

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1957, TO JUNE 30, 1958

IN THE MATTER OF

JULIUS HOFFERT, INC., ET AL.

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

Docket 6726. Complaint, Feb. 18, 1957—Decision, July 2, 1957

Consent order requiring a furrier in New York City to cease invoicing fur products falsely through setting forth required information in abbreviated form, in violation of the Fur Products Labeling Act.

Mr. Robert E. Vaughan and Mr. Ross D. Young for the Commission.

Mr. Arthur J. Goldsmith, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on February 18, 1957, issued its complaint herein under the Federal Trade Commission Act, and the Fur Products Labeling Act against the above-named respondents Julius Hoffert, Inc., a corporation, and Julius Hoffert and Bert Edwards, individually and as officers of said corporation. The complaint charges respondents with having violated in certain particulars the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act. The respondents were duly served with process. Upon being advised that Commission's counsel and the respondents were negotiating an agreement for a consent cease and desist order pursuant to § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the time for answer was extended and the initial hearing postponed by appropriate order pending the negotiation of such an agreement.

On May 13, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between each of the said respondents

and their attorney, Arthur J. Goldsmith, and Robert E. Vaughan and Ross D. Young, counsel supporting the complaint, under date of April 11, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and Assistant Director of the Commission's Bureau of Litigation.

On due consideration of the said agreement containing consent order to cease and desist, the hearing examiner finds that said agreement both in form and content is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed that:

1. The corporate respondent, Julius Hoffert, Inc., is a corporation organized, existing and 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 226 West 29th Street, New York, New York.

Respondent Julius Hoffert is president and secretary of said corporate respondent. Respondent Bert Edwards is treasurer of said corporate respondent. These individual respondents formulate, direct and control the acts, policies and practices of said corporate respondent. Their address is the same as that of said corporate respondent.

2. Pursuant to the provisions of the Fur Products Labeling Act and Federal Trade Commission Act, the Federal Trade Commission, Act, the Federal Trade Commission, on February 18, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

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Order

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Julius Hoffert, Inc., a corporation, and its officers, and respondents Julius Hoffert and Bert Edwards, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the introduction, or manufacture for introduction, into commerce, or the sale, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the manufacture for sale, sale, offering for sale, transportation, or distribution of fur products, which have been made in whole or in part of furs which have been

shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed by the Rules and Regulations;

b. That the fur product contains or is composed of used fur, when such is the fact;

c. That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur, when such is the fact;

e. The name and address of the person issuing such invoice;

f. The name of the country of origin of any imported furs contained in the fur product.

2. Setting forth on invoices of fur products:

a. Information, required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in abbreviated form.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2nd day of July, 1957, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

Decision

IN THE MATTER OF
MANHATTAN BRUSH COMPANY, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5814. Complaint, Sept. 27, 1950—Decision, July 3, 1957

Order requiring a manufacturer in New York City to cease using the terms "Pure Bristle" or "bristle" to refer to paint and varnish brushes which contained quantities of horsehair or were not composed wholly of hog bristles.

R. P. Bellinger, Esq. for the Commission.

Edward S. St. John, Esq. and *Thomas P. Dougherty, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

THE PROCEEDING

The Federal Trade Commission, by virtue of authority vested in it pursuant to the provisions of the Federal Trade Commission Act, did, on September 27, 1950, issue its complaint against respondents, Manhattan Brush Company, Inc., a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at No. 42 West 18th Street, New York, New York, and its officers in their representative capacities and as individuals, they being Robert S. Gillman and Norman B. Bloom respectively President and Secretary-Treasurer of respondent corporation. The address of all respondents is as above recited.

The complaint charges respondents with false and misleading representations that paint and varnish brushes manufactured and sold by them were composed of bristles, meaning and importing thereby, the hair derived from the swine or hog, for which bristles there is a decided preference on the part of the purchasing public; that such representations were in fact false in that respondents caused the fiber content of said brushes to be adulterated with a cheaper and inferior product, to wit, horsehair.

