

Complaint

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IN THE MATTER OF

RICHARD L. SCHROEDER ET AL. DOING BUSINESS AS
INTERSTATE MERCHANDISERSCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8431. Complaint, June 16, 1961—Decision, Oct. 24, 1961*

Consent order requiring a Rochester, Minn., distributor of vending machines and nuts and candy dispensed thereby, to cease using deceptive offers of employment, false earnings claims, and other misrepresentations in newspaper advertisements, the real purpose of which was to sell its products.

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 Richard L. Schroeder and Lois I. Schroeder, individually and as copartners, trading and doing business as Interstate Merchandisers, 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. Respondents Richard L. Schroeder and Lois I. Schroeder are copartners trading and doing business as Interstate Merchandisers, with their office and principal place of business located at 1519 Fourth Avenue, N.W., Rochester, Minnesota.

Said individuals cooperate and act together in formulating, directing and controlling the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, sale and distribution of vending machines and nut meats, candy and other merchandise dispensed thereby, to purchasers thereof located in various States of the United States.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products, when sold, to be transported from their place of business located in the State of Minnesota, or drop-shipped from elsewhere, 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents insert advertisements in newspapers soliciting persons to whom to sell said products. Persons responding to said

advertisements are contacted by respondents or their representatives. Said respondents or their representatives, in soliciting the sale of said products, make various oral representations concerning the benefits to be derived by purchasing said products. Among and typical but not all inclusive of the statements and representations made in newspapers, circulars, form letters, flyers and other printed material given to prospective purchasers are the following:

RELIABLE MAN OR WOMAN

From this area to service and collect from new automatic cigarette, candy, nut and gum vendors. No selling, we will establish accounts for you. To qualify party must have car, references, and cash capital of \$495.00 to \$1995 which is secured. Excellent earnings part time—Full time more. For personal interview give phone, etc. Write P.O. Box 156, Rochester, Minnesota.

EXCEPTIONAL OPPORTUNITY

Reliable man or woman from this area to distribute complete line of cigarettes, candy, nuts, or gum through new automatic vendors. No selling, we will establish accounts for you. To qualify party must have car, references, and cash capital of \$900 which is secured by inventory. Excellent earnings part time—Full time more. For personal interview give phone, etc. Write P.O. Box 156, Rochester, Minnesota.

* * * You can get started on a shoestring and build your capital into a snug fortune. * * *

* * * We have, therefore designed our machines to attract attention through their attractive appearance. * * *

Undisputable Facts Concerning

PENNY MERCHANDISE VENDORS

The Safest Surest Business on Earth

1. NO RISK of losing your investment * * *.
2. No EXPERIENCE REQUIRED. * * *
3. NO SELLING OR SOLICITING.
4. NO LONG HOURS. * * *
5. NO WAITING for month, six months or a year or more to build up the business. It pays you a profit the first day your machines are on location. YOU CANNOT FAIL.
6. It's on ALL CASH Business. There are no charge accounts. NO BAD ACCOUNTS. Your NET PROFITS ARE approximately 100%, and on some vendors like the BASKETBALL DISPENSERS the Net Profit may be approximately 200% to 300%. Your average business is 10%.

* * *

8. And it is permanent—as long as Uncle Sam manufactures pennies. And it is depression proof. * * *

* * *

10. And because you get your original investment back (plus a profit) BECAUSE your machines "ON GOOD LOCATION" are worth from 25% to 33½%

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more than you paid for them. If you doubt this statement, try to buy an established Route of GUM machines or other mechanical merchandise machines anywhere in the United States.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, and by means of oral statements made by the respondents or their representatives, respondents represented, directly or by implication, that:

1. Respondents offer employment to persons responding to their advertisements.
2. Persons selected must own a car and have references in order to purchase respondents' products.
3. Any amount invested is secured by an inventory worth the amount invested and there is no risk of losing any part of the investment.
4. Persons selected will not be required to engage in any kind of selling activity.
5. The vending machine business is permanent and depression proof.
6. Respondents have designed the vending machines sold by them.
7. Respondents obtain or assist in obtaining satisfactory locations for vending machines purchased from them.
8. Substantial earnings are assured to persons who purchase respondents' vending machines and other products and engage in business.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Respondents do not offer employment to persons responding to their advertisements. Their sole purpose and intent is to sell their products to such persons.
2. It is not necessary to own a car or to furnish references in order to purchase respondents' products. The only requirement is the purchase price.
3. Invested sums of money are not secured by an inventory worth the amount invested and there is a real and substantial risk assumed by the purchaser of losing all or a substantial portion of the money invested.
4. Persons purchasing said products were required to engage in extensive selling or soliciting in order to establish, operate and maintain locations for said products.
5. The business opportunity offered by respondents is not permanent and is not depression proof.
6. Respondents do not design the vending machines sold by them.

7. Respondents do not obtain satisfactory locations for persons purchasing said products. Locations, if any, secured by respondents, are usually undesirable, unsuitable and unprofitable.

8. In most instances, persons purchasing respondents' products and engaging in business make little or no profit.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

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 such 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of 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, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

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1. Respondents Richard L. Schroeder and Lois I. Schroeder are individuals and copartners trading and doing business as Interstate Merchandisers, with their office and principal place of business located at 1519 Fourth Avenue, N.W., Rochester, Minnesota.

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 Richard L. Schroeder and Lois I. Schroeder, individually and as copartners, trading and doing business as Interstate Merchandisers, or under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, of vending machines, vending machine supplies, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Employment is offered by respondents or others when in fact the real purpose of the offer is to obtain purchasers for respondents' merchandise;

2. Persons must own an automobile or furnish references in order to qualify for purchase of respondents' products;

3. The amount invested in respondents' products is secured or that there is no risk of losing the money so invested;

4. Selling or soliciting is not required to establish, operate or maintain a route of said products, or otherwise misrepresenting the amount of selling or soliciting required to establish, operate or maintain such route;

5. The sale of merchandise by, through, or in connection with respondents' products or devices is a permanent business or is unaffected by economic depression;

6. The respondents' vending machines or other merchandise have been designed by, or originated by, any person or organization other than the person or organization which actually designed or originated such vending machines or other merchandise;

7. Respondents or their sales representatives obtain, or assist in obtaining, profitable locations for the vending machines purchased from respondents;

8. The earnings or profits derived from the operation of respondents' vending machines will be any amount greater than that usually and customarily earned by operators of respondents' said machines.

It is further 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 this order.

IN THE MATTER OF

EGON SEIDEN TRADING AS SEIDEN'S FURS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 8434. Complaint, June 16, 1961—Decision, Oct. 24, 1961

Consent order requiring a Kansas City, Mo., furrier to cease violating the Fur Products Labeling Act by failing, in invoicing, labeling, and advertising, to show the true animal name of the fur used in fur products, and to disclose that fur was dyed; failing to set forth the term "dyed Broadtail processed Lamb" on labels as required; by newspaper advertising which stated falsely "All prices drastically reduced 25% to 50%" and represented falsely that he operated a factory storeroom; by setting forth on labels fictitious prices represented thereby as regular retail prices; and by failing in other respects to comply with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Egon Seiden, an individual trading as Seiden's Furs, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Egon Seiden is an individual trading as Seiden's Furs with his office and principal place of business located at 935 Broadway, Kansas City, Missouri.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been

made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of his business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto were fur products with labels which failed:

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur contained in the fur product was dyed.

PAR. 6. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "dyed Broadtail processed Lamb" was not set forth as required where an election was made to use that term instead of Lamb in violation of Rule 10 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced by respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such falsely and deceptively invoiced fur products but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur contained in the fur products was dyed.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that said respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 10. Among and included in the advertisements as aforesaid but not limited thereto, were advertisements of respondent which appeared in issues of the Kansas City Star, a newspaper published in the city of Kansas City, State of Missouri, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(c) Represented directly or by implication through the use of percentage savings claims such as "All prices drastically reduced 25% to 50%" that the regular or usual prices charged by respondent for fur products were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 11. In advertising fur products for sale as aforesaid respondent falsely and deceptively advertised such fur products in violation

of Section 5(a) (5) of the Fur Products Labeling Act by representing, directly or by implication, through such statements as "Save at the factory storeroom" that respondent owned and operated a factory storeroom and savings could be effected from the purchase of fur products at such storeroom when, in truth and in fact, respondent did not own or operate a factory storeroom and no savings could be effected therefrom.

PAR. 12. In advertising fur products for sale as aforesaid respondent falsely and deceptively advertised such fur products in violation of Section 5(a) (5) of the Fur Products Labeling Act by setting forth fictitious prices on labels and misrepresenting the regular retail selling prices of such products in that the prices represented on such labels as the regular prices of the fur products were in excess of the regular retail prices at which respondent usually and regularly sold such fur products in the recent regular course of business.

PAR. 13. Respondent in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Messrs. Edward B. Finch and Robert W. Lowthian supporting the complaint.

Rich & Rich for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint herein was issued June 16, 1961, charging respondent with violation of both the Fur Products Labeling Act and the Federal Trade Commission Act through false and deceptive labeling, invoicing and advertising of fur products.

Thereafter and on July 27, 1961, respondent, his counsel and counsel supporting the complaint entered into an agreement authorizing the entry of a consent order to cease and desist the practices charged without further notice. Said agreement was duly approved by the Chief,

Division of Enforcement, Bureau of Textiles and Furs and the Director and Assistant Director of the Bureau of Textiles and Furs. It was presented to the undersigned on August 9, 1961.

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 agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

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; 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. Egon Seiden is an individual trading as Seiden's Furs, with office and principal place of business located at 935 Broadway, Kansas City, Missouri.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

Order

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ORDER

It is ordered, That Egon Seiden individually and trading as Seiden's Furs or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

B. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices or values thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondent has usually and customarily sold such products in the recent regular course of business.

C. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

D. Failing to set forth the term "Dyed Broadtail processed Lamb" in the manner required.

E. Setting forth on labels affixed to fur products, information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products and which:

A. Fails to disclose:

1. The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

2. That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

B. Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

C. Represents directly or by implication that respondent owns and operates a factory storeroom, or similar establishment, and savings can be effected from the purchase of fur products at such factory storeroom or similar establishment, when such is not the fact.

D. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

4. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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 24th day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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 THE YOUNG MEN'S SHOP OF WASHINGTON, INC., ET AL.

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