

Complaint

60 F.T.C.

IN THE MATTER OF

A. J. HOLLANDER & CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8197. Complaint, Nov. 30, 1960—Decision, Jan. 3, 1962*

Consent order requiring an importer and two distributors of Japanese baseball gloves, all of New York City, to cease representing falsely, by imprinting thereon in block letters the names of well-known players, such as "Tony Kubek Model", "Elston Howard Model", etc., that prominent baseball players used or endorsed their gloves.

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 the A. J. Hollander & Co., Inc., a corporation, and Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, individually and as officers of the said corporation; Olympic Sporting Goods Company, Inc., a corporation, and Herman N. Ullman and Allen D. Ullman, individually and as officers of said corporation, and Cambridge Sporting Goods Corp., a corporation, and Joseph Greenberg, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 A. J. Hollander & Co., 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 154 Nassau Street, New York, N.Y.

Individual respondents, Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher are officers of the corporate respondent, A. J. Hollander & Co., Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

Respondent Olympic Sporting Goods Company, 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 598 Broadway, New York, N.Y.

Individual respondents Herman N. Ullman and Allen D. Ullman are officers of the corporate respondent, Olympic Sporting Goods Company, Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

Respondent Cambridge Sporting Goods Corp. 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 625 Broadway, New York, N.Y.

Individual respondent, Joseph Greenberg, is an officer of the corporate respondent, Cambridge Sporting Goods Corp. He formulates, directs and controls the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondent A. J. Hollander & Co., Inc., is now, and for some time last past has been, engaged, among other things, in the importation of baseball gloves from Japan and in the offering for sale, sale and distribution thereof to wholesalers for eventual resale to the public.

Respondent Olympic Sporting Goods Company, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of sporting goods to retailers for resale to the public.

Respondent Cambridge Sporting Goods Corp. is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of sporting goods to retailers for resale to the public.

Included among the products offered for sale, sold and distributed by respondents Olympic Sporting Goods Company, Inc., and Cambridge Sporting Goods Corp. are the aforesaid baseball gloves purchased by them from respondent A. J. Hollander & Co., Inc.

PAR. 3. In the course and conduct of their business, 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 State of 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 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. Respondent A. J. Hollander & Co., Inc., at the direction of respondents Olympic Sporting Goods Company, Inc., and Cambridge Sporting Goods Corp., has engaged in the practice of causing the manufacturer to imprint in block letters on the aforesaid imported baseball gloves the names of prominent or well-known baseball players

and other statements, all of said respondents, thereby representing, directly or by implication, that the said prominent or well-known baseball players used respondents' gloves or approve or endorse the types of said gloves. Typical but not all inclusive of such names and statements are:

Tony Kubek Model
Elston Howard Model
Rocky Calavito Model
Al Kaline Model
Whitey Ford Model
Early Wynn Model
Duke Snider Model
Bill Skowron Model
Jim Bunning Model
User Approved

In truth and in fact, the aforesaid prominent or well-known baseball players have neither used respondents' gloves nor approved nor endorsed the types of said gloves.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they mislead the public, especially boys of teen or sub-teen age, into the belief that their imported baseball gloves are used by the aforesaid prominent or well-known baseball players or are the type or model used or approved or endorsed by said prominent or well-known baseball players.

PAR. 6. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of baseball gloves of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practice 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' product by reason of said 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. 8. 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, un-

fair 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 in the proceeding with violation of the Federal Trade Commission Act, and agreements by and between respondents and counsel supporting the complaint, which agreements contain an order to cease and desist, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and further provide for the dismissal of the complaint as to respondents Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher in their individual capacities; and

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

1. Respondent A. J. Hollander & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 154 Nassau Street, New York City, N.Y.

Individual respondents Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher are officers of corporate respondent A. J. Hollander & Co., Inc., and their address is the same as that of said corporate respondent.

2. Respondent Olympic Sporting Goods Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 598 Broadway, New York City, N.Y.

Individual respondents Herman N. Ullman and Allen D. Ullman are officers of corporate respondent Olympic Sporting Goods Company, Inc., and their address is the same as that of said corporate respondent.

3. Respondent Cambridge Sporting Goods Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 625 Broadway, New York, N.Y.

Decision and Order

60 F.T.C.

Individual respondent, Joseph Greenberg, is an officer of corporate respondent Cambridge Sporting Goods Corp., and his address is the same as that of said corporate respondent.

4. 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 A. J. Hollander & Co., Inc., a corporation, its officers, and Martin Blumenthal, individually and as an officer of said corporation, and Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, as officers of said corporation, Olympic Sporting Goods Company, Inc., a corporation, its officers, and Herman N. Ullman and Allen D. Ullman, individually and as officers of said corporation, and Cambridge Sporting Goods Corp., a corporation, its officers, and Joseph Greenberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of baseball gloves or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing baseball gloves upon which the names of prominent or well-known baseball players are printed, either accompanied or unaccompanied by the words "Model" or "User Approved," or any other words of the same import, when in fact, such baseball gloves have not been used, approved or endorsed by such persons.

2. Representing, in any manner, directly or by implication, that a person has used, approved, or endorsed a product, when such is not the fact.

3. Placing in the hands of others any means or instrumentality by or through which they may mislead the public as to any of the matters and things set out in paragraphs 1 and 2 above.

