

after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

By the Commission, Commissioner Elman not concurring.

IN THE MATTER OF
NASH, INC., ET AL.

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

Docket 8201. Complaint, Dec. 6, 1960—Decision, Sept. 18, 1962

Order requiring Jersey City, N.J., manufacturers of wallets, billfolds, purses, and other small leather and plastic accessories, to cease representing falsely that their split pigskin products were made of top grain leather by such practices as stamping them with the words "Saddle Pigskin", describing them on attached cards as "Leather" and "Genuine Leather", and inserting in them cards stating the true composition of nonleather pockets, linings, etc., in such a manner as not to be readily noticed by purchasers.

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 Nash, Inc., a corporation, and Daniel J. Nash and Jack Hammel, individually and as officers of said 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:

PARAGRAPH 1. Respondent Nash, Inc., is a corporation organized, existing and doing business under the laws of the State of New Jersey,

with its principal office and place of business located at 316 Barrow Street, Jersey City 2, N.J.

Respondents Daniel J. Nash and Jack Hammel are officers of the corporate respondent. They formulate, direct and control its acts and practices, including those hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of wallets, billfolds, purses and other small leather and plastic accessories to jobbers and retailers for resale to the public.

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 place of business in the State of New Jersey to purchasers thereof located in various other States of the United States, 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. Respondents, in the course and conduct of their business, have in certain instances misrepresented or failed to disclose the true identity of the materials from which their products are fabricated:

1. By stamping or causing to be stamped on certain of their wallets or billfolds the words "Saddle Pigskin", thereby representing that said products are made of top grain leather. In truth and in fact, said wallets or billfolds are not made of top grain leather but of corium split pigskin.

2. By inserting a printed card in their wallets or billfolds stating that such product is made of the type of leather stamped on said wallets or billfolds, except for the pockets, linings, partitions, stays and lacings (where used) which are made of other materials that simulate leather. Such a card, however, is frequently placed in the wallet or billfold in such a manner so as not to be readily noticed by prospective purchasers thereof, and they are not informed that the wallet or billfold contains materials other than that set forth by the stamping.

3. By designating and describing certain of their wallets or billfolds on cards attached thereto as "Leather" and "Genuine Leather" when, in truth and in fact, they are made of split leather.

PAR. 5. Respondents also have engaged in the practice of attaching, or causing to be attached, to their wallets or billfolds tickets upon which a price is printed, accompanied by a legend such as "Comparable Value" and "Comparable Retail", thereby representing, directly or by implication, that said wallets or billfolds are of like grade and

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quality in all material respects to other wallets or billfolds currently offered for sale and sold at the price appearing on the tickets in the trade area where the representations are made. In truth and in fact, respondents' said wallets or billfolds are inferior in grade and quality in material respects to other wallets or billfolds currently selling for the price appearing on said tickets.

PAR. 6. By the aforesaid practices, respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public with respect to the matters and things set out in paragraphs 4 and 5 hereof.

PAR. 7. Through the use of printing on inserts in their wallets or billfolds and on invoices of the legend "House of Nash, Canada-Jamaica, Puerto Rico-Paris-New York-London-Rome" respondents represent that they operate plants or offices in such places.

Said representation is false, misleading and deceptive. While the respondents do maintain factories in Puerto Rico, and formerly did in Jamaica, B.W.I., and formerly maintained a sales office in Canada, they do not own or operate any plant or office in London, Paris, Rome or Canada.

PAR. 8. 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 merchandise similar to that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead purchasers into the erroneous and mistaken belief that said statements and representations 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, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. 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. Ames W. Williams supporting the complaint.

Mr. William R. Liberman, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

This proceeding was commenced by the issuance of a complaint on December 6, 1960, charging the above-named corporate respondent and the individual respondents, its officers, with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act by (a) misrepresenting or failing to disclose the true identity of the materials from which their wallets are fabricated, (b) misrepresenting the grade and quality of their wallets by attaching thereto a ticket upon which is imprinted a fictitious price accompanied by the words "Comparable Value" and (c) misrepresenting the operation of plants or offices in London, Paris, Rome and Canada. Specifically respondents are charged with misrepresenting or failing to disclose the true identity of the materials from which their wallets are fabricated by (a) stamping or causing to be stamped on certain wallets the words "Saddle Pigskin" when in fact such wallets are not made of top leather, but of corium split pigskin, (b) inserting a printed card in their wallets stating they are of leather except for those portions made of other materials simulating leather, but frequently this card is placed where it cannot be noticed readily by prospective purchasers, and (c) describing certain of their wallets on cards attached as "Leather" and "Genuine Leather" when they are made of split leather.

