

Complaint

IN THE MATTER OF

THOMAS HARRIS McDONALD TRADING AS
MCDONALD & SON GOLF COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1094. Complaint, Aug. 3, 1966—Decision, Aug. 3, 1966*

Consent order requiring a Batavia, Ill., reconditioner of used golf balls, to cease failing to disclose on the golf balls themselves or on the wrappers or boxes that they are previously used golf balls which have been re-washed or repainted.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the said Act, the Federal Trade Commission, having reason to believe that Thomas Harris McDonald, an individual trading as McDonald & Son Golf Company, hereinafter referred to as respondent, has 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 Thomas Harris McDonald is an individual trading as McDonald & Son Golf Company with his office and principal place of business at 103 Island Avenue, Batavia, Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of previously used, rewashed and repainted golf balls to retailers and dealers for resale to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped and transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, respondent rewashes and repaints, or causes to be rewashed and repainted, golf balls which have been previously used.

Respondent does not disclose either on the ball itself, on the wrapper or on the box in which the balls are packed, or in any other manner, that said golf balls are previously used balls which have been rewashed or repainted.

When such previously used golf balls are rewashed or repainted, in the absence of any disclosure to the contrary, or in the absence of an adequate disclosure, such golf balls are understood to be and are readily accepted by the public as new balls, a fact of which the Commission takes official notice.

PAR. 5. By failing to disclose the fact as set forth in Paragraph Four, respondent places in the hands of uninformed, unwary, and unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature and condition of the said golf balls.

PAR. 6. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 7. The failure of the respondent to disclose on the golf ball itself, on the wrapper or on the box in which they are packed or in any other manner, that they are previously used balls which have been rewashed or repainted has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said golf balls were, and are, new in their entirety and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and of the respondent's 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 respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 Thomas Harris McDonald is an individual trading as McDonald & Son Golf Company with his office and principal place of business at 103 Island Avenue, Batavia, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondent, Thomas Harris McDonald, an individual trading and doing business as McDonald & Son Golf Company, or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of used, rewashed or repainted golf balls in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing clearly to disclose on the boxes in which respondent's rewashed or repainted golf balls are packaged, on the wrapper and on said golf balls themselves, that they are previously used balls which have been rewashed or repainted: *Provided, however,* That disclosure need not be made on the golf balls themselves if respondent establishes that the disclosure on the boxes and/or wrappers is such that retail customers, at the point of sale, are informed that the golf balls are previously used and have been rewashed or repainted.

2. Placing any means of instrumentality in the hands of others whereby they may mislead the public as to the prior use and rewashed or repainted nature of their golf balls.