It is further ordered, That the complaint insofar as it relates to the respondents, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, in their individual capacities, be, and the same hereby is, dismissed.

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.

Complaint

IN THE MATTER OF

PRESSING SUPPLY COMPANY ET AL.

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

Docket 8337. Complaint, Mar. 16, 1961—Decision, Jan. 3, 1962

Consent order requiring the New York City sales representative of two affiliated Philadelphia concerns—who themselves agreed to a similar order on July 25, 1961 (59 F.T.C. 146), to cease imprinting on the containers of their ironing board covers fictitiously high prices represented thereby as the usual retail prices.

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 Pressing Supply Company, a corporation, and Ironfast Products Company, a corporation, and Jerome Silk and Sidney Cozen, individually and as officers of said corporations, and Sanford A. Specht and Annette Specht, doing business as S. A. Specht Associates, 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 Pressing Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its main office and principal place of business located at 1807 E. Huntington Street in Philadelphia, Pa.

Respondent Ironfast Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at 1807 E. Huntington Avenue, Philadelphia, Pa.

Individual respondents Jerome Silk and Sidney Cozen are officers of said corporations. They formulate, direct and control, the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. S. A. Specht Associates is a copartnership consisting of Sanford A. Specht and Annette Specht. S. A. Specht Associates is the sales representative of the corporate respondents. Its address is 1140 Broadway, New York, N.Y.

Complaint

60 F.T.C.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of ironing board covers and other merchandise to distributors, jobbers and retailers for resale to the purchasing public.

PAR. 4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and 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. 5. Respondents, before shipping said ironing board covers, imprint on the containers thereof various prices.

By means of the prices appearing on said containers, respondents represent that such are the usual and regular retail prices for said ironing board covers. Such representations are false, misleading and deceptive. In truth and in fact such amounts are fictitious and greatly in excess of the prices at which the ironing board covers are usually and regularly sold at retail.

PAR. 6. By the practice aforesaid respondents place in the hands of retailers a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their ironing board covers.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of ironing board covers of the same kind and general nature of those sold by respondents.

PAR. 8. The aforesaid acts and practices of respondents had, and now have, the tendency and capacity to mislead and deceive members of the purchasing public as to the usual and regular retail selling price of said ironing board covers and into the purchase of substantial quantities thereof because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 9. The acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of their competitors and constitute unfair methods of competition and unfair acts

and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.

Mr. Murray S. Selby, of New York, N.Y., for respondents Sanford A. Specht and Annette Specht.

INITIAL DECISION AS TO RESPONDENTS SANFORD A. SPECHT AND
ANNETTE SPECHT BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 16, 1961, charging respondents with violation of the Federal Trade Commission Act by imprinting on the containers of their ironing board covers false, misleading and deceptive representations of the regular retail prices for said ironing board covers.

Thereafter, on September 6, 1961, respondents Sanford A. Specht and Annette Specht, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Acting Chief, Division of General Advertising, and the Acting Director of the Commission's Bureau of Deceptive Practices, and thereafter, on September 7, 1961, submitted to the Hearing Examiner for consideration. As to all other respondents herein, this proceeding has been previously disposed of by an initial decision issued June 7, 1961.

The agreement identifies respondents Sanford A. Specht and Annette Specht as individuals and copartners doing business under the name of S. A. Specht Associates, with their principal place of business located at 1140 Broadway, New York, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and 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 the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the 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.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Sanford A. Specht and Annette Specht, individually and as copartners doing business under the name of S. A. Specht Associates, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ironing board covers or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail in the trade area or areas where the representation is made;
2. Putting any plant into operation whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

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 3d day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Sanford A. Specht and Annette Specht, doing business under the name of S. A. Specht Associates, 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.

Syllabus

IN THE MATTER OF

ERIE SAND AND GRAVEL COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE
CLAYTON ACT

Docket 6670. Complaint, Oct. 30, 1956—Order, Jan. 4, 1962

Order dismissing—following the Third Circuit's vacating of the Commission's order of divestiture (56 F.T.C. 437) and remand of the case for further consideration (291 F. 2d 279)—complaint charging illegal acquisition of competitor.

ORDER DISMISSING COMPLAINT

The Commission having placed this matter on its own docket for reconsideration in the light of the opinion of the United States Court of Appeals for the Third Circuit vacating the order of divestiture entered by the Commission October 26, 1959, and remanding the cause to the Commission for such purpose; and

It appearing in the light of additional information obtained by the Commission that respondent no longer retains any substantial part of the assets of the company it acquired which formed the basis for this proceeding; and

The Commission having determined that the case is now in essence moot and that, in the circumstances, it would not be in the public interest to take any further action in the matter:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

AUTOMOTIVE JOBBERS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(f) OF THE
CLAYTON ACT

Docket 7590. Complaint, Sept. 21, 1959—Decision, Jan. 4, 1962

Order requiring a Texas association of jobbers of automotive products and supplies—which was simply a bookkeeping device and served as agent through which members were billed and made settlement for purchases—and its 19 members, to cease violating Sec. 2(f) of the Clayton Act by inducing and receiving from suppliers what they knew were “discriminatory and illegal prices, discounts, allowances and rebates” resulting from their combined bargaining power and not available to their competitors.