

Complaint

IN THE MATTER OF

M. LOBER & ASSOCIATES COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8299. Complaint, Mar. 3, 1961—Decision, Sept. 6, 1961*

Consent order requiring two associated distributors in New York City and Richmond, Ind., respectively, and their common officer, to cease representing falsely in advertisements in newspapers, trade journals, etc., that they were the largest and the oldest manufacturers of power lawn mowers in the United States and in the world.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C. Title 15, Section 41, et. seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that M. Lober & Associates Company, a corporation, G. W. Davis Corporation, a corporation, and Morris Lober, individually and as an officer of said corporations, 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 M. Lober & Associates Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Central Park West, New York 23, New York.

Respondent G. W. Davis Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 500 North Twelfth Street, Richmond, Indiana.

Respondent Morris Lober is an individual and is President and Treasurer of respondent M. Lober & Associates Company, and is Vice President and Secretary of respondent G. W. Davis Corporation. The business address of respondent Morris Lober is the same as that of respondent M. Lober & Associates Company. Said respondent is also the principal owner of respondent M. Lober & Associates Company and respondent G. W. Davis Corporation. Said Morris Lober formulates, directs and controls, and at all times hereinafter mentioned has formulated, directed and controlled, the policies, acts and practices of said corporate respondents, including the acts and practices hereinafter mentioned.

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PAR. 2. Respondents are now, and for the past several years have been, engaged in the advertising, offering for sale, sale and distribution of power lawn mowers. Respondents sell power lawn mowers to retailers, distributors, various dealers and others for resale to the public. Respondents' volume of business in said power lawn mowers is, and has been, substantial.

PAR. 3. In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused, their products, when sold, to be shipped and transported from their place of business in the State of Indiana, to purchasers thereof located in various other States of the United States and in the District of Columbia. Thus, for the past several years, respondents have been, and are now, engaged in a continuous course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their business, as herein described, respondents have been in competition with other corporations, firms, partnerships and individuals engaged in the sale of power lawn mowers in commerce between and among the various States of the United States and the District of Columbia.

PAR. 5. In the course and conduct of their business, as herein described, and for the purpose of inducing the purchase and promoting the sale of their power lawn mowers in commerce, respondents have, in advertisements published in various newspapers, magazines and trade journals of general circulation and by means of other statements, represented that said respondents are the oldest and largest power mower manufacturers or producers in the United States and in the world. Representative of such statements, representations and claims are the following:

- (1) "The World's Largest Producers of Power Mowers"
- (2) "The Oldest and Largest Power Mower Manufacturer In The U.S.A."
- (3) "The Largest Power Mower Manufacturer in the World"
- (4) "The Oldest and Largest Power Mower Manufacturer in the U.S."
- (5) "The Oldest and Largest Power Mower Manufacturer in the World"
- (6) "The Oldest and Largest Power Mower Manufacturers in the World"
- (7) "World's Largest Power Mower Manufacturer"

PAR. 6. The aforementioned statements, representations and claims are false, misleading and deceptive. In truth and in fact, said respondents are not the largest producers or manufacturers of power lawn mowers in the United States or in the world, and said respondents are not the oldest producers or manufacturers of power lawn mowers in the United States or in the world.

PAR. 7. The use by the respondents of the aforementioned false, misleading and deceptive statements, representations and claims has had, and now has, the capacity and tendency to mislead and deceive a substantial part of the dealers, retailers, distributors and others of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and into the purchase of a substantial number of respondents' power lawn mowers because of such erroneous and mistaken belief that they are dealing with the oldest and largest manufacturer or producer of power lawn mowers in the United States and in the world. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and substantial injury has thereby been, and is being, done to said competitors and to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and 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. Charles S. Cox for the Commission.

Segan & Culhane of New York City, by *Mr. Leon Segan* for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The respondents, M. Lober & Associates Company (a corporation organized and existing under the laws of the State of Delaware), G. W. Davis Corporation (a corporation organized and existing under the laws of the State of Indiana), and Morris Lober (who is president and treasurer of the former corporation and vice-president and secretary of the latter corporation), were named in a complaint issued March 3, 1961, by the Federal Trade Commission. M. Lober & Associates Company and Morris Lober are located at 7 Central Park West, New York 23, New York, and G. W. Davis Corporation is located at 500 North Twelfth Street, Richmond, Indiana. The corporations and Morris Lober (both individually and as an officer thereof) were charged with having violated the Federal Trade Commission Act by falsely representing, in connection with the sale and distribution of power lawn mowers in commerce, that they were the oldest and largest power mower manufacturers or producers in the United States and in the world.

By and with the advice and consent of their attorney, respondents have entered into an agreement with counsel supporting the com-

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plaint, which agreement contains a proposed consent order to cease and desist, and disposes of all the issues involved in this proceeding.

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

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

By the agreement, the respondents expressly waive 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 to be entered in accordance therewith.

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

It is further provided in said agreement that the same, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order to be issued pursuant to said agreement; and that such 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 the 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 shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, 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 M. Lober & Associates Company, G. W. Davis Corporation, corporations, and their officers, and Morris Lober, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the offering for sale, sale and distribution

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of power lawn mowers, or other merchandise, in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner that respondents, or any of them, are the oldest power lawn mower manufacturers or producers in the United States or in the world.

(2) Representing in any manner that respondents, or any of them, are the largest power lawn mower manufacturers or producers in the United States or in the world, unless such is the fact.

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 6th day of September 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.