

Complaint

59 F.T.C.

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, July 25, 1961*

Consent order requiring an individual in Owosso, Mich., to cease misrepresenting, in advertisements in trade journals, newspapers, circulars, etc., the effectiveness, comparative qualities, guarantee, and other relevant facts concerning their "Super Atom" electrical fence charger used to prevent cattle from straying.

On Mar. 30, 1961 (518 F.T.C. 517), the same order was consented to by the corporate manufacturer and one officer.

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 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.

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

1. Respondents' fence charger 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.

Mr. William A. Somers supporting the complaint.

Mr. Kenneth B. Kelly of Owosso, Mich., for respondent.

INITIAL DECISION AS TO RESPONDENT FRANK FISHER, INDIVIDUALLY
BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against Frank Fisher (hereinafter referred to as respondent) and against Smith-Fisher Corporation and Jack D. Smith on November 8, 1960. The complaint charged respondent 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 March 30, 1961, the Commission approved an Initial Decision by the undersigned based on an agreement by Smith-Fisher Corporation and Jack D. Smith dated January 10, 1961.

Thereafter and on May 18, 1961, counsel supporting the complaint presented to the undersigned an agreement dated April 26, 1961, executed by the respondent, his counsel, 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 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 respondent of all jurisdictional facts alleged in the complaint.

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;
- (3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

Attached to and made part of said agreement is an affidavit of respondent verified April 26, 1961, alleging: that he resigned from all offices of Smith-Fisher Corporation on November 10, 1960; that the only connection he has or intends to have with Smith-Fisher Corporation so long as Jack D. Smith and his mother have anything to do with the corporation is as a minority stockholder; that this interest is one-third of the stock of the corporation; and that respondent since his resignation has not and does not intend to attend any meetings of officers, directors, or stockholders of the corporation.

On the basis of such affidavit the parties agreed that the complaint be dismissed [as] to Frank Fisher as an officer of Smith-Fisher Corporation, but not as an individual.

Having considered said agreement including the proposed order and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding, so far as it relates to respondent Frank Fisher, and finally disposes of the proceeding in all respects, 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 Frank Fisher is an individual whose address is R.R. #3, Owosso, Michigan.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Frank Fisher, an individual, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offer-

ing 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:

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

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

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

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Frank Fisher as an officer of Smith-Fisher Corporation.

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 25th day of July 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

PARLIAMENT T.V. TUBE SALES, INC., ET AL.