After being served with the said complaint, respondents appeared by counsel and thereafter filed their answer which in effect (a) admitted the use of the words "Saddle Pigskin" on wallets not made of top leather prior to January 12, 1959, (b) denied the improper positioning of descriptive cards so they cannot be noticed readily, (c) admitted the use of the words "Leather" and "Genuine Leather" on wallets made of split leather prior to January 12, 1959, (d) admitted attaching a ticket to their wallets imprinted with a price and the words "Comparable Value" but denied that their wallets were not of a like grade and quality, and (e) admitted the use of representations that they maintained offices or plants in Canada, Jamaica, Puerto Rico, Paris, New York, London, and Rome, but denied that they falsely represented the scope of these operations since they reflected any changes, as made from time to time, by rubber-stamping over previously painted stationery and other material the fact of the elimination of Canada, Jamaica, Rome and the substitution of Lausanne for the latter.

A pre-hearing conference was held in this case on July 17, 1961 at which by stipulation of the parties exhibits CX 1 to CX 17 inclusive for the Commission, and RX 1 to RX 3 inclusive for respondents, were admitted into evidence and the testimony of Stanley Miller as a witness for the Commission was received. Thereafter, on August 21, 1961 the undersigned was substituted as hearing examiner. At the outset of hearings conducted before the undersigned examiner on September 27 to 29, 1961, in New York, New York, both parties moved that the transcript of the hearings held on July 17, 1961, along with the exhibits introduced therein be, and the same were, made a part of the record herein. At such hearing additional testimony and other evidence were offered in support of the complaint and in opposition to the allegations set forth in the complaint. Proposed findings of fact, conclusions of law and briefs were filed by counsel supporting the complaint and by counsel for respondent on November 27, 1961.

Consideration has been given to the proposed findings of fact, conclusions of law and briefs submitted by the parties, and all proposed findings of fact not hereinafter specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent Nash, Inc., is a corporation organized, existing and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 316 Barrow Street, Jersey City 2, New Jersey.
2. The individual respondents Daniel J. Nash and Jack Hammel are officers of the corporate respondent and in said capacity formulate, direct and control its acts and practices.
3. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of wallets, bill-folds, purses, and other small leather and plastic accessories to jobbers and retailers for resale to the public.
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 their place of business in the State of New Jersey and Puerto Rico to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. Respondents in the past and as late as March and April of 1959 stamped or caused to be stamped on wallets and billfolds of their manufacture the words "Saddle Pigskin", thereby representing that said wallets were made of top grain leather when, in fact, they were made of split leather. This practice is deceptive and tends to mislead purchasers.

6. Respondents in the past and as late as the summer of 1959 failed to properly disclose on inserts or attachments, where such information may be readily seen by prospective purchasers, that constituent parts of the items involved are, if such is the case, made from materials other than those represented. Certain wallets manufactured by respondents and shipped as late as June 1960, contain printed notices affixed to the price and value tags. Said notices are inserted in the pockets of the wallet so that only the price and value portion thereof are visible while the concealed portion bears the statement "Inner linings are rayon with simulated leather lining in the card case." However, plastic binders prominently positioned on the exposed face of the card case state, among other things, that the wallets are of "Luxurious Leather" and are "Silk Lined." This practice is patently ambiguous and tends to deceive purchasers.

Respondents since the latter part of 1959 and currently place in the interior portion of their wallets light weight paper inserts bearing the inscription in small type "This product is made of the type of leather stamped thereon, except for the pockets, linings, partitions, stays and lacings (where used) which are of other materials."

7. Respondents in the past and as late as October 1959 used cards placed prominently in the pass cases of their wallets bearing the inscription "Leather" and "Genuine Leather," thereby representing that said wallets were made of top grain leather when, in fact, they were made of split leather or deep buff. Top grain leather is the top layer whereas deep buff and split leather are the second and third layers respectively. The use of the words "Leather" and "Genuine Leather" without qualification in connection with wallets made of split leather or deep buff is deceptive and tends to mislead and deceive purchasers. *Matter of Louis Hoffman, Trading as L. Hoffman*, 31 F.T.C. 793 (1940); *Matter of Samuel Brier, d.b.a. Samuel Brier & Company and Quakertown Luggage Company, Inc.*, 24 F.T.C. 905 (1937).

Currently and since late 1959 respondents have been using cards similarly placed which state "Made of leather as stamped."

8. The respondents maintained a warehousing operation in Canada, but discontinued it late in 1959; a shopping service office, design and purchasing office in Rome, Italy, which was shifted to Lausanne,

Switzerland sometime in 1959; and a manufacturing plant in Jamaica, B.W.I., but discontinued that operation sometime in 1959. The corporate respondent expended considerable sums each year in maintaining these foreign offices and purchased considerable amounts of materials from each of the particular foreign countries through its local offices therein. When the offices and warehouses in Canada, Italy and Jamaica were discontinued, the corporate respondent had on hand a substantial amount of expensive business stationery, but took timely steps and at least as early as January 4, 1960, to obliterate and overstamp the names of the foreign cities of the discontinued operations. Under these circumstances the charge that respondents misrepresented their foreign operations has not been sustained and counsel supporting the complaint has not proposed any such finding.

