through the use of the expressions "An Elkee Corporation Product, Rochester, New York", and similar statements and representations in connection with said electrical tape and through the indiscriminate mingling of domestic and foreign goods in its advertising catalogs and the representation "Mfgr. Elkee Corp." in connection with said solderless service connectors, respondents have affirmatively represented that said products are manufactured in the United States.

(2) The obscure, indistinct markings which purport to reveal the country of origin of said products are wholly and completely inadequate to give to the public notice of the country of origin of said products.

When products of foreign origin are offered for sale to the public and are not marked so as to give notice of their foreign origin, the public understands and believes that they are of domestic origin.

(3) Through the use of the expression "An Elkee Corp. Product, Rochester, New York" in connection with said tape and through the use of the expression "Mfgr. Elkee Corp." in connection with said connectors, respondents represent that they are the manufacturers of said products.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(1) Said products are not manufactured in the United States. Said products are manufactured in Japan.

(2) Said markings are wholly and completely inadequate to advise or apprise purchasers of the fact that said products are manufactured in Japan and not in the United States.

(3) Respondents do not manufacture said products. Said Elkee Corporation is simply a convenient corporate device used by respondents to import foreign made goods which are then offered for sale and sold by respondents under the aforesaid trade name of Diamond Electric Company. Said tape is imported in bulk from Japan. It is wrapped and packaged by independent contractors in this country for respondents. Said solderless service connectors are wholly manufactured in Japan.

PAR. 7. By the aforesaid acts and practices, respondents place in the hands of retailers and dealers the means and instrumentalities

by and through which they may mislead the public as to the country or origin and the manufacturer of said products.

PAR. 8. A substantial portion of the purchasing public has a preference for articles of domestic manufacture or origin as distinguished from products of foreign origin, including the products sold and distributed by respondents.

PAR. 9. There is a preference on the part of purchasers to deal directly with the manufacturer of products in the belief that they receive, among other things, better prices and service.

PAR. 10. Respondents, in the course and conduct of their business, are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same kind and nature as those sold by respondents.

P(8. 11. The use by 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. 12. 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. Terral A. Jordan*, supporting the complaint.  
Respondents, *pro se*.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

On November 29, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that for the purpose of inducing the purchase of their electrical supplies and equipment, respondents had made certain false statements and misrepresentations with respect to the origin and manufacture of said products.

Counsel presented to the undersigned Hearing Examiner on January 27, 1961, an agreement dated January 17, 1961, between respond-

ents and counsel supporting the complaint providing for the entry without further notice of a cease and desist order. Said agreement has been duly approved by the Acting Director, the Associate Director and the Assistant 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 conclusions of law;

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, Dialand Electric Sales Corporation, is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of

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business located at 1230 Lyell Avenue, in the City of Rochester, State of New York. Said Dialand Electric Sales Corporation also trades and does business under the name of Diamond Electric Company.

2. Respondent, Elkee Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is the same as that of the said Dialand Electric Sales Corporation.

3. Respondents, Elliott Landsman and Morris Diamond, are individuals and are officers of the said Dialand Electric Sales Corporation. Said individual respondents formulate, direct and control the acts and practices of each of the aforementioned corporate respondents. Their address is the same as that of the said Dialand Electric Sales Corporation.

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

## ORDER

*It is ordered,* That respondents, Dialand Electric Sales Corporation, a corporation, trading and doing business under its own name or under the name of Diamond Electric Company, or under any other name, and its officers, and Elliott Landsman and Morris Diamond, individually and as officers of said Dialand Electric Sales Corporation, and Elkee Corporation, a corporation, and its officers, 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 electrical tape or solderless service connectors or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or indirectly, in advertising or in labeling that products manufactured in Japan or any other foreign country are manufactured in the United States;

(2) Offering for sale or selling products which are, in whole or in substantially part, of foreign origin, without clearly and conspicuously disclosing on such products, and if the products are enclosed in a package or carton, on said package or carton, in such a manner that it will not be hidden or obliterated, the country of origin thereof;

(3) Representing, directly or indirectly, in any manner or by any means that respondents manufacture any product that is not manufactured in a factory owned, operated or controlled by them.

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