

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

Docket C-818. Complaint, Aug. 26, 1964—Decision, Aug. 26, 1964

Consent order requiring a Chicago distributor of "Magna-Sighter," an optical device of Japanese origin, to cease failing to label such product with indicia of foreign origin, and making deceptive pricing and savings claims.

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 Fairchild Optical Company, Inc., a corporation, and William Bogolub, individually and as an officer 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 as follows:

PARAGRAPH 1. Respondent Fairchild Optical Company, 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 1555 West Howard Street, Chicago, Illinois.

Respondent William Bogolub is an officer of the 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.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of an optical device consisting of a plastic hood holding lenses of varying degrees of magnification, hereinafter referred to as respondents' "Magna-Sighter," to the public and to 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 products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Certain of respondents' "Magna-Sighters" are of Japanese origin. Said "Magna-Sighters" are packaged in plastic pouches and cardboard boxes and no disclosure is made on said products or the packaging therefor that said products are of Japanese origin. On certain of the aforesaid "Magna-Sighters" are affixed labels bearing the words "Fairchild Optical Company, Inc., Chicago 26, Illinois." Such words constitute an affirmative representation that said "Magna-Sighters" are of domestic, rather than foreign origin. Such representation is false, misleading and deceptive as said "Magna-Sighters" are of Japanese origin.

PAR. 5. When the name and address of a domestic corporation, firm or individual appear on a product and no disclosure is made that the

product is of foreign origin, a substantial portion of the purchasing public understands and believes that the product is of domestic origin, a fact of which the Commission takes official notice.

A substantial portion of the purchasing public has a preference for optical devices such as respondents' "Magna-Sighter" which are of domestic origin, a fact of which the Commission also takes official notice.

Respondents' misrepresentation of the country of origin of their optical devices is, therefore, to the prejudice of the purchasing public.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing the sale of their "Magna-Sighter," respondents have made statements and representations with respect to the price of said product. Said statements and representations have been made in circulars, direct mail pieces and other types of advertising and promotional material distributed by means of the United States mails to prospective purchasers located in States other than the State of Illinois and to retailers for distribution to prospective purchasers.

Typical and illustrative of said statements and representations are the following:

\$8.95
EACH
WHEN YOU BUY
2 OR MORE
(\$9.95 FOR ONE)
SELLS NATIONALLY
FOR \$12.50
SAVE UP TO \$3.55
PER PAIR

PAR. 7. By and through the statements and representations as set forth in Paragraph Six hereof, respondents represent, directly or by implication, that \$12.50 is the price at which substantial sales of respondents' "Magna-Sighter" have been made and are being made in the recent and regular course of respondents' business and that, therefore, purchasers who accept respondents' offer to sell said "Magna-Sighters" at \$9.95 for one or \$8.95 each for two or more will save the difference between \$12.50 and \$9.95 or \$8.95 as the case may be.

In truth and in fact, the models of respondents' "Magna-Sighter" as depicted in said advertising and promotional material have never sold for \$12.50 and \$9.95 for one and \$8.95 each for two or more are respondents' regular prices for said "Magna-Sighters." Therefore, purchasers do not save the difference between \$12.50 and the stated lower prices.

Therefore, said representations and statements were, and are, false, misleading and deceptive.

PAR. 8. By the aforesaid practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public as to the country of origin of respondents' optical devices and as to the prevailing selling price of respondents' optical devices and the amount of savings afforded to purchasers of said devices.

PAR. 9. 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 optical devices of the same general kind and nature as those sold by respondents.

PAR. 10. 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' optical device by reason of said erroneous and mistaken belief.

PAR. 11. 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 unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined

that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Fairchild Optical Company, 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 1555 West Howard Street, Chicago, Illinois.

Respondent William Bogolub is an officer of said corporation, and his address is the same as that of said corporation.

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 Fairchild Optical Company, Inc., a corporation, and its officers, and William Bogolub, 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 advertising, offering for sale, sale or distribution of optical devices or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner or by any means that any product or substantial part thereof is made in the United States when said product or part is manufactured in or imported from a foreign country; or otherwise misrepresenting in any manner the country of origin of their merchandise.

2. Using the words "sells nationally for" or any other words of similar import or meaning to refer to any price which exceeds the price at which substantial sales of such merchandise are being made in respondents' trade area; or otherwise misrepresenting in any manner the price at which substantial sales of such merchandise are being made.

3. Representing, directly or by implication, that purchasers of respondents' merchandise will be afforded any savings from the retail price of respondents' merchandise unless the price at which such merchandise is offered constitutes a substantial reduction from the highest price at which substantial sales of such merchandise are being made at retail in respondents' trade area; or otherwise misrepresenting in any manner the savings afforded to purchasers of respondents' merchandise.

4. Placing in the hands of others the means and instrumentalities by and through which they may deceive and mislead the pur-

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chasing public as to any of the matters and things set forth in the preceding paragraphs of this order.

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.