9. The Federal Trade Commission initiated its investigation of respondents by letter dated May 13, 1958, bringing to their attention the failure to disclose that certain parts of their wallets were not leather and the fictitious pricing of such wallets, while affording them the opportunity for voluntary compliance. On May 15, 1958, counsel for respondent replied stating a desire to cooperate and requesting more particulars. On June 2, 1958, the Federal Trade Commission furnished respondents' counsel details as to the disclosures required where parts of wallets are made of materials other than leather and requested respondents to indicate if they were complying and whether such wallets bear price tickets that do not represent the usual and regular selling price of same. Counsel for respondent acknowledged said letter on June 4, 1958, and advised he would take it up with respondents. By letter dated June 19, 1958, respondents' counsel submitted cards reading "Plastic Stay and Pocket", "Rayon Lined", "Plastic Lacing and Stay" which were to be placed in the wallets in such a position that when the wallet is unfolded, these notices as to materials other than leather are in plain view and promised further information as to the pricing question. The Commission acknowledged this letter on July 15, 1958, and respondents' counsel replied thereto promising the requested information on August 4, 1958. By letter dated August 5, 1958, respondents' counsel stated that summer vacations at the plant had delayed the information. The Commission on August 25, 1958, requested prompt submission of the information and respondents' counsel replied August 27, 1958, stating the information would be furnished shortly after Labor Day.

Again on September 18, 1958, the Commission called upon respondents' counsel for a sample of the required disclosure on wallets and whether the same were made of split leather. In addition, an as-

assurance was requested from respondents that they would not attach pretickets to their wallets except in those instances where a customer actually sells their wallets at the ticketed price. In response thereto respondents' counsel on September 26, 1958, transmitted a letter dated September 25, 1958, from the corporate respondent which stated, in part, that respondents did not attach and would not attach any price tickets or labels to their wallets which prices were in excess of the usual and regular retail selling price thereof. Respondents qualified this statement stating that it did not apply on "special" deals because on occasion and for a particular customer or to meet a demand of a particular situation, they would quote their usual selling price to the customer so that the customer could lower his usual selling price to the retail trade without affecting the normal higher value of the wallet. By letter dated October 1, 1958, respondents' counsel enclosed two specimen wallets pointing out indications of materials other than leather contained therein and advising that respondents are being asked about the split leather referred to in the Commission's letter of September 18, 1958. The Commission advised respondents' counsel that the disclosures in the two wallets submitted did not meet the legal requirements, pointing out in detail the shortcomings of the disclosures submitted. The letter also stated that irrespective of special deals or otherwise, price tickets cannot be placed on merchandise where such prices are in excess of the usual and regular retail selling prices of such articles. In conclusion, the Commission again requested assurance from respondents that they would comply with the Commission requirements including the pricing requirements and requested that such assurance be submitted within ten days.

On November 14, 1958, respondents' counsel advised the Commission that the busy time of the year and Christmas rush was at hand, but he would try to start changes in respondents' operations. Thereafter, on December 8, 1958, respondents' counsel enclosed a printed-card-disclosure indicating how said card would be inserted in the wallets. In response thereto, by letter dated December 18, 1958, the Commission advised respondents' counsel that the card disclosure could not be adequately evaluated unless contained or positioned in a wallet. Assurances were again requested from respondent that they would comply with the pricing requirements of the Guides Against Deceptive Pricing. In response thereto, respondents' counsel on December 22, 1958, advised that he would be back in his office on January 9, 1959, and by letter dated December 29, 1958, requested a conference in Washington in early February 1959.

By letter dated January 6, 1959, the Commission notified respond-

ents' counsel that since the information was not furnished that the corporate respondent was complying with the Federal Trade Commission's requirements, the file was being referred to the Bureau of Investigation. On or about January 12, 1959, Mr. Milton H. Gross, representing respondents' counsel, and Mr. Stanley N. Miller, an employee of respondents, conferred in Washington with staff members of the Federal Trade Commission. Subsequent thereto, by letter of January 30, 1959, respondents' counsel transmitted several wallets representative of how disclosure cards were inserted or attached thereto. It was also stated that when "Split Leather" is used it is so identified. It was further stated that "with respect to price designation in the form of labels, tickets or cards in connection with the sale of wallets, Nash, Inc. no longer furnishes price labels with or in connection with the sale of its wallets unless the customer strongly insists on such labels. In any case, where such price tickets, labels or cards are furnished at customer's request, the indicated price does not and will not exceed the usual customer selling price of the product in the area, or where the customer requests a particular price ticket and the product is actually retailed by the customer at the designated price, in which latter case the ticket will not be identified with Nash, Inc."

By letter dated February 11, 1959, the Commission acknowledged receipt of eight wallets and five invoices. The use of the term "Genuine Leather" was questioned and it was requested that its use be discontinued. In response thereto, respondents' counsel by letter dated March 3, 1959, stated that "Split Leather" will not be designated as "Genuine Leather" after January 30, 1959. Respondents' counsel on March 19, 1959, submitted a wallet marked "Calfskin Split", as stamped thereon. On March 24, 1959, the Commission acknowledged receipt of respondents' letter of March 3, 1959, and advised that the information would be given consideration in further treatment of the matter. Similarly on March 27, 1959, the Commission acknowledged respondents' March 19, 1959, letter.

