

Decision

58 F.T.C.

IN THE MATTER OF
DIERKS FORESTS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 8 OF THE CLAYTON ACT

Docket 8113. Complaint, Sept. 14, 1960—Decision, Mar. 8, 1961

Order dismissing—after resignation of the two directors concerned from the Board of Directors of Pickering Lumber Corp.—charges that two competing lumber companies illegally permitted two individuals to serve as their common directors.

Mr. Lynn C. Paulson for the Commission.

Watson, Ess, Marshall & Enggas, by *Mr. Elton L. Marshall*, and *Mr. George T. Morton, Jr.*, of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 14, 1960, charging Respondents with violation of §8 of