

Complaint

84 F.T.C.

IN THE MATTER OF

WILLIAM FISHER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2537. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974*

Consent order requiring a former officer of Camera Hut, Ltd., a now-bankrupt, corporate mail order seller of cameras and photographic equipment, located in Moorestown, N.J., among other things to cease misrepresenting the quality, performance or characteristics of photographic lenses or the quality or grade of photographic equipment or supplies; failing to make refunds as advertised; and failing to maintain records of transactions.

Appearances

For the Commission: *Myer S. Tulkoff.*

For the respondent: *Robert Pluese, Camden, N.J.*

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 William Fisher, an individual and as a former officer of Camera Hut, Ltd., Inc., hereinafter referred to as respondent, has 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 William Fisher is an individual and a former officer of Camera Hut, Ltd., Inc., a corporation organized, existing and formerly 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 Moorestown Mall, Route 38 and Lenola Road, Moorestown, N.J. Respondent William Fisher formerly formulated, directed and controlled the acts and practices of Camera Hut, Ltd., Inc., including the acts and practices hereinafter set forth. His address is the same as that of the corporation.

PAR. 2. Respondent for some time last past was engaged in the purchasing, advertising, sale, offering for sale and distribution of photographic equipment and supplies to the public at retail, through direct sales and through mail order.

PAR. 3. In the course and conduct of his business as aforesaid, and at all times mentioned herein, respondent was in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the advertising, offering for sale, and sale of merchandise of the same general kind and nature as that advertised, offered and sold by respondent.

PAR. 4. In the course and conduct of his business as aforesaid, respondent for some time last past caused his said merchandise, when sold, to be shipped from his place of business in the State of New Jersey, to purchasers thereof located in various States of the United States, and at all times mentioned herein maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, and for the purpose of inducing the purchase of photographic equipment and supplies, particularly various types of lenses and 27 piece camera outfits, respondent made certain statements and representations in advertisements inserted in various newspapers and magazines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with respect to the qualities or characteristics of said merchandise.

PAR. 6. Respondent by means of the aforesaid advertisements represented directly and by implication that:

1. The teleconverter lens has unbelievable sharpness which compares with normal lens and even close-up auxiliary lens.

2. The Sun zoom lens, as sold by Camera Hut, Ltd., focuses up to 8''.

3. The Prinz 500 mm f/8 lens, as sold by Camera Hut, Ltd., focuses from only 10''.

4. The 27 Piece SLR outfit is of the same grade and quality as other comparative items that respondents list in their ad.

5. The pictures used in connection with said advertising matter are accurate demonstrations of the offered items.

PAR. 7. In truth and in fact:

1. The said teleconverter lens does not have unbelievable sharpness which compares with normal lens or close-up auxiliary lens.

2. The said Sun zoom lens does not focus up to 8''.

3. The said Prinz 500 mm f/8 lens does not focus from only 10''.

4. The 27 Piece SLR outfit is not of the same grade and quality as other comparative items that respondents list in their ad.

5. The pictures used in connection with said advertising matter are not accurate demonstrations of the offered items.

Therefore, the representations, acts and practices as set forth in Paragraph Six were unfair, misleading and deceptive.

PAR. 8. In the course and conduct of his business, and for the purpose of inducing sale of said merchandise, respondent made certain statements and representations in advertisements inserted in various newspapers and magazines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with respect to the time in which delivery of merchandise may be expected.

PAR. 9. By and through the use of the aforementioned statements and representations, the respondent represented directly or by implication, that a purchaser can expect delivery on all merchandise within a reasonable period of time.

PAR. 10. In truth and in fact:

Respondent on numerous occasions and in a substantial number of instances, either failed to deliver prepaid merchandise, or delivered prepaid merchandise only after a long lapse of time and/or after several demands thereof were made to respondent and pleas for assistance were made to Better Business Bureaus, United States Postal Inspectors' offices, magazine publishers, and to governmental agencies. Such practices resulted in substantial expense and inconvenience to purchasers.

Therefore said practices, statements and representations were unfair and misleading and deceptive.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive statements and representations, directly or by implication, has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of said merchandise from respondent's place of business by reason of said erroneous and mistaken belief.