10. Field investigation of this matter was initiated on July 15, 1959, and the record shows that respondents cooperated with the investigator for the Commission giving him free access to their plant, records, documents, etc.

11. Respondents urge that since the practices set forth in findings 5, 6 and 7 hereinabove were discontinued more than a year prior to the filing of the complaint herein on December 6, 1960, and they do not intend to resume them, no order is necessary. As set forth above the Federal Trade Commission initiated its investigation on May 13, 1958, of respondents' practices in stamping and otherwise identifying

the materials contained in their wallets. Correspondence between the respondent and the Commission dragged on for more than a year without complete assurances from the respondent as to the correction of these practices, finally culminating in the commencement of a field investigation in July 1959. The record demonstrates that the greater portion of the complained of practices set forth in findings 5, 6 and 7 hereof were discontinued, modified or abandoned by the respondents at least by the fall of 1959 and that they do not intend to resume them. This action on the part of respondents is commendable.

It is well settled that a discontinuance of the practices which the Commission may find to constitute a violation of the law does not render the controversy moot. *F.T.C. v. Goodyear Tire and Rubber Company*, 304 U.S. 257 (1938). It is also well established that even though a respondent has discontinued an unlawful practice, even prior to the issuance of a complaint, that this, in and of itself, does not prevent the Commission from issuing a cease and desist order. *Marlene's, Inc. v. F.T.C.* 216 F. 2d 556 (CA 7 1954); see also Initial Decision, *Swanee Paper Corporation*, Docket No. 6927¹ (1959) where the abandonment defense was rejected, although it took place ten months prior to the issuance of the complaint. The Commission may, however, in its broad discretion dismiss a complaint because of discontinuance if unusual circumstances arise warranting dismissal. *Ward Baking Co.*, 54 F.T.C. 1919 (1956); *Argus Cameras, Inc.*, 51 F.T.C. 405 (1954).

In *Art National Manufacturers Distributing Co., Inc.*, et al., Docket 7286 the Chairman speaking for the Commission recently stated,

* * * One such plea is respondents' claim that they have discontinued or abandoned several of the practices indicted by the complaint and have no intention to again engage in them. To resolve such questions we generally look to the timing and circumstances surrounding the alleged discontinuance. In this case it is admitted that the practices were not discontinued until the Commission attorney investigating this matter informed respondents of their questionable nature. Such discontinuance after the commencement of proceedings will not support a conclusion or give assurance that the practices will not be resumed and under such circumstances we have consistently refused to dismiss complaints. E.g., *Ward Baking Company*, 54 F.T.C. 1919 (1958); *Arnold Constable Corporation*, Docket No. 7657 (January 12, 1961) [58 F.T.C. 49]. Respondents here have presented no grounds which would justify our departure from past holdings and we accordingly reject their plea of abandonment.

The facts and circumstances which exist in this case do not justify dismissal of the charges contained in Paragraph 4 of the complaint on the ground that respondents have discontinued these practices. The

¹ Adopted by Commission March 1960; aff'd. on this point *sub silentio* 291 F. 2d 833 (CA 2 June 1961).

plea of voluntary discontinuance is much like Don Quixote's helmet. It appears impressive but it affords little protection. The respondents did not discontinue these acts and practices until after the Commission began its investigation and after the Commission's "hand was on respondents' shoulder." *Snap-On Tools Corporation*, Docket No. 7116 (November 1, 1961) [59 F.T.C. 1035]. The record is devoid of any evidence upon which to base a conclusion that the practices have been surely stopped with no likelihood of resumption. No unusual circumstances are shown to exist in this proceeding which would justify dismissal of this portion of the complaint on the grounds of abandonment.

12. Respondents engage in the practice of attaching, or causing to be attached, to some of their wallets or billfolds, tickets upon which a price is printed, and since sometime in 1959 the price has been accompanied by the words "Comparable Value," thereby representing, directly or by implication, that said wallets or billfolds are of like grade and quality in all material respects to other wallets or billfolds currently offered for sale and sold at the price appearing on the tickets in the trade area where the representations are made. Many of respondents' wallets preticketed as "Comparable \$7.50 Value" actually sell for \$2.99.

13. Counsel supporting the complaint offered in evidence three of respondents' wallets: one preticketed with a tag of "\$7.50" and two with tags reading "Comparable \$7.50 Value" which had been purchased for \$2.99, in July 1959 and in July 1961 respectively. According to the unanimous testimony of four impartial witnesses, who have a combined total of over 55 years as wallet and leather goods buyers in four leading New York City department stores, the afore-said wallets were worth considerably less than the alleged "Comparable \$7.50 Value," and were not comparable in value or quality to items which they sell at retail for \$7.50. One witness placed a retail value of \$2.99 on all three of these wallets, one witness valued two at \$5.00 and one at \$3.95, and another witness valued all three at between \$2.49 and \$2.99. This testimony, if accepted, would mean that the "Comparable \$7.50 Value" ticketed price used by respondents was grossly in excess of the price at which wallets of like grade and quality are usually sold in the trade area where the representations are made.

