

Complaint

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IN THE MATTER OF

E. R. WAGNER MANUFACTURING COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8087. Complaint, Aug. 24, 1960—Decision, Sept. 9, 1961*

Consent order requiring a Milwaukee distributor and its subsidiary in Syracuse, N.Y., to cease misrepresenting, in advertising in newspapers and magazines, the effectiveness and comparative merits of their rug cleaning devices known as "Wagner Carpeteer" and "Easy Glamur Shampoo King", and their "Easy Glamur Shampoo".

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 E. R. Wagner Manufacturing Company, a corporation, and Glamur Products, Inc., a 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:

PAR. 1. Respondent E. R. Wagner Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4611 N. 32nd Street in the City of Milwaukee, State of Wisconsin.

Respondent Glamur Products, 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 1024 Montgomery Street in the City of Syracuse, State of New York. Respondent Glamur Products, Inc. is a subsidiary of respondent E. R. Wagner Manufacturing Company.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rug cleaning devices and rug and upholstery cleaning shampoos, to distributors and jobbers and to retailers for resale to the public.

PAR. 3. In the course and conduct of their businesses, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the States of Wisconsin and New York to purchasers thereof located in

various other States of the United States and in the District of Columbia, and maintain, and at all times herein mentioned 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 their businesses, and for the purpose of inducing the sale of their products, respondents have made certain statements with respect to the cleaning abilities and qualities of their products, in advertisements in magazines of national circulation, on television and in newspapers, of which the following are typical:

WAGNER CARPETEER WITH EASY GLAMUR CLEANER * * * Get professional results * * *.

NEW WAGNER CARPETEER WITH EASY-GLAMUR RUG SHAMPOOER * * * Just apply and let dry, no rinsing or vacuuming!

FABULOUS NEW APPLICATOR Easy Glamur Shampoo King.

JUST APPLY, LET DRY! RUG & UPHOLSTERY CLEANER New Easy Glamur For Hand & Shampoo Applicators.

PAR. 5. Through the use of the aforesaid statements, respondents represented that their rug cleaning devices, known as "Wagner Carpeteers" and "Easy Glamur Shampoo Kings", when used with Easy Glamur Shampoo, are as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and will clean a rug or carpet merely by spreading the Easy Glamur Shampoo over a rug or carpet. They also represented that Easy Glamur Shampoo will clean upholstery merely by wiping it on upholstery and letting it dry.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact said "Wagner Carpeteer" and "Easy Glamur Shampoo King" when used with Easy Glamur Shampoo are not as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and they will not clean a rug or carpet merely by spreading the Easy Glamur Shampoo over a rug or carpet. Also, Easy Glamur Shampoo will not clean upholstery merely by spreading the Easy Glamur Shampoo over the upholstery and letting it dry.

PAR. 7. In the course and conduct of their businesses, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those 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 of substantial quantities of respondents' products by reason of said

erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, 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. Frederick McManus supporting the complaint.

Foley, Sammond & Lardner, of Milwaukee, Wis., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 24, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements and representations concerning the cleaning abilities and qualities of their rug cleaning devices and rug and upholstery cleaning shampoos. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated July 5, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director of the Bureau of Deceptive Practices and the Chief of the Division of Food & Drug Advertising, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It

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has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent E. R. Wagner Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4611 N. 32nd Street, in the city of Milwaukee, State of Wisconsin.

Respondent Glamur Products, 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 1024 Montgomery Street, in the city of Syracuse, State of New York. Respondent Glamur Products, Inc. is a subsidiary of respondent E. R. Wagner Manufacturing Company.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That E. R. Wagner Manufacturing Company, a corporation, and Glamur Products, Inc., a corporation, and their officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Wagner Carpeteer" and "Easy Glamur Shampoo King" or any other device of similar nature and rug and upholstery shampoos, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents' "Wagner Carpeteer" and "Easy Glamur King" and rug shampoos:

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(a) are as effective in cleaning rugs and carpets as professional rug or carpet cleaning;

(b) will clean a rug or carpet without sweeping or vacuuming.

2. That respondents' shampoo will clean upholstery without brushing or vacuuming.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 9th day of September 1961, become the decision of the Commission; and, accordingly:

It is 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.