

Complaint

85 F.T.C.

IN THE MATTER OF
CAMBRIDGE CAMERA EXCHANGE, INC., ET AL.

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

Docket 8971. Complaint, June 10, 1974 - Decision, Mar. 17, 1975

Consent order requiring a New York City mail-order distributor of photographic equipment and supplies, among other things to cease using unfair and deceptive practices in connection with the delivery of prepaid mail order merchandise.

Appearances

For the Commission: *Larry B. Feinstein* and *Herbert S. Forsmith*.
For the respondents: *Harvey M. Greene, Lotwin, Goldman, Rosen & Greene*, New York, N.Y.

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 Cambridge Camera Exchange, Inc., a corporation, Andrew Elbogen, individually, and as an officer of said corporation, and Robert Lindenblatt, 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 in that respect as follows:

PARAGRAPH 1. Cambridge Camera Exchange, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal place of business and executive offices located at 47 Seventh Ave., N.Y., N.Y.

PAR. 2. Andrew Elbogen is an individual and is president of the corporate respondent, and formulates, directs and controls its acts and practices, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 3. Robert Lindenblatt is an individual and is the vice president of the corporate respondent, and formulates, directs and controls its acts and practices, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 4. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution by mail order of photographic equipment and supplies.

PAR. 5. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their photographic equipment and supplies, when sold, to be shipped from their place of business in the State of New York to purchasers located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing sale of said merchandise, respondents have made, and are now making, certain statements and representations in various newspaper and magazine advertisements, direct mail circulars and by other means in commerce, as "commerce" is defined by the Federal Trade Commission Act, with respect to the time in which delivery of said merchandise may be expected.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following statements:

(a) "RUSH ORDER FORM," (printed above a clip-coupon order form).

(b) "Fast Shipment."

(c) "Prompt Shipment."

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly and by implication that all orders are promptly shipped upon receipt of an order, or within a reasonable time thereof.

PAR. 8. In truth and in fact, respondents on numerous occasions and in a substantial number of instances, either have failed to deliver merchandise or have delivered merchandise only after a long lapse of time and/or after several demands thereof have been made to respondents and pleas for assistance have been made to Better Business Bureaus, United States Postal Inspectors' Offices, the magazines respondents advertise in, and to government agencies. Such practices have resulted in substantial expense and inconvenience, hardship, outrage and irritation to purchasers.

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

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, have had, and now have, 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 order

and purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. In the conduct of their aforesaid business and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising, offering for sale, and the sale of merchandise of the same general kind and nature as that advertised, offered, and sold by the respondent.

PAR. 11. The acts and practices of the respondents as set forth above 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 Commission having issued its complaint on June 10, 1974, charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of negotiating a settlement by entry of a consent order; and

Respondents and counsel for the complaint having thereafter executed an agreement containing a consent order, an admission by respondents of all jurisdictional facts set forth in the complaint, a statement that the signing of the agreement by respondents 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 aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having thereupon placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter, now, in further conformity with the procedure prescribed in its rules, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered;

1. Respondent Cambridge Camera Exchange, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal place of business and executive offices located at 47 Seventh Ave., N.Y., N.Y.

2. Respondent Andrew Elbogen is an individual and is president of the corporate respondent, and formulates, directs and controls its acts and practices. His address is the same as that of the corporate respondent.

3. Respondent Robert Lindenblatt is an individual and is the vice president of the corporate respondent, and formulates, directs and controls its acts and practices. His address is the same as that of the corporate respondent.

4. 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, Cambridge Camera Exchange, Inc., a corporation, its successors and assigns and its officers, and Andrew Elbogen and Robert Lindenblatt, individually and as officers of said corporation, and respondents' 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 or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(1) Soliciting orders for sales of merchandise to be ordered by the buyer through the mail on a prepaid basis unless such merchandise will be shipped within that time clearly and conspicuously stated in such solicitation or if no time is stated, within thirty (30) days after receipt of payment and a properly completed order from the buyer.

(2) Failing to offer in writing, if shipment is not made within the said period, to promptly refund the full purchase price therefor to the purchaser. Upon request for said refund, the return of the purchase price shall be made within ten (10) business days from the date of the receipt of said written request.

That where the respondents, due to circumstances beyond their control, are unable to make shipment as required by paragraph (1), paragraph (2) may be complied with by the respondents furnishing a definite shipping date for the merchandise and by the respondents sending to the buyer a notice of delayed shipment providing the buyer with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. The notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the buyer may indicate his choice, and mailed by the expiration of the thirty (30) day period, or that time stated in the solicitation as the time within which shipment

would have been made. If, at any time prior to shipment, the respondents receive a response from the buyer requesting refund, such refund shall be made within ten (10) business days from receipt of said request.

(3) Failing:

(a) to maintain a record of each complaint alleging failure to ship merchandise solicited and ordered on a prepaid basis, or of failure to make a refund within the applicable period of time specified in paragraph (2) above, and the disposition of each such complaint. Such record shall be kept for a period of at least twelve (12) months following the disposition of such complaint.

(b) to maintain records showing the employment of systems and procedures designed to comply with paragraphs (1) and (2).

Wherever in this order the term "receipt of payment" is used, it shall be deemed to be (1) at the time the respondents receive the mail-order with payment enclosed either in cash or by money order, (2) at the time the respondents charge a buyer's account for a credit order, or (3) if payment is made by check, at the time the said check clears the buyer's bank.

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

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

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 this order.

IN THE MATTER OF

C.E.B. PRODUCTS, INC., ET AL.

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

Docket C-2650. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Chicago, Ill., cosmetic manufacturer, among other things to cease advertising and packaging "Dark-Eyes Lash and Brow Tint" without a warning to consumers that the product can cause severe pain to the eye for a substantial period of time. Further, the order requires that all existing packages of the product not yet sold to the public and all point-of-purchase displays either be corrected so as to prominently display the required warning or be recalled by respondent.

Appearances

For the Commission: *Marvin R. Lange* and *Stewart A. Block*.

For the respondents: *R. Quincy White* and *Jack Bierig*, *Sidley & Austin*, Chicago, Ill.

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 C.E.B. Products, Inc., a corporation, and Charlotte E. Barth and Herman Goldenberg, 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. For purposes of this complaint, the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act;
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act;
3. "Dark-Eyes" means the product "Dark-Eyes Lash and Brow Tint" in each formulation in which it is packaged and sold to the public.