14. Respondents question the expertise of the four witnesses called in support of the complaint because of alleged discrepancies between them in values placed on various wallets, identified and unidentified as to the manufacturer, shown to them by respondent on cross-examination. Respondents' point out that discrepancies exist between the

experts and the actual retail prices at which competitors' wallets were purchased by witnesses acting on behalf of respondents. Respondents further note that discrepancies exist between values placed by the experts on wallets of recent manufacture by respondents and respondents' witnesses who testified that such wallets were \$7.50 and \$10.00 values. In the opinion of the examiner the facts relied upon by respondents are not a sufficient justification for concluding that the four buyers called by counsel supporting the complaint were not qualified experts as to the retail value of the wallets at issue. All four witnesses appeared to have a good understanding as to what it is that contributes to the value of a leather wallet. None of the four expert witnesses heard the testimony of the others or had an opportunity to discuss his or her testimony with the others, yet their estimates as to the retail value of the various wallets shown them were substantially in line with one another. A chart of the expert testimony relating to paragraph five of the complaint is attached hereto and made a part of this finding [p. 608].

This chart graphically demonstrates the cross-examination to which these four witnesses were exposed and the overall accuracy and consistency of their testimony with respect to the valuation not only of the wallets of other manufacturers purchased by respondent, but as to those wallets of recent manufacture by respondents, which were unidentified when shown to them. For example, with respect to RX 14, a competitor's wallet which allegedly retails at \$7.50, the four experts valued this wallet at \$4.95, \$5.00, \$5.00 and \$3.50 respectively, and respondents' witness Miller valued it at only \$1.98 to \$2.98. Again with respect to RX 15 which allegedly retails at \$8.95 the four experts valued it at \$4.00, \$3.99, \$3.95 and \$2.00 to \$2.50, while respondents' witness Miller valued it at \$5.00. Similarly with respect to RX 10 and RX 11, the experts valued both of these at \$6.00, \$5.00 and \$4.00 respectively. The mere fact that they differed in their testimony or that they valued wallets at less than their alleged retail purchase price by one of respondents' witnesses does not destroy the efficacy of their testimony. Especially when the wallets RX 12, RX 15 and RX 19 so undervalued were purchased at Adlins Stationery Store in Jersey City, New Jersey; Union News Co., Pan American Gift Shop, Idlewild Airport, New York; and a gift shop at O'Hare Airport, Chicago, all of whose markups are unknown and obviously are not competitive with the large New York department stores. As noted in the chart, some of the discrepancies between the four experts can also be attributed to variances in the markups in their respective department stores.

CHART OF TESTIMONY RELATING TO PARAGRAPH FIVE OF COMPLAINT

Results introduced by Revisionists during cross examination of Commission experts and during presentation of defense. All, except RX 7, 3, 10, 11 and 13 are competitors' products.

	Fur	CX 12 Nash	CX 15 Nash	CX 14 Nash	RX 8 Lord Nash	RX 7 Nash	RX 3 Nash	RX 9 Lord Nash	RX 10 Nash	RX 11 Nash	RX 12 Lord Nash	RX 14 Nash	RX 15 Nash	RX 16 Nash	RX 19 Nash	RX 20 Nash	RX 21 Tempo	Assistant \$1.00 ret.
Sara Gordon Buyer Adams 13 yrs. experience	Commission	Each Exhibit worth less than \$7.50 Retail Value.		\$7.73	\$5.30 to \$7.25	\$5.00 to \$5.25	\$5.00 to \$5.25	\$7.25	Prefers quality over quantity of them.		\$7.25	\$4.95	\$3.95 to \$4.00.					
Michael Grogan Buyer, Gunble's 20 yrs. experience	Commission	\$2.99	\$2.99	\$2.99	\$7.50	\$5.00	\$7.50	\$7.50	\$2.95 to \$6.00			\$3.00	\$3.99	\$1.00				
Johna Hermann Buyer, Macy's 14 yrs. experience	Commission	\$3.00	\$2.95	\$5.00		Rates RX 8 as 7 but both higher than CX 12.			\$2.95 to \$6.00			\$5.00	\$1.25	No estimate of value.	\$2.93			
For Friedman** Buyer, Chicago's 8 yrs. experience	Commission	Each Exhibit is valued from \$2.40 to \$2.00.		\$4.00	\$2.50 to \$3.00.	\$2.50 to \$3.00.	\$3.00	\$4.00	\$5.00		\$5.00	\$3.50	\$2.00 to \$2.50.					
Stanley N. Miller** Employee Manager Nash, Inc.	Respondent	Exhibits sold to woman's de en.		\$7.55 - a little more.	Rates RX 7 worth \$10.20.	Rates RX 1 sold by woman's dealer for \$10.00.	\$7.50	Rates RX 10 same as RX 11.			\$7.50	\$1.38 to \$2.29.	\$5.00		\$7.50			
Daniel J. Nash** Owner Nash, Inc.	Respondent	Exhibits sold to woman's de en.			Sold by woman's dealer than Nash for \$7.50.	Sold by woman's dealer than Nash for \$7.50.		Sold up by Nash for \$7.50.				Much less.	Less value at \$8.25 than RX 12 and 13.				\$3.20	
Jane Cagle Designer Nash, Inc.	Respondent	Rated CX 12 slightly higher than RX 11.			Rates RX 7 and 8 better value than RX 6.			Rates RX 9, 10 and 11 the same.										
Ludwig Lorenz***** Agent to Nash, Inc.	Respondent				Rates higher value of RX 7 and 8 higher than CX 12 and RX 6.			Rates average quality of RX 9, 10 and 11 rated the same.										
Betty H. Krainer Representing Agent Nash, Inc.	Respondent	CX 12, 13 and 14 much lower in price than RX 7, 8, 10, 11 and 12.	****		Rates RX 7 and 8 as higher priced than CX 12 as cheap.			Rates RX 9, 10 and 11 about same and better than CX 14.			Prefers RX 13 to RX 12 but there is little difference.							

