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Decision

ized magazines which are undeliverable, thus leading to the substitution of other magazines by the respondents. As previously stated, both allegations are sustained by the evidence.

In view of the foregoing, the appeal of counsel supporting the complaint is granted. The initial decision is set aside, and we are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

Commissioner Tait did not participate in the decision of this matter.

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IN THE MATTER OF  
REICHART FURNITURE COMPANY ET AL.

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

*Docket 7535. Complaint, July 13, 1959—Decision, Mar. 8, 1960*

Consent order requiring retailers of furniture, home furnishings, electrical appliances, etc., in Wheeling, W. Va., to cease making deceptive pricing and savings claims for their merchandise by such advertisements as "Regularly \$16.95 BASE CABINET \$8.88 \* \* \*"; "5-Pc. Day-O-Niter Outfit! Usually \$129.95! Save \$41.95 \* \* \* At Reichart's Only \$88," in which the prices following the words "Regularly," "Usually," and "List" were greatly in excess of the usual prices, and the purported savings were fictitious.

*Mr. Morton Nesmith* for the Commission.

*Mr. J. T. McCamic* of *McCamic & Tinker*, of Wheeling, W. Va., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes hereinafter referred to as the Commission) on July 13, 1959, issued its complaint herein, charging respondents with having violated the provisions of the Federal Trade Commission Act by the use of false, misleading and deceptive advertisements by mail and otherwise in interstate commerce in connection with the prices of furniture, home furnishings and electrical and other household appliances sold by them to the public. Respondents were duly served with process and thereafter on October 26, 1959, agreed to a motion to amend the complaint made by counsel supporting the complaint. This motion was found to be without prejudice to the public interest or to the rights of the parties, and it was sustained by an order of the hearing examiner

on October 28, 1959, and the complaint was thereby amended in certain particulars which were and are reasonably within the scope of the proceeding as initiated by the original complaint.

On January 15, 1960, respondents, their attorneys, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was thereafter duly approved by the Commission's Bureau of Litigation and transmitted to the hearing examiner for his consideration. Having examined said agreement and the complaint as amended, the hearing examiner finds that the agreement, both in form and in 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 agreed to the following matters.

1. Respondent Reichart Furniture Company is a corporation, existing and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business located at 1115-1125 Main Street, in the City of Wheeling, State of West Virginia. Said corporation trades and does business under the name of Reichart's.

Respondents Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson are officers of the corporate respondent. Said individual respondents formulate, direct and control the policies, acts and practices of said corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

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

4. 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.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint, as amended, and this agreement.

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

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## Order

7. 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, as amended.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint as amended may be used in construing the terms of the order.

Upon due consideration of the complaint as amended and the "Agreement Containing Consent Order To Cease And Desist" submitted herein, the said agreement is hereby approved and accepted, and ordered filed if and when the agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint, as amended and the agreement that the Commission has jurisdiction of the subject-matter of this proceeding, and of the respondents herein; that the complaint as amended states a legal cause for action under the Federal Trade Commission Act, generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the proposed order contained in the agreement is appropriate for the just disposition of all the issues in this proceeding, and should be and hereby is entered. Therefore,

*It is ordered,* That the respondents Reichart Furniture Company, a corporation, and its officers and Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That any amount is the price of merchandise in respondents' trade area when it is in excess of the price at which said merchandise is usually and customarily sold in said trade area;

2. That any amount is respondents' customary and usual price of merchandise, when it is in excess of the price at which said merchandise is customarily and usually sold by respondents in the recent regular course of business;

3. That any savings are afforded from respondents' customary and usual prices in the purchase of merchandise unless the price at which the merchandise is offered constitutes a reduction from the price at which it has been sold by respondents in the recent regular course of business;

4. That any saving is afforded in the purchase of merchandise from the price in respondents' trade area unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold in said trade area.

B. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents or their competitors in the normal course of their business.

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 8th day of March, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents Reichart Furniture Company, a corporation, and its officers, and Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson, individually and as officers of said corporation, 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

LEE RUBBER & TIRE CORPORATION

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

*Docket 7595. Complaint, Sept. 24, 1959—Decision, Mar. 8, 1960*

Consent order requiring a Conshohocken, Pa., distributor of automobile tires and tubes to franchised dealers for resale to the public, to cease representing falsely, in advertising in magazines of national circulation and in advertising mats and other advertising material furnished its dealers, that its premium "Ultra Deluxe" tires and its second line "Advanced Super Deluxe" were of equal quality and both were premium or first line category tires; and to disclose reduction in quality of its named tires when such was the fact.