PAR. 12. The use by respondent of the unfair, deceptive and misleading acts and practices described herein in connection with respondent's business enabled respondent unfairly to receive remuneration and financial gains in commerce. All of respondent's practices were intertwined and mutually supportive so as to comprise a totality of unfair and deceptive practices in commerce.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged were unethical, exploitative and caused substantial injury to consumers, and constituted and have constituted unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 14. The aforesaid acts and practices of respondent, as alleged herein, were and have been all to the prejudice and injury of the public and of respondent's competitors and constituted unfair methods of

competition 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 respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 individual respondent William Fisher and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the said individual respondent 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 said individual respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent William Fisher is an individual and a former officer of Camera Hut, Ltd., Inc., a corporation organized, existing and formerly 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 Moores-town Mall, Route 38 and Lenola Road, Moorestown, N.J. Respondent William Fisher formerly formulated, directed and controlled the acts and practices of Camera Hut, Ltd., Inc., including the acts and practices hereinafter set forth. His address is the same as that of the corporation.¹

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.

¹ Camera Hut, Ltd., Inc., was originally listed as a proposed respondent in the proposed complaint issued by the Commission on Jan. 29, 1974 under Section 2.31 of the Commission's rules. On Mar 1, 1974 a Creditors' Petition in Bankruptcy was filed against Camera Hut, Ltd., Inc. and an Order Appointing Receiver was filed by Bankruptcy Judge William Lipkin in the United States District Court, District of New Jersey on Mar. 5, 1974 (B-74-303). The corporation thereafter ceased doing business, and the receiver was ordered to wind up the affairs of the corporation. Because of these facts, the corporation Camera Hut, Ltd., Inc., has not been named as a party in the Commission's final Complaint or this decision and order.

Decision and Order

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ORDER

It is ordered, That respondent William Fisher individually and respondent's agents, representatives, and employees directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of photographic equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing by any means, directly or by implication, that respondent's lenses possess sharpness of focusing characteristics which in fact they do not possess or which do not perform in the manner or to the extent represented; or misrepresenting in any manner the quality, performance, or characteristics of photographic lenses and other photographic equipment.

2. Misrepresenting by any means, directly or by implication, that photographic equipment is of the same grade and quality as other comparative photographic equipment and supplies; or in any other manner misrepresenting the grade and quality of photographic equipment and supplies.

3. Representing by any means, directly or by implication, that pictures or depictions used in connection with respondent's advertising are accurate demonstrations of the advertised items where such is not the case; or misrepresenting in any manner through pictures, drawings, depictions or sketches the qualities, characteristics, or performance of photographic equipment and supplies.

4. Failing to make, without prior demand, a prompt refund to the buyer of all moneys paid for merchandise ordered by mail when the merchandise is not shipped within twenty-one (21) days from receipt of payment; *Provided*, That nothing in this paragraph (4) is intended to preclude the respondent from shipping merchandise at a later time without having made a refund if:

- (a) a clear and conspicuous disclosure of the estimated time required for shipment has been made in all advertisements, catalogs, and other materials soliciting orders; or

- (b) the respondent obtain the express written consent of the buyer to a specified delay.

5. Failing to make, without prior demand, a prompt refund to the buyer of all moneys paid for merchandise ordered by mail when the merchandise is not shipped within that time stated in the advertisement, catalogs or other materials soliciting orders, or within that

time expressly agreed to by the buyer, as provided in paragraph (4)(a) and (b).

6. Failing to disclose clearly and conspicuously in all advertisements, catalogs and other materials soliciting orders, the following statement:

NOTICE: ALL MERCHANDISE WILL BE SHIPPED WITHIN 21 DAYS OR ALL MONEY WILL BE REFUNDED WITHOUT PRIOR DEMAND.

This statement must appear in all materials soliciting orders unless such materials contain a clear and conspicuous disclosure of the estimated time required for shipment.

7. Failing to maintain for a period of one (1) year with regard to each and every transaction between the respondent and his customers, the nature of merchandise ordered, the date the order was received, and the date the merchandise was shipped.

It is further ordered, That nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondent is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That the individual respondent named herein promptly notify the Commission in the event that he discontinues his present business or employment, and becomes affiliated with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondent herein shall forthwith distribute a copy of this order to each of his operating officers, agents and representatives.

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

IN THE MATTER OF

FIELDSTON CLOTHES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND WOOL PRODUCTS LABELING ACTS

Docket C-2538. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974

Consent order requiring a New Jersey corporation located in New York City, a manufacturer and distributor of wool products, including boy's clothing, among other things to cease misbranding its wool products.

Appearances

For the Commission: *James Manos.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fieldston Clothes, Inc., a corporation, and Marvin Mantin and Stanley J. Miles, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Fieldston Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey.

Respondents Marvin Mantin and Stanley J. Miles are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the corporate respondent.

Respondents are engaged in the manufacture and distribution of wool products including, but not limited to boys' clothing. Respondents' office and principal place of business is located at 1330 Broadway, New York, N.Y.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products