*Qhrbach's mark-up is 50 to 35% rather than the 40 to 45% of the other; three stores and 13, consequently.

entirely a mark-up to 20-30%. Finding that 10 to 15% of all items must actually be sold at a loss, the company reflected in the lower appraisals.

- Testified that RX 7, 3, 10, 11 and 13 contain \$7.50 comparable value tickets were sold to Woolworth's.
- Testified RX 11 is presently sold to Woolworth's for \$21.00 a dozen.

*****Could not compare value of leathers except pigskin - RX 7, 8 and CX 12.

.....Material in CX 14 used in lower price range than RX 9, 10 and 11.

But the examiner does not rely solely on the testimony of the four witnesses called in support of the complaint for his findings. Henry Kramer, an employee of respondent, testified that CX 12, CX 13 and CX 14, the wallets introduced to support the allegations of paragraph 5 of the complaint, were much lower in price than RX 7, RX 8, RX 10, RX 11 and RX 13, also manufactured by respondents and valued by some of respondents' witnesses at \$7.50 and by the experts called in support of the complaint at prices ranging from \$2.50 to \$6.00. Even if we assume that RX 7, RX 8, RX 10, RX 11 and RX 13 are respondents' current line of merchandise replacing CX 12, CX 13 and CX 14 in 1960, the testimony of the four experts unanimously valued these exhibits at less than a "Comparable \$7.50 Value." The fact that RX 7, RX 8, RX 10, RX 11 and RX 13 have never been in the retail market and that the mode and basis of their selection from respondents' current production line was not indicated, casts doubts on any such assumption or inference.

Respondents' witness Kramer also testified that he rated the leather in RX 7 and RX 8 as higher priced and of better wearing quality than CX 12 and RX 10 and RX 11 better in the same respects than CX 14. This testimony was corroborated by another witness for respondent, Ludwig Lowenstein, a leather expert, who rated the grade and quality of the leather in RX 7 and RX 8 higher than CX 12. With respect to wallets made of other than pigskin, the leather expert refused to compare the quality of the leather in the various exhibits giving as the reason that to make an accurate judgment on quality and grades of leather he would have to see the entire hide, not just one wallet. Respondents' argument that the four experts were not qualified because they lacked experience in leather fabrication is therefore of little consequence since respondents' acknowledged leather expert refused to testify to any great extent regarding quality and grades of leather used in the various exhibits.

15. It is concluded and found that respondents' wallets or billfolds are inferior in grade and quality in material respects to other wallets or billfolds currently selling for the price appearing on the tickets attached to respondents' wallets in the trade area where the representations are made.

16. By indulging in the practices embraced in paragraphs 5, 6, 7 and 12 hereof, the respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public.

17. In the conduct of their business, the respondents have been and are in substantial competition in commerce, with corporations, firms,

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and individuals in the sale of merchandise similar to that sold by the respondents.

18. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices have the tendency and capacity to mislead purchasers into the erroneous and mistaken belief that said statements and representations 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 is being unfairly diverted to respondents from their competitors and substantial injury is being done to competition in commerce.

19. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and 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.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. Counsel supporting the complaint has proved by reliable, probative and substantial evidence that respondents by misrepresenting or failing to disclose prominently the true identity of the materials from which their wallets are fabricated and by misrepresenting the grade and quality of their wallets by attaching thereto a ticket upon which is imprinted a fictitious price accompanied by the words "Comparable Value," put into the hands of retailers who buy wallets from them, the means whereby such persons may mislead and deceive members of the purchasing public. Respondents' aforesaid acts and practices are to the prejudice and injury of the public and respondents' competitors and 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.

4. Counsel supporting the complaint has failed to prove by reliable, probative and substantial evidence that respondents have misrepresented the operation of plants or offices in London, Paris, Rome and Canada.

