

Order

IN THE MATTER OF
UNION PHARMACEUTICAL CO., INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7254. Complaint, Sept. 12, 1958—Decision, June 9, 1959

Order dismissing, following dissolution of respondent corporation, complaint charging false advertising of a laxative preparation designated "Saraka."

Mr. Harold A. Kennedy for the Commission.

Mr. Carson G. Frailey, of Washington, D.C., and *Mr. Richard J. Bennett*, of Bloomfield, N.J. for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter was issued September 12, 1958. On October 20, 1958, respondent filed a motion seeking dismissal of the complaint on the ground that respondent had discontinued entirely the manufacture and distribution of the preparation involved in the proceeding, as well as all other products, such discontinuance having taken place prior to the issuance of the complaint.

On December 22, 1958, a hearing was held for the limited purpose of receiving evidence in connection with the motion to dismiss. At the hearing a considerable volume of testimony and other evidence was received, and subsequent to the hearing counsel for respondent forwarded to the hearing examiner a certified copy of the certificate of dissolution of the respondent. This document has been incorporated in the record as a part of the evidence on the motion to dismiss.

Counsel supporting the complaint has now filed a further answer to the motion to dismiss in which he states that in view of all of the circumstances disclosed by the record, including the dissolution of the respondent, he does not oppose the granting of the motion provided the dismissal be without prejudice.

In the circumstances it is evident that no useful purpose would be served by continuing with the proceeding; that no public interest is now present.

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It is therefore ordered, That the complaint be, and it hereby is, dismissed, without prejudice to the right of the Commission to

take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of June 1959 become the decision of the Commission.

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IN THE MATTER OF

A. E. TROUTMAN COMPANY ET AL.

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

Docket 7403. Complaint, Feb. 6, 1959—Decision, June 9, 1959

Consent order requiring furriers in Greensburg, Pa., to cease violating the Fur Products Labeling Act by failing to comply with the labeling, invoicing, and advertising requirements; and, in advertisements in local newspapers, failing to disclose the names of animals producing certain furs or that certain furs were artificially colored, and representing prices as reduced without maintaining adequate records as a basis therefor.

Mr. Garland S. Ferguson for the Commission.

Sullivan and Cromwell, of New York, N.Y., for respondent A. E. Troutman Company.

Respondents B. Poverman, Inc., and B. Poverman, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 6, 1959, charging them with having violated the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

On April 13, 1959, respondent A. E. Troutman Company and its counsel entered into an agreement with counsel in support of the complaint for a consent order; and on April 14, 1959, respondents B. Poverman, Inc. and B. Poverman entered into a similar agreement.

Under the agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist orders there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the documents include waivers by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the two agreements meets all of the requirements of §3.25(b) of the Rules of the Commission.

The hearing examiner is of the opinion that the two agreements and the proposed orders provide an appropriate basis for disposition of this proceeding as to all of the parties. Accordingly, the agreements are hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent A. E. Troutman is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 200 South Main Street, Greensburg, Pa. Respondent B. Poverman, Inc., is a corporation 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 370 Seventh Avenue, New York, N.Y. Respondent B. Poverman is an officer of B. Poverman, Inc. He formulates, directs and controls the policies and practices of said corporation, and his address is the same as that of the corporate respondent, B. Poverman, Inc.

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. Therefore,

It is ordered, That respondents A. E. Troutman Company, a corporation, and its officers; B. Poverman, Inc., a corporation, and its officers; B. Poverman, individually and as officer of said corporation; and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution, of fur products which are made in whole or in part of fur which has 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:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

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(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

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

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product;

B. Setting forth on labels affixed to fur products:

(1) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

(2) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information;

(3) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting;

C. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches;

D. Failing to set forth the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence;

2. Falsely or deceptively invoicing fur products by:

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

(1) 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 under the Rules and Regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

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

(5) The name and address of the person issuing such invoice;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product;

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

A. Fails to disclose:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(2) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

B. Fails to set forth the information required under §5(a) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other;

4. Making price claims and representations respecting prices and values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted two agreements containing identical consent orders to cease and desist executed by the respondents and counsel in support of the complaint, service of which initial decision was completed on May 7, 1959; and

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreements of the parties:

It is ordered, That said initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

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Under the agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist orders there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the documents include waivers by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall, on the 9th day of June 1959, become the decision of the Commission.

It is further ordered, That the respondents, A. E. Troutman Company and B. Poverman, Inc., corporations, and B. Poverman, individually and as an officer of B. Poverman, Inc., 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 contained in said initial decision.

IN THE MATTER OF
HUTCHINSON CHEMICAL CORPORATION ET AL.

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

Docket 7140. Complaint, May 7, 1958—Decision, June 11, 1959

Order requiring Chicago distributors of an automobile polish designated "Hutchinson's Waterproof Wax," to cease fictitiously pricing its product in television advertising.

A charge of representing falsely that the product imparted a finish that was both heat- and cold-resistant, was dismissed for lack of sustaining evidence.

Mr. William A. Somers for the Commission.

Nash & Donnelly, by *Mr. John A. Nash* and *Mr. Arthur H. Schwab*, of Chicago, Ill., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act in two respects. The charges and essential pertinent facts as developed and shown by the record are as follows:

1. Respondent Hutchinson Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Herman S. Hutchinson is an individual and president of said corporate respondent. Together with his wife, who is also an officer of the corporation, he owns 88% of the corporate stock, and formulates, directs and controls the corporate policies, acts and practices. The office and principal place of business of the respondents is located at 918 West Armitage Avenue, Chicago 14, Ill.

2. Respondents are now and for several years past have been engaged in the sale and distribution of an automobile polish described as "Hutchinson's Waterproof Wax," which, when sold, is shipped from their place of business in the State of Illinois to purchasers located in various other States of the United States. Thus respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobile polish in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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3. Respondents at all times mentioned herein have been and now are in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of automobile polishes.

4. In the course and conduct of their business, and for the purpose of inducing the sale of their product, respondents have engaged in advertising, which has been disseminated by television over more than fifteen stations throughout the United States, including stations in Chicago, Ill., Cincinnati, Ohio, and Milwaukee, Wis., which have power sufficient to carry their programs into areas in surrounding States. Respondents' programs consist of a picture of a flaming automobile, followed by a sales pitch relating to the quality of respondents' polish and the reduced price at which it may be purchased.

5. The "flaming-automobile" demonstration is performed in the following manner: Respondents' polish is applied as directed to the surface of a used car, or to a portion thereof. Then gasoline is squirted on the polished surface; this may be done as many as ten or fifteen times in rapid succession. The gasoline is then ignited, and cold water is poured on the flaming surface. After the flame has been quenched, the picture shows the polished surface to be unaffected by the flame or water—as shiny as before the demonstration. The audio part of the broadcast emphasizes the protection that the polish lends to the surface of the car, and then states that if the viewer will order "right now," he will receive a glare shield worth \$1.50 for his automobile, and a \$3.95 can of respondents' "Waterproof Wax," both for "only \$2.00." The demonstration must be completed within 11½ or 12 seconds, in order to meet the television time limit, since the entire broadcast is less than three minutes long.

6. The complaint avers that through the aforesaid statements and pictorial representations, respondents represent and have represented, directly or by implication:

(1) That the burning car demonstration, in which a flammable liquid is poured on the finish of an automobile, to which Hutchinson's Waterproof Wax had been applied, ignited and cold water then thrown on the flame, proves or demonstrates that their product imparts a finish that is both heat and cold resistant;

(2) That respondents' regular retail price of a can of their product is \$3.95.

The complaint charges that these representations are false, misleading and deceptive; that in truth and in fact:

