INTERLOCUTORY ORDERS, ETC.

UNION CARBIDE CORPORATION

Docket 6826. Order, July 3, 1961

Order denying respondent's motion to file brief in reply to answering brief of complaint counsel.

Counsel for respondent by oral motion to the Commission on June 28, 1961, having requested leave to file a brief in reply to the answering brief of counsel supporting the complaint; and

The Commission having duly considered said request:

It is ordered, That the motion of respondent for leave to file a reply brief be, and it hereby is, denied.

Commissioner Elman dissents from the decision of the Commission and is of the opinion that respondent should be granted leave to file a reply brief with leave to counsel supporting the complaint to file an answer thereto.

SIDNEY J. KREISS, INC., ET AL.

Docket 7264. Order and Opinion, July 10, 1961

Order, with opinion, denying motion for modification of desist order of May 19, 1960, 56 F.T.C. 1421, to permit use of trade names of fashion designers in connection with sale of hosiery.

OPINION OF THE COMMISSION

In a petition filed March 22, 1961, respondents in this proceeding request that the Commission add a provision to its order to cease and desist permitting respondents under circumstances designated in such motion to use the trademarks or trade names of certain fashion designers in connection with their sale of hosiery or, in the alternative, that the order be set aside and that respondents be given an opportunity to be heard on this issue. Counsel supporting the complaint has filed an answer in opposition thereto.

As grounds for their motion, respondents contend, in substance, (1) that there was no express finding nor is there any evidence to support a finding that the use of said trademarks or trade names, alone and without further wording, constitutes a representation which is in violation of the Federal Trade Commission Act, and (2) that industry practice demonstrates that the use of said trademarks or trade names

does not, by implication, represent that the hosiery bearing these trademarks was designed and created by the persons whose names constitute the trademarks.

The Commission's decision issued in this proceeding on May 19, 1960, and the order to cease and desist has become final by operation of Section 5(g)(1) of that Act. Such order requires respondents to cease representing directly and by implication that their hosiery has been created, designed, styled or manufactured by anyone other than the respondents or the person who actually did create, design, style or manufacture such hosiery. This order is based on evidence which shows that respondents engaged in the practices of representing that their hosiery was created, designed or styled by certain fashion designers and that such representations are false and misleading.

It is well settled that the Commission may frame its order broadly enough to prohibit an unfair practice in any form. The requirement of the order, among other things, that respondents cease using the trademarks of fashion designers in the sale of their hosiery without appropriate qualification or disclosure, is necessary to achieve that purpose.

Respondents, in the motion presently before us, do not contend that their hosiery is now designed, created or styled by the fashion designers whose trademarks they desire to use nor have they made any attempt to show that the use of said trademarks without further wording would not have a tendency and capacity to deceive. Their principal argument in this connection, that it is the practice in the hosiery industry to use the trademarks of fashion designers, provides no justification for modification of an order so as to permit respondents to engage in a sales practice shown to be unlawful. Moreover, respondents make no showing that hosiery sold by other members of the industry which bears the trademarks of fashion designers, is not in fact designed, created or styled by said designers.

Under the circumstances, we conclude that the respondents have not made the requisite showing of a change in condition of fact or of law nor have they demonstrated a probability that the public interest requires the action requested.

Respondents have made a request for oral argument, but it appears that the briefs are entirely adequate to fully advise the Commission as to the matters in issue and that no useful purpose would be served thereby.

The Commission having determined that respondents' motion provides no basis for reopening the proceeding, said motion must therefore be denied.

ORDER

This matter having been heard on respondents' motion filed on March 22, 1961, requesting modification of the order to cease and desist contained in the initial decision, as adopted by the Commission on May 19, 1960, and requesting oral argument, and upon the answer in opposition to the motion filed by counsel supporting the complaint; and

The Commission having concluded, for the reasons stated in its accompanying opinion, that respondents' motion does not constitute a sufficient showing as contemplated under Section 5 of the Federal Trade Commission Act that conditions of fact or law may have so changed as to justify the action requested, or that the public interest so requires:

It is ordered, That respondents' motion filed on March 22, 1961, and request for oral argument be, and they hereby are, denied.

DIAMOND CRYSTAL SALT CO.