ORDER

It is ordered, That respondent Nash, Inc., a corporation, and its officers, and respondents Daniel J. Nash and Jack Hammel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wallets or billfolds, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Saddle Pigskin", "Leather", "Genuine Leather", or any other words of similar import, in connection with wallets or billfolds made of split leather, or misrepresenting in any manner the kind or quality of the materials of which their wallets or billfolds are composed.

2. Offering for sale or selling wallets or billfolds made in whole or in part of split leather without affirmatively disclosing such fact on or in immediate connection with such product in a clear and conspicuous manner.

3. Offering for sale, selling or distributing wallets or billfolds made in part of leather and in substantial part of material other than leather without clearly disclosing thereon or in immediate connection therewith that a part thereof is not made of leather.

4. Using the words "comparable value" or any words of similar import, in connection with any price, as descriptive of respondents' products when such products are not of like grade and quality in all material respects as the merchandise to which compared and which is regularly sold at the purported retail price in the trade area or areas where the representation is made.

5. Furnishing any means or instrumentality to others whereby they may mislead the public as to any of the matters or things prohibited by the above provisions of this order.

It is further ordered, That the complaint insofar as it relates to the misrepresentation of the operation of plants or offices in London, Paris, Rome and Canada, as more specifically set forth in paragraph 7 of the complaint, be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

By MacIntyre, *Commissioner*:

This is an appeal by the respondent wallet and billfold manufacturer and two of its officers from the hearing examiner's initial decision filed December 12, 1961, in which he found respondents had

violated the Federal Trade Commission Act. The complaint in this matter, issued December 6, 1960, charges (1) respondents misrepresented or failed to disclose the true identity of the materials from which their products were manufactured; (2) misrepresented the quality of their products by advertising them as "comparable" to wallets selling for \$7.50; and (3) falsely represented that the respondent company operated plants or offices in London, Paris, Rome and Canada. The hearing examiner dismissed the third of the enumerated charges but held the first two to have been sustained and directed the respondents to cease and desist therefrom.

The Alleged Misrepresentation of Materials

The respondents' alleged failure to properly disclose the true nature of the components from which their wallets and billfolds are fabricated is charged in Paragraph 4 of the complaint. It is there alleged that respondents stamped certain wallets and billfolds with the words "Saddle Pigskin" and in certain other wallets or billfolds inserted cards containing the words "Leather" or "Genuine Leather". It is charged that by the use of these unqualified designations the respondents represented, contrary to fact, that the wallets so designated were made of top grain leather when in truth and in fact they were made of split leather.

It is also charged in Paragraph 4 that respondents' practice of indicating on printed cards that certain components such as linings, pockets and lacings are made of materials other than leather is inadequate to inform prospective purchasers since the cards are placed in the billfolds ". . . in such a manner so as not to be readily noticed. . . ."

The respondents allege as a special defense that such practices were discontinued "shortly after January 12, 1959". The hearing examiner discounted this defense and so do we. It appears that Commission personnel first contacted the respondents in respect to these misrepresentations by letter dated May 13, 1958. Thereafter conferences were had and much correspondence exchanged, but eighteen months later, in October 1959, the respondents were still representing by means of card inserts bearing the inscription "Genuine Leather" that their split cowhide wallets were made of top grain leather. Moreover, wallets bearing these misleading cards were still on retailers' shelves in 1960.

It appears that as late as June 1960, respondents were not properly and adequately disclosing that certain components of their wallets were made of materials other than leather. At that time wallets were still being shipped with the necessary disclosure printed on a card

but obscured by the wallet pocket in which the card was inserted.

While these practices were apparently discontinued some time before the complaint issued, we, nevertheless, feel that the public interest requires an order to cease and desist. The respondents' discontinuance was the result of official, although informal, action, and, therefore, cannot be said to be voluntary. Under these circumstances the public is entitled to a guarantee against resumption, a guarantee which can only be supplied by an order to cease and desist.¹

The Quality Charge

In Paragraph 5 of the complaint it is charged that respondents attach tickets to their wallets which bear a monetary amount accompanied by the legend "Comparable Value" or "Comparable Retail", thereby representing that their wallets are equal in grade and quality "... to other wallets or billfolds currently offered for sale and sold at the price appearing on the tickets ...". The complaint alleges that the respondents' wallets are, in fact, inferior in quality to such "... other wallets or billfolds currently selling for the price appearing on said tickets."

The record reveals that some of respondents' wallets containing tags or tickets reading "Comparable \$7.50 value" are sold to retailers for \$1.80 (\$21.60 a dozen) and resold to consumers for \$2.99.

Complaint counsel rests his case entirely on the testimony of four expert witnesses, wallet and billfold buyers for leading New York City department stores. Each of these witnesses was handed respondents' wallets and asked for an opinion as to their retail value. The resulting answers fixed the value as between a low of \$2.49 and a high of \$5.00. By "value" the witnesses meant the price at which the respondents' wallets would sell to consumers in their stores. Respondents' wallets were, in fact, not stocked and sold by the buyer witnesses' stores. The experts also testified that the wallets in question do not represent a \$7.50 value or compare to wallets which their employers were selling for \$7.50.

