

Decision

IN THE MATTER OF
ACCURATE QUILTING COMPANY, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 7139. Complaint, May 7, 1958—Decision, Nov. 7, 1958*

Consent order requiring manufacturers in Hoboken, N.J., to cease violating the Wool Products Labeling Act by labeling interlining materials which contained substantially less reprocessed or reused wool than the percentage set out, as "70% Reprocessed Wool, 30% Man-made Fibers"; "80% Reused Wool, 20% Unknown Fibers"; "100% Reprocessed Wool," etc., and by failing to label other materials as required.

Thomas A. Ziebarth, Esq., for the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued May 7, 1958, charges the respondents above named with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the introduction or manufacture for introduction into commerce, sale, offering for sale, transportation and distribution, and delivery for shipment in commerce of interlinings or other wool products in commerce, as "commerce" is defined in said Acts.

After the issuance of said complaint respondents, on August 25, 1958, entered into an agreement for a consent order with counsel supporting the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing

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examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided for other orders of the Commission.

Said agreement recites that respondent Accurate Quilting Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 225 Adams Street, Hoboken, N.J. Individual respondents Joseph Teitelbaum and S. J. Tuttle are president and secretary-treasurer, respectively, of said corporate respondent and have the same address as the corporate respondent.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and, without further notice to respondents is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

ORDER

It is ordered, That respondents Accurate Quilting Company, Inc., a corporation, and its officers, and Joseph Teitelbaum and S. J. Tuttle, individually and as officers of said corporation, and

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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 offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen battings or other wool products as such products are defined in, and subject to, said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

(1) Falsely or deceptively tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

(2) Failing to securely affix to, or place on, each such product a stamp, tag or label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product exclusive of ornamentation not exceeding five percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling or adulterating matter, and;

(c) The name or the registered identification number of the manufacturer of such wool product or one or more persons engaged in introducing such wool product into commerce or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That Accurate Quilting Company, Inc., a corporation, and its officers, and Joseph Teitelbaum and S. J. Tuttle, 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 offering for sale, sale or distribution of woolen interlining materials or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

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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 7th day of November, 1958, 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.

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IN THE MATTER OF
ALLEGHANY PHARMACAL CORP. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7176. Complaint, June 27, 1958—Decision, Nov. 7, 1958

Consent order requiring distributors in New York City to cease representing falsely in newspaper advertisements and otherwise that their reducing drug preparation designated "Hungrex with P.P.A." was safe for use by all obese persons, and that such persons could expect to lose weight at the rate of five pounds a week.

Mr. Morton Nesmith and Mr. Berryman Davis for the Commission.

Mr. Milton A. Bass of Bass & Friend, of New York, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On June 27, 1958, the Federal Trade Commission issued its complaint against the above-named respondents charging them with the use of an unfair and deceptive act and practice in commerce in violation of the provisions of the Federal Trade Commission Act in the dissemination of false advertisements of a drug preparation designated "Hungrex with P.P.A." In lieu of submitting answer to said complaint, the respondents entered into an agreement for consent order with counsel supporting the complaint disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Bureau of Litigation. It was recommended in the agreement that the complaint be dismissed as to Harry Evans and Vincent J. Lynch as officers of Alleghany Pharmacal Corp., the respondent corporation, as they had resigned as such officers before the issuance of the complaint. In support of said recommendation, an affidavit by these individual respondents was attached to the agreement and by reference made a part thereof.

The reference to "respondents" herein is only to Alleghany Pharmacal Corp., a corporation, and Harry Evans and Vincent J. Lynch, individually.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that

the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and 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.

It was further provided in said agreement that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that said 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 agreement also provided that the order to cease and desist issued in accordance with said agreement 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.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Alleghany Pharmacal Corp. 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 16 West 61st Street, New York, N.Y. The address of the individual respondents is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, Alleghany Pahrmacal Corp., a corporation, and its officers, and Harry Evans and Vincent J. Lynch, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation "Hungrex with P.P.A.", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That said preparation is safe to use by all obese persons;

(b) That any predetermined weight reduction can be achieved by the taking or use of said preparation for a prescribed period of time.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Harry Evans and Vincent J. Lynch as officers of Alleghany Pharmacal Corp., a corporation.

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 7th day of November 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Alleghany Pharmacal Corp., a corporation, and Harry Evans and Vincent J. Lynch, individually, 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.

