

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
GENERAL SPRAY SERVICE, INC., ET AL.

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

Docket 7967. Complaint, June 23, 1960—Decision, Aug. 9, 1961

Consent order requiring a Katonah, N.Y., firm engaged in selling and leasing lawn spray equipment and supplies, to cease representing falsely through its sales representatives and advertisements in newspapers, magazines, etc., that persons purchasing or leasing its said products would earn \$300 weekly, and that it would buy back equipment from the purchaser at the price he paid.

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 General Spray Service, Inc., a corporation, and Francis H. Hoge, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appear-

ing 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. General Spray Service, 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 156 Katonah Avenue in the City of Katonah, State of New York.

Respondent Francis H. Hoge, Jr. is an officer and sole stockholder of the corporate respondent. He formulates, directs and controls the 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 advertising, offering for sale, sale, offering for lease and leasing of lawn spray equipment and supplies.

PAR. 3. In the course and conduct of their business, respondents now cause, and since 1956 have caused, their said products, when sold and leased, to be shipped from various states of the United States to purchasers thereof located in 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 said business and for the purpose of inducing the purchase or lease of said products, respondents have made various statements concerning their said products and business methods through their sales representatives and through advertisements inserted in newspapers, circulars and other advertising literature circulated among the purchasing public. Typical of such advertisements, but not all inclusive, are as follows:

GET INTO THIS FABULOUS NEW BUSINESS

YOU MUST EARN \$300 WEEKLY OR WE BUY BACK THIS EQUIPMENT

PROFITS GUARANTEED

GSS only nation-wide lawn and garden spray service GUARANTEES you'll be satisfied with this business and your profits from it, or we buy back this equipment.

PAR. 5. Through the use of the statements set forth in Paragraph Four, and others similar thereto but not specifically set out therein, respondents have represented and do now represent, directly or by implication, that:

1. Persons purchasing or leasing respondents' equipment and supplies will earn \$300 weekly.

2. Respondents will buy back equipment sold to purchasers thereof at the price paid for the equipment by the purchaser.

PAR. 6. The foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact:

1. The vast majority of purchasers of respondents' products do not earn \$300 weekly, but substantially less than said amount.

2. Respondents do not buy back equipment sold to purchasers thereof at the price paid for the equipment by the purchaser.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of lawn spray equipment and supplies of the same general kind and nature as that sold by respondents.

PAR. 8. 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 and lease of substantial quantities of respondents' lawn spray equipment and supplies 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. 9. 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. Robert G. Cutler for the Commission.

Donovan, Leisure, Newton & Irvine, by *Mr. Robert M. Loeffler*, New York, N.Y., for the respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued June 23, 1960, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On June 14, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement 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 General Spray Service, Inc., 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 business located at 156 Katonah Avenue, in the City of Katonah, State of New York.

Respondent Francis H. Hoge, Jr., an individual, is an officer and sole stockholder of General Spray Service, Inc. 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, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents General Spray Service, Inc., a corporation, and its officers, and Francis H. Hoge, Jr., individually and as an 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, offering for lease, or leasing of lawn spray equipment or supplies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly and by implication that:

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1. Purchasers or lessees of respondents' lawn spray equipment and supplies will earn or realize any amount in excess of that which is in fact customarily and regularly earned by purchasers or lessees of respondents' equipment and/or products under like circumstances.

2. Respondents will buy back the lawn spray equipment and supplies sold to purchasers thereof at the price paid by said purchasers; or misrepresenting in any manner the amount that a purchaser will receive for the purchased equipment and/or products, whether bought back by respondents or otherwise disposed of by the purchaser.

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 9th day of August 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.