On the basis of this expert testimony, elicited on direct examination, the hearing examiner found that respondents' wallets were in-

¹ It is now well established law that discontinuance prior to the issuance of a complaint does not bar an order to cease and desist. See, for example, *Keasbey & Mattison Co., et al. v. Federal Trade Commission*, 159 F.2d 940, 951 (6th Cir. 1947); *Hershey Chocolate Corp., et al. v. Federal Trade Commission*, 121 F.2d 968, 971 (3rd Cir. 1941); *Dr. W. B. Caldwell, Inc. v. Federal Trade Commission*, 111 F.2d 889, 891 (7th Cir. 1940).

Even a "voluntary" discontinuance does not necessarily preclude the issuance of an order. *Marlene's, Inc., et al. v. Federal Trade Commission*, 216 F.2d 556, 559-60 (7th Cir. 1954); *C. Howard Hunt and Co. v. Federal Trade Commission*, 197 F.2d 273, 281 (3rd Cir. 1952).

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ferior to "other wallets or billfolds currently selling for . . ." \$7.50 and concluded that respondents' representations were false. In so finding he apparently gave no weight at all to the effective rebuttal produced by cross-examination.

On cross-examination the experts were asked to place a value on two "other" wallets which the record shows were "currently offered and sold" for \$7.50 and \$8.95.² Their testimony fixed the retail "value" of these wallets in the same range as respondents, that is, from \$2.00 to \$5.00. Thus, these "other" wallets were not superior in "grade and quality" to respondents' wallets or, stated another way, respondents' wallets were not shown to be "inferior" to these "other" wallets currently selling at or higher than the comparable value price appearing on the tickets affixed to respondents' wallets.

Of course, it may be that the "other" wallets shown to the witnesses were substantially over-priced and, indeed, one is almost forced to that conclusion by the testimony of the expert witnesses. However, that is not a relevant consideration under this complaint for they were, in the language of the complaint, "currently offered for sale and sold" at \$7.50 and \$8.95. The same witnesses fixed the value of these "other" wallets and, thus, the only conclusion which can be drawn is that respondents' wallets are approximately equal in grade and quality to at least some other higher priced wallets.

The Commission believes that the public understands "comparable value" advertising representations to mean that the advertiser is offering goods at a price lower than that generally prevailing in the trade area for goods of similar quality. It seems to us that this is the only logical interpretation which can be made of such representations and it is doubtless the one intended by the advertiser. But the complaint was not cast in such terms and as drafted was not proved. An appropriate order dismissing this charge of the complaint will issue. The hearing examiner's contrary findings are in error and are vacated and set aside.

Commissioner Anderson did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon

² The hearing examiner found that these wallets "allegedly retail" for \$7.50 and \$8.95. This is an erroneous characterization since the record contains un rebutted proof that the wallets were purchased from prominent New York City area retailers at these prices. As a matter of fact, one of these "other" wallets was purchased from a store which employed one of the expert witnesses.

briefs and oral argument in support of said appeal and in opposition thereto; and the Commission having rendered its decision in part granting and in part denying the appeal:

It is ordered, That the following provisions of the initial decision be, and they hereby are, vacated and set aside.

1. Findings 12, 13, 14 and 15 in their entirety.
2. The phrase “. . . and 12 . . .” appearing in finding 16.
3. The phrase “. . . and by misrepresenting the grade and quality of their wallets by attaching thereto a ticket upon which is imprinted a fictitious price accompanied by the words ‘Comparable Value, . . .’” appearing in numbered paragraph 3 of the Conclusions of Law.
4. Numbered paragraph 4 of the Order in its entirety.

It is further ordered, That as so modified the initial decision be, and it hereby is, adopted as the decision of the Commission, which hereby promulgates and issues this, its final order:

It is ordered, That respondent Nash, Inc., a corporation, and its officers, and respondents Daniel J. Nash and Jack Hammel, individually and as officers of said corporation, and respondents’ representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wallets or billfolds, or any other product, in commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words “Saddle Pigskin”, “Leather”, “Genuine Leather”, or any other words of similar import, in connection with wallets or billfolds made of split leather, or misrepresenting in any manner the kind or quality of the materials of which their wallets or billfolds are composed.

2. Offering for sale or selling wallets or billfolds made in whole or in part of split leather without affirmatively disclosing such fact on or in immediate connection with such product in a clear and conspicuous manner.

3. Offering for sale, selling or distributing wallets or billfolds made in part of leather and in substantial part of material other than leather without clearly disclosing thereon or in immediate connection therewith that a part thereof is not made of leather.

4. Furnishing any means or instrumentality to others whereby they may mislead the public as to any of the matters or things prohibited by the above provisions of this order.

It is further ordered, That the complaint insofar as it relates

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to the misrepresentation of the operation of plants or offices in London, Paris, Rome and Canada, as more specifically set forth in Paragraph Seven of the complaint be, and the same hereby is dismissed.

It is further ordered, That Paragraph Five of the complaint be, and it hereby is, dismissed.

It is further ordered, That respondents 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.