The then officiating Hearing Examiner, having received testimony and exhibits on behalf of, and in opposition to, the allegations of the complaint, all of which said testimony was stenographically reported and, together with the exhibits and documentary evidence related thereto, duly recorded in the office of the Federal Trade Commission in Washington, D.C., as required by law, then proceeded with the preparation of his Initial Decision based upon such records.

RÉSUMÉ OF THE RECORD

From this point the proceedings are rather lengthy and involved for which reason it is considered that a résumé thereof, in chronological form, will be of assistance in a ready appreciation of the matter and its history in the Commission.

On August 28, 1951, the said then Hearing Examiner filed an Initial Decision ordering that the complaint in this proceeding be dismissed, from which decision an appeal was noted by the attorney in support of the complaint. September 13, 1951 said appeal was perfected.

During the interim, and while said appeal was pending and undisposed of, Petitions for Leave to Intervene were filed by the American Brush Manufacturers Association, the Eastern Paint Brush Manufacturers Association, Inc., and the New York Metropolitan Brush Manufacturers Association, all of which said Petitions were granted by the Commission, with certain limitations, and, pursuant to permission contained in the granting orders, all of the petitioners filed briefs in support of their respective positions concerning the appeal from the Hearing Examiner's order of dismissal, said briefs, and the replies thereto, appearing of record in the formal proceeding.

On June 9, 1952, formal argument before the Commission was had on the appeal from the Hearing Examiner's Initial Decision and thereafter, before rendition of decision on said appeal, and on October 21, 1952, counsel in support of the complaint formally moved for withdrawal of his aforesaid appeal and for remand of the entire matter to the Hearing Examiner for the purpose of receiving additional testimony in support of the charges of the complaint.

On February 17, 1953, pursuant to the foregoing motion, the Commission passed its formal order which:

(1) Granted the motion of counsel supporting the complaint to withdraw his appeal from the initial decision;

(2) Vacated and set aside the Hearing Examiner's Initial Decision;

(3) Appointed a substitute Hearing Examiner, (the services of the Hearing Examiner who had rendered the Initial Decision being no longer available to the Commission by reason of his retirement from public service);

(4) Reopened and remanded the proceeding to the Hearing Examiner for the purpose of receiving additional testimony; and

(5) Directed that after receipt of such additional testimony the Hearing Examiner render "an initial decision on the entire case."

By order of the Commission dated August 6, 1953, the undersigned Hearing Examiner was substituted with directions to proceed as authorized by law.

Hearings were held on February 24 and April 7 and 8, 1954, and thereupon, by reason of a decision of the Circuit Court of Appeals¹ and insistence by respondents that such decision made obligatory the trial of this matter *de novo*, the Hearing Examiner, on April 26, 1954, certified the question to the Commission for its determination of the future course of the proceedings, pursuant to which certification the Commission did, on October 29, 1954, order the Hearing Examiner:

to grant a new hearing for the purpose of resubmission of evidence bearing on the issues in this case which was not received by the present Hearing Examiner,

and that:

to the extent all parties expressly waive rehearing as to any evidence previously presented, rehearing shall not be directed.

At a formal hearing held in Washington, D.C., on November 10, 1954, specially called for the purpose of determining the status and future course of the proceeding in the light of the afore-quoted order of the Commission, all parties to the proceeding entered into a formal stipulation on the record, by the terms whereof it was agreed, in substance, that the entire record containing the testimony and evidence had before the original Hearing Examiner, as well also the testimony and evidence theretofore had subsequent to the remand, and thereafter to be had before the present Examiner, shall constitute the record on which the present Examiner shall base his findings and conclusions, the respondents thus abandoning their position contending for a trial *de novo*. Pursuant to such agreement the proceeding, after the reception of additional testimony and evidence in support of, and in opposition to, the allegations of the complaint, went forward to a normal conclusion, all of such additional testimony and evidence being likewise filed of record as required by law.

Thereafter the parties filed their Proposed Findings as to the Facts and Conclusions based thereon and, additionally, the attorney in support of the complaint submitted a Proposed Order, all of which have been separately ruled upon as required by the Rules of Practice.

¹ *Gamble-Skogmo, Inc. v. F.T.C.*, 211 F. 2d 106 (1954).

