

Complaint

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IN THE MATTER OF
STANLEY MYERS ET AL.

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

Docket C-1011. Complaint, Nov. 4, 1965—Decision, Nov. 4, 1965

Consent order requiring three defunct firms in Melrose Park, Pa., engaged in purchasing used X-ray film from hospitals, doctors and others, for resale to processors for the recovery of silver therefrom, to cease misrepresenting the condition of materials received and the cost or amount of labor expended upon any shipment of goods, and to cease from failing to pay suppliers agreed-upon amounts for material unless failure to pay is based upon a bona fide claim.

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 Stanley Myers, Edward S. Myers and Louis Myers, individuals, formerly doing business at Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, herein-after 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. Respondents Stanley Myers, Edward S. Myers and Louis Myers are individuals who have in the past done business as Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, with their principal office and place of business located at 7607 Spring Avenue, Melrose Park, Pennsylvania.

PAR. 2. Respondents have in the past engaged in the solicitation for and purchase of used X-ray film from hospitals, doctors and others, for resale to processors of such film for the recovery of silver therefrom. Respondents used the name Edward S. Myers Company from the inception of their business in about 1955 until about May, 1961 when they adopted the name Jostan-Montgomery Plastics Company. Respondents used the latter name until about January, 1964 at which time they chose the name Philadelphia Processing Company, which they used until September, 1964 when they ceased doing business.

PAR. 3. In the course and conduct of their business, respondents for some time in the past caused the aforesaid product, when pur-

chased, to be shipped to their place of business in the State of Pennsylvania from sellers thereof located in various other States of the United States. In addition, respondents for some time in the past caused the aforesaid product, when sold, to be shipped from their place of business in the State of Pennsylvania to a purchaser thereof located in the State of New Jersey. At all times mentioned herein respondents maintained a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents engaged in the practice of mailing circulars to prospective sellers of used X-ray film throughout the country, offering to purchase such film at a specified price and offering to pay the motor freight charges for the shipment of such film. When contacted by the recipients of these circulars, respondents forwarded to them a purchase order contract along with instructions for shipping the used X-ray film.

Upon receipt of a shipment of used X-ray film accompanied by a signed purchase order contract, respondents engaged in the practice of notifying the seller that the packaging of the film did not comply with the conditions prescribed in the purchase order contract, that most of the film was substandard or was received in a damaged condition and, by reason thereof, respondents were required to perform extensive labor upon the substandard or damaged film. Consequently, respondents deducted a substantial portion of the agreed upon amount as compensation for the alleged labor performed and for the lower value of the alleged substandard or damaged film, and remitted a check which was a small fraction of the amount originally offered as full payment for the film received.

PAR. 5. In truth and in fact, the used X-ray film received by respondents was packaged in the same manner usually and customarily employed by sellers of such used film and such packing was in substantial compliance with the terms of the purchase order contract. The film was not substandard, received in a damaged condition, or otherwise of lower value than any other used X-ray film of the same type. No labor was performed by respondents upon the film other than that required in any case to prepare such film for resale to processors thereof.

Therefore, the statements and representations as set forth in Paragraph Four hereof were false, misleading and deceptive.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents were in substantial competition, in commerce,

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with corporations, firms and individuals likewise engaged in the purchase and resale of used X-ray film.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and into the sale of substantial quantities of used X-ray film by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondents Stanley Myers, Edward S. Myers and Louis Myers are individuals who have in the past done business as Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, with their office and principal place of business located at 7607 Spring Avenue, in the city of Melrose Park, State of Pennsylvania.

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 Stanley Myers, Edward S. Myers and Louis Myers, individuals, doing business as Edward S. Myers Company, Jostan-Montgomery Plastics Company, Philadelphia Processing Company or under any other trade name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the soliciting or offering to purchase or the purchase of used X-ray film, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Falsely representing, directly or by implication, that any goods or materials shipped to or purchased by respondents were substandard, or otherwise inferior, or were received in a damaged or otherwise injured condition.
2. Falsely representing, directly or by implication, the cost or amount of labor that has been or will be performed upon any shipment of goods or materials purchased or received by respondents.
3. Failing to pay, or deducting any amount of money from, a sum agreed upon between respondents and the seller of any goods or materials, unless such failure to pay or deduction is based upon a bona fide claim.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
NATIONAL MODERNIZERS, INC., ET AL.