Docket 7323. Order, July 11, 1961

Order modifying desist order of Feb. 4, 1960, 56 F.T.C. 818.

The respondent having filed a petition on June 7, 1961, which requests that the Commission approve the respondent's proposed purchase of certain package manufacturing machinery and patents attendant thereto, the land and building housing such machinery, and the existing inventory now owned by three affiliated companies known as Unit-Packet Corporation, Packet Products Corporation and Hoag-Russell Company, which concerns have been engaged in the sale of salt in small packets designed for use as individual servings; and

The Commission having issued its decision in this proceeding on February 4, 1960, containing its order to divest and to cease and desist, which order, among other things, prohibits the respondent from acquiring any time during the succeeding ten years the assets or share capital of any corporation in commerce and engaged in the business of producing and/or distributing salt; and the Commission having accordingly determined that respondent's petition should be treated as a request that the order be duly modified to exclude the above purchase from its purview; and

It appearing from the facts stated in the petition and in the answer filed by counsel supporting the complaint, which joins in the request that the petition be granted, that there is no reasonable probability that any of the anticompetitive effects proscribed by the relevant statute will result from the proposed purchase, and the Commission having further determined that the public interest now requires that this

proceeding be reopened solely for the purpose of altering and modifying the order so that it shall not prohibit the respondent from effectuating such acquisition:

It is ordered, That this proceeding be, and it hereby is, reopened and that paragraph 4 of the order to divest and to cease and desist be, and it hereby is, modified to read as follows:

(4) *It is further ordered*, That for a period of ten years from February 4, 1960, the respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, or purchase, the physical assets, stock, share capital of, or any other interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt in any form, specifically including salt in a dry state produced by any dry mining method, or produced by any evaporation method, and salt in brine; provided, however, that the respondent shall not be prohibited hereby from effectuating the proposed purchase of the assets referred to in the first paragraph of the Commission's order ruling on the petition filed by the respondent on June 7, 1961.

J. & H. STOLOW, INC., ET AL.

Docket 7569. Order, Aug. 8, 1961

Order on recommendation of hearing examiner, granting respondents' request to amend desist order of Dec. 19, 1959, 56 F.T.C. 674, and substituting modified order.

This proceeding having been reopened and the matter referred to a hearing examiner for the purpose of receiving evidence in support of and in opposition to the respondents' request for modification of the consent order to cease and desist contained in the hearing examiner's initial decision, filed November 5, 1959, which decision became the decision of the Commission on December 19, 1959; and

The Commission having considered the evidence received and having determined that the recommendation of the hearing examiner to grant respondents' request to amend the cease and desist order is justified and should be adopted and that respondents' alternative request to rescind the order should be denied:

It is ordered, That respondents' request for a modified order made in their motion of October 12, 1960, be, and it hereby is, granted.

It is further ordered, That respondents' alternative request that the Consent Order be rescinded made in their motion of October 12, 1960, be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed November 5, 1959, and the Commission's decision adopting it, issued December 18, 1959, be, and they hereby are, modified by striking

the order contained in such initial decision and substituting therefor the following:

ORDER

It is ordered, That respondents, J. & H. Stolow, Inc., a corporation, and its officers, and Julius Stolow, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of postage or other stamps or of adhesive labels having the appearance of postage stamps, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that stamps and adhesive labels having the appearance of postage stamps are valid stamps, unless such stamps and labels are, or were, valid for the payment of some type of internal or external mail service, or were produced under the authority of authorized officials of a recognized or existing government.

2. In connection with the advertising and offering for sale of specific stamps or adhesive labels failing to reveal:

(a) That such stamps or labels are not valid for or were not issued for postal use, or were not issued by a government recognized by the United States, when such are the facts.

(b) Clearly and conspicuously in advertising that nothing therein is to be construed as a representation that the stamps offered are presently valid for postal use, or that they are stamps issued by a government recognized by the United States.

This order shall not apply to institutional or other advertising which does not offer for sale any specific stamp or stamps.

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 the modified order to cease and desist.

KEEN FRUIT CORPORATION

Docket 7918. Order, Aug. 10, 1961

Order reopening the record and modifying the consent agreement and initial decision by inclusion therein of the "stipulation" below set forth.

Counsel for respondent by motion filed July 25, 1961, having requested that certain material included in said motion and referred to