*Mr. Anthony J. Kennedy, Jr.*, for the Commission.

*Mr. Paul Van Anda of Satterlee, Browne, Cherbonnier & Dickerson*, of New York, N.Y., for respondent.

## INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of certain motor vehicle tires and tubes.

An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint; 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 agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it may have to challenge or contest the validity of the order; that the order may be altered, modified or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Lee Rubber & Tire Corporation 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 at Conshohocken, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondent, Lee Rubber & Tire Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its motor vehicle

tires and tubes, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by the use of trade names or otherwise that respondent's tires of different category quality are of the same or equal quality.

2. Reducing the quality of motor vehicle tires so as to put them in a lower quality category without changing the trade name designation unless a clear and conspicuous disclosure is made of such reduction in quality.

3. Furnishing any means or instrumentality to others by and through which they may mislead the public, by the use of trade names or otherwise, that tires of different category quality are the same or of equal quality and by offering for sale tires of reduced quality category, bearing a trade name originally applied to a tire of higher quality category, without making a clear and conspicuous disclosure of such reduction in the quality of the said tires.

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 8th day of March, 1960, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

RECOTON CORPORATION AND G. SCHIRMER, INC.

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

*Docket 7601. Complaint, Oct. 1, 1959—Decisions, Feb. 12 and Mar. 8, 1960*

Consent orders dated Mar. 8, 1960, and Feb. 12, 1960, respectively, the first addressed to a manufacturer of phonograph needles and the second to its retailer customer, of New York City and Long Island City, requiring them to cease such unfair practices as advertising falsely in the New York Times that Recoton diamond and diamond-sapphire needles with a "List Price" of \$25 and \$30 were on sale at \$9.95 and \$10.95, respectively, and using the expression "Unconditional Lifetime Guarantee" when the guarantee was, in fact, subject to undisclosed limitations.

*Mr. John J. Mathias* supporting the complaint.

*Mr. Joshua B. Cahn* of *Cahn, Schwartzreich & Mathias*, of New York, N.Y., for respondent Recoton.

*Mr. Milton M. Rosenbloom* of *O'Brien, Driscoll and Raftery*, of New York, N.Y., for respondent Schirmer.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On October 1, 1959, pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission caused to be issued its complaint in this proceeding to which Recoton Corporation, a corporation, and G. Schirmer, Inc., a corporation, were made respondents. A true copy of said complaint was served upon said respondents as required by law. The complaint charges respondents with false, misleading and deceptive pricing statements in selling diamond and combination diamond-sapphire phonograph needles, and in deceptively advertising their "Unconditional Lifetime Guarantee" of said phonograph needles. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act. After being served with the complaint, respondents Recoton Corporation and G. Schirmer, Inc., appeared by counsel and entered into an agreement dated December 4, 1959, which purports to dispose of all of this proceeding as to the respondents Recoton Corporation, and G. Schirmer, Inc., corporations, without the necessity of conducting a formal hearing. The agreement has been signed by the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On December 16, 1959, and January 8, 1960 the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents Recoton Corporation and G. Schirmer, Inc., pursuant to the aforesaid agreement, have 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. Said agreement further provides that respondents Recoton Corporation and G. Schirmer, Inc., waive 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 such agreement. The parties have, *inter alia*, by such agreement agreed: (1) 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; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; and (4) 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of December 4, 1959, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding, the agreement of December 4, 1959 is hereby accepted and ordered to be filed and to become a part of the record at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

#### JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;
2. Respondent Recoton Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 52-35 Barnett Avenue, Long Island City, New York;  
Respondent G. Schirmer, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 3 East 43rd Street, New York, New York;
3. Respondents Recoton Corporation and G. Schirmer, Inc., are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;
4. The complaint herein states a cause of action against said respondents Recoton Corporation and G. Schirmer, Inc., under the Federal Trade Commission Act, and this proceeding is in the public interest.

