

It is further ordered, That the initial decision as so modified shall on the 13th day of May 1961, become the decision of the Commission.

It is further 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

UNITED STATES PLYWOOD CORPORATION ET AL.

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

Docket 8185. Complaint, Nov. 23, 1960—Decision, May 13, 1961

Consent order requiring New York City distributors to cease advertising—in magazines and newspapers and on tags resembling a tanned cowhide supplied to fabricator purchasers—as “Leather Product of Imported Italian Leather Fibers—Permanently Bonded”, its imported product “Barco”, having a leather-like appearance but composed of bonded, ground, or pulverized leather with one side plastic coated, and used in the manufacture of such articles as suitcases and ladies’ handbags.

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 the United States Plywood Corporation, a corporation, hereinafter referred to as respondent, has 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 United States Plywood Corporation is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 55 West 44th Street, New York, New York.

PAR. 2. Respondent United States Plywood Corporation is now, and for several years last past has been, engaged in the business of advertising, offering for sale, sale and distribution of a material

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which it designates as "Barco" to fabricators, who use said product in the manufacture, among other things, of suitcases and ladies handbags which they sell to distributors and jobbers and also to retailers for resale to the public. Respondent corporation imports said material which is composed of bonded, ground or pulverized leather with one side coated with a plastic or similar substance.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused, said product 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 said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent has made certain statements with respect to its product "Barco" in advertisements, in magazines and newspapers and on tags supplied to the purchasers of said product of which the following is typical:

Leather Product of Imported Italian Leather Fibers—Permanently Bonded.

The fabricators using respondent's product make use of the foregoing statement originating with respondent in connection with the products manufactured by them. In addition, respondent furnishes said fabricators with tags resembling a tanned cowhide upon which the aforesaid statement is printed which are attached by some of said fabricators to products manufactured by them from said product, which products, with said tags attached thereto, are shipped by said fabricators to retailers located in states other than the state or states in which the shipments originate.

PAR. 5. Products made of "Barco" have the appearance of leather and in the absence of an adequate disclosure as to their actual composition are readily accepted and understood by many members of the public as being genuine leather, which is not the fact. The statement "Leather Product of Imported Leather Fibers—Permanently Bonded" is confusing to many members of the public and not informative to the extent that they know the actual composition of said product and are thereby enabled to distinguish it from genuine leather.

PAR. 6. There is a preference on the part of many members of the public for products such as suitcases and ladies handbags made of genuine leather over such articles made from a product such as respondent's.

PAR. 7. Respondent by means of the aforesaid acts and practices, and by failing to adequately disclose the actual composition of its

said product, furnishes means and instrumentalities to others whereby the public is confused or misled as to the actual composition of articles made from its said product.

PAR. 8. In the course and conduct of its business, respondent is in substantial competition in commerce with corporations, firms and individuals engaged in the sale of genuine leather and leather substitutes used in the manufacture of suitcases and ladies handbags.

PAR. 9. The aforesaid acts and practices of the respondent and its failure to adequately disclose the composition of its said product has the capacity and tendency to confuse the public as to its composition and to mislead the public into the erroneous and mistaken belief that the articles made therefrom are genuine leather and into the purchase thereof by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has thereby been done to competition in commerce.

Morton Nesmith, Esq., supporting the complaint.

Robert N. Hawes, Esq., of Washington D.C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 23, 1960, issued its complaint in this proceeding against respondent United States Plywood Corporation, and a true copy was duly served on said respondent. Thereafter, on February 7 and 15, 1961, said respondent filed motions to dismiss the complaint accompanied by an affidavit and copy of contract for the sale of its Barash Division (manufacturers of "Barco") and all of its assets to The Barash Company, Inc. Said contract was entered into prior to the issuance of this complaint, on October 24, 1960, but the sale was consummated on January 3, 1961. On February 24th, the undersigned hearing examiner denied the motion to dismiss the complaint until such time as there were impleaded in this proceeding the respondent's successors, vendees and assigns in the sale of "Barco." Pursuant to the terms of an agreement dated March 15, 1961, filed with the undersigned on March 20, 1961, signed by attorneys for the original respondent, the substituted respondents, and counsel supporting the complaint, and approved by the Bureau of Litigation, The Barash Company, Inc., a New York corporation, and Samuel M. Abrams and M. Barash, individually and as officers of said corporation, as the successors, vendees and assigns of all the assets of the Barash Division of the respondent United States Plywood Corporation

agreed that they be substituted as respondents herein in lieu of said respondent United States Plywood Corporation.

It is ordered, That pursuant to the aforesaid agreement The Barash Company, Inc., a New York corporation, and Samuel M. Abrams and M. Barash, individually and as officers of said corporation, as the successors, vendees and assigns of all the assets of the Barash Division of the respondent United States Plywood Corporation be and hereby are substituted as respondents in lieu of respondent named in the complaint, United States Plywood Corporation.

The substituted respondents, The Barash Company, Inc., a corporation, and Samuel M. Abrams and M. Barash, individually and as officers of said corporation hereby have waived any further notice of the foregoing complaint. This agreement containing a consent order to cease and desist is hereby approved and accepted as conforming with the provisions of §3.25 of this Commission's Rules of Practice for Adjudicative Proceedings. Said agreement is hereby found dispositive of all the issues raised in the original complaint after the substitution of the new respondents as hereinabove ordered.

The undersigned hearing examiner finds that in accordance with the terms of the aforementioned agreements the substituted respondents admit all the jurisdictional facts alleged in the complaint as modified by this agreement and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations and this agreement. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the substituted respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. 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 of March 15, 1961, con-

taining consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding; and this proceeding is in the public interest;

2. The substituted respondent, The Barash Company, 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 122 Fifth Avenue, in the City of New York, State of New York. The substituted respondents Samuel M. Abrams and M. Barash are officers of The Barash Company, Inc. They formulate, direct and control the acts and practices of said corporation. Their address is the same as that of the corporate respondent;

3. Respondents are engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein. Now, therefore,

It is ordered, That respondents The Barash Company, Inc., a corporation, and its officers and Samuel M. Abrams and M. Barash, 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 manufacturing, offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "Barco" or other material of leather fibers do forthwith cease and desist from representing directly or indirectly:

1. That a material or product which is not manufactured from the hide of an animal is leather or genuine leather;

2. That a material is leather if such material is made of leather fibers bonded together with an adhesive and thus is not wholly the hide of an animal, provided however that this shall not be construed as preventing an accurate representation that the material is composed of leather fibers and an adhesive;

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3. That such material is leather by attaching hand tags thereto in the shape of a tanned cowhide.

It is further ordered, That said respondents, their representatives, agents or employees cease and desist from offering for sale or selling "Barco" or any other leather fiber material which has the appearance of leather unless accompanied by a disclosure that it is not leather or a disclosure of the general nature of such material as will clearly show that it is not leather, but this shall not be construed as preventing an accurate representation that the material is composed of leather fibers and an adhesive.

It is further ordered, That the complaint be and the same hereby is dismissed as to the respondent United States Plywood Corporation, a corporation, without prejudice.

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 13th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The Barash Company, Inc., a corporation, and its officers and Samuel M. Abrams and M. Barash, 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.