

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of June 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

ACME SPARKLER & SPECIALTY COMPANY ET AL.

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

Docket 8288. Complaint, Feb. 13, 1961—Decision, June 14, 1961

Consent order requiring a River Grove, Ill., distributor of fireworks to cease representing falsely that foreign-made products were domestic, through such practices as packaging a Japanese import known as "Black Python Snake" in cartons either printed with the words "Made in U. S. A." or not adequately marked to inform purchasers of its foreign origin.

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 Acme Sparkler & Specialty Company, a corporation, and Harry Callen and Lawrence Callen, individually and as officers of said corporation, also doing business as Acme Specialties 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 Acme Sparkler & Specialty Company is a corporation organized, existing and doing business under and

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by virtue of the laws of the State of Illinois. Respondents Harry Callen and Lawrence Callen are individuals and are officers of said corporate respondent. The said individual respondents also do business as Acme Specialties Corporation. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices herein-after set forth.

Respondents' office and principal place of business is located at 2000 North River Road, River Grove, Illinois.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of celebration fireworks and other products to jobbers and retailers, one of which, known as "Black Python Snake", is imported from Japan.

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 Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a 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, respondents sell and distribute, to jobbers and retailers, their "Black Python Snake", which is imported from Japan. When said product is offered for sale or sold it has been packaged in cartons which have printed thereon "Made in U.S.A." or in cartons which are not sufficiently labeled or adequately marked to inform the purchasing public that such product is of foreign origin.

PAR. 5. When imported products are offered for sale and sold in the channels of trade in commerce throughout the United States, they are purchased and accepted as and for, and are taken to be, products of domestic manufacture and origin, unless the same are labeled and marked in a manner which informs the purchasers that said products are of foreign origin.

A substantial portion of the purchasing public has a preference for products, including fireworks, which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin.

PAR. 6. Respondents, by placing their said products in the hands of jobbers and retailers, provide said jobbers and retailers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said products.

PAR. 7. 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, including products of both domestic and foreign origin.

PAR. 8. The practice of respondents, as aforesaid, in offering for sale, selling and distributing their said product without marking the product or the cartons in which it is packed to indicate to purchasers that said product is of Japanese or other foreign origin, has had, and now has, the tendency and capacity to mislead and deceive purchasers or members of the buying and consuming public into the false and erroneous belief that said product is wholly of domestic manufacture and origin and into the purchase of substantial quantities of such product in reliance upon such erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Mr. Lawrence Callen, of River Grove, Ill., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued February 13, 1961, charged the respondents, Acme Sparkler & Specialty Company (a corporation organized under the laws of the State of Illinois), and its officers Harry Callen and Lawrence Callen, individually and as officers thereof, and also as doing business under the firm name of Acme Specialties Corporation, all of 2000 North River Road, River Grove, Illinois, with violation of the Federal Trade Commission Act by misdescribing and failing to disclose and identify the country of origin of goods advertised and offered for sale and sold and distributed by them in commerce.

After the issuance of the complaint, respondents (with the advice of their attorney), and counsel supporting the complaint entered into an agreement, containing consent order to cease and desist, disposing of all the issues as to all parties to this proceeding.

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It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith.

Respondents agreed further that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and, upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms thereof, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Acme Sparkler & Specialty Company, a corporation, trading and doing business under its own name or under the name of Acme Specialties Corporation, or under any other name, and its officers, and Harry Callen and Lawrence Callen, individually and as officers of said Acme Sparkler & Specialty Company, and respondents' representatives, agents and employees, directly or through any corporate or other devices, in connection with the offering for sale, sale or distribution of fireworks,

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or of any other products, 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 in any other foreign country are manufactured in the United States.

2. Offering for sale or selling products which are, in whole or in substantial 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. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

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 14th day of June, 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