

Complaint

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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

JOHN J. McKUNE & SONS CO., INC., ET AL.

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

Docket C-34. Complaint, Nov. 30, 1961—Decision, Nov. 30, 1961

Consent order requiring Chicago sellers of vending machines and supplies therefor to cease representing falsely in circulars, form letters, etc., that they would obtain profitable locations for machines bought from them, give purchasers exclusive territories, and repurchase the machines on terms favorable to buyers; exaggerating profits earned by the machines; substituting a different type and quality of machine from that displayed; and, through the use of the words "Factory" and "Manufacturers," representing falsely that they manufactured and designed their machines.

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 John J. McKune & Sons Co., Inc., a corporation, and John J. McKune, individually and as an officer of said corporation, and Philip A. Small and John J. McKune, individually and as former partners doing business as U.S. Commercial Products Company, 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 John J. McKune & Sons Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 7435 North Western Avenue, Chicago, Illinois.

Individual respondent John J. McKune is an officer of said 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.

Respondent Philip A. Small and the aforesaid John J. McKune were formerly copartners, trading and doing business as U. S. Commercial Products Company, with their office and principal place of business the same as that of the corporate respondent. Their partnership was dissolved and the assets were transferred to the corporate respondent. The present address of respondent Philip A. Small is 595 North Waukegan Road, Lake Forest, Illinois.

The corporate respondent and the aforesaid individuals cooperated and acted together in formulating, directing and controlling the acts and practices hereinafter set forth.

PAR. 2. The corporate respondent and individual respondent John J. McKune are now, and for some time last past have been, engaged in the advertising, sale and distribution of vending machines and vending machine supplies.

Respondents Philip A. Small and the said John J. McKune trading as U. S. Commercial Products Company, for a long time prior to dissolution and transfer of the assets to the corporate respondent, were engaged in the same type of business.

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 in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents 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. Respondents solicit persons to whom they sell their products by sending advertisements in the form of flyers, circulars, brochures and form letters. Enclosed with said advertisements is a self-addressed post card to be filled out and returned to respondents by the prospective purchasers if they are interested in respondents' products. The names of persons responding to said advertisements were then given by respondents to their sales representatives or agents, who called upon such persons and solicited the purchase of respondents' products.

PAR. 5. Through the use of the statements and representations appearing in their advertisements, sales material and purchase contracts, and by oral statements made their sales representatives or agents, respondents have represented, and are now representing, directly or indirectly, that:

1. Respondents, or their sales representatives or agents, will obtain satisfactory and profitable locations for vending machines purchased from them.

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2. A person can reasonably expect to earn a net profit of \$196 to \$300 per machine a year on certain of their vending machines and a specified net profit on other types of vending machines.

3. Purchasers of machines will be given exclusive territory within which to locate their machines.

4. Respondents will repurchase the vending machine from the purchasers, in the event they desire to sell the same, at near cost, or at a profit to the purchasers if owned and operated for a year or more.

5. The purchase and use of respondents' vending machines requires no selling upon the part of the purchaser.

6. Prospective purchasers will receive a certain type and quality vending machine.

7. They manufacture and design their vending machines, through the use of the words "Factory" and "Manufacturers and Designers of Postage Stamp Machines".

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

1. Respondents, or their representatives or agents, seldom, if ever, obtain satisfactory and profitable locations for the vending machines purchased from them.

2. The net profit of \$196 to \$300 per machine a year on certain vending machines is greatly in excess of the profit that will accrue in a great majority of the cases, and the net profits specified on other types of their vending machines are greatly exaggerated in most instances.

3. Purchasers of respondents' machines are not given exclusive territory in which their machines may be located but, on the contrary, respondents sell their machines to anyone willing and able to purchase, for placement wherever the purchaser may desire.

4. Respondents do not repurchase for any amount the machines sold by them, regardless of the length of time the machines are owned or operated.

5. Persons purchasing said products were required to engage in extensive selling and soliciting in order to establish, operate and maintain locations for said products.

6. The vending machines received by purchasers are of a different type and quality than those actually displayed to prospective purchasers.

7. Respondents do not manufacture or design the vending machines sold by them.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial com-

petition, 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.

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 methods of competition in commerce and deceptive acts and practices in commerce in violation of Section 5(a) (1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth 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 the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent John J. McKune & Sons Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 7435 North Western Avenue, in the City of Chicago, State of Illinois. Respondent John J. McKune is an officer of said corporation and his address is the same as that of such corporate respondent.

Respondent Philip A. Small and respondent John J. McKune were formerly partners trading and doing business as U.S. Commercial Products Company, which partnership was dissolved. During such

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partnership respondent John J. McKune was known as John E. McKune. The address of respondent Philip A. Small is 595 North Waukegan Road, Lake Forest, Illinois.

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 John J. McKune & Sons Co., Inc., a corporation, and its officers, John J. McKune, individually and as an officer of said corporation, and Philip A. Small and John J. McKune, individually and as former partners trading and doing business under the name of U.S. Commercial Products Company, 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 and vending machines supplies, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Respondents or their sales representatives will obtain or assist in obtaining satisfactory or profitable locations for products purchased from them.

(b) The earnings or profits derived from the purchase of respondents' products and engaging in business will be in any amount in excess of the earnings or profits usually and customarily earned in the operation of their products.

(c) Respondents grant exclusive territory in which the products purchased from them may be operated or located.

(d) Respondents will repurchase the products sold by them.

(e) Selling or soliciting is not required to establish, operate or maintain a route of said products.

(f) Respondents are the manufacturers or designers of any products sold by them, unless and until they own, operate or directly and absolutely control the manufacturing plant or factory where the products are manufactured or designed.

2. Substituting an inferior type, grade or quality product for the product displayed and represented as the product being sold to the purchaser.

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.

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IN THE MATTER OF

PACIFIC COAST FUR COMPANY ET AL.

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

Docket C-85. Complaint, Nov. 30, 1961—Decision, Nov. 30, 1961

Consent order requiring associated furriers in Los Angeles, Calif., to cease violating the Fur Products Labeling Act by failing, on invoices and labels, to show the true animal name of the fur used in fur products and to disclose when fur was dyed; failing to show the country of origin of imported furs and when fur products contained flanks, and falsely representing mink as from the Aleutian Islands, on invoices; by newspaper advertising which failed to disclose the names of the fur-producing animals, represented prices as reduced without giving the time of compared higher prices, and falsely represented "\$200,000 worth of precious furs" offered for sale; failing to keep adequate records for price and value claims; and failing in other respects to comply with labeling and invoicing requirement.

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 Pacific Coast Fur Company, a corporation, and Venus Furs, a corporation, and Ralph J. Nymer, and Moe Basner, individually and as officers of the said corporations, and Milton Corb, individually and as general manager of the said corporations, hereinafter referred to as respondents, have 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. Pacific Coast Fur Company and Venus Furs are corporations organized, existing and doing business under and by virtue of the laws of the State of California with their office and principal place of business located at 706 South Hill Street, Los Angeles, California.

Ralph J. Nymer and Moe Basner are president and vice president, respectively, of the said corporate respondents. Milton Corb is general manager of the said corporate respondents. These individuals including the general manager control, formulate, and direct the acts, practices and policies of the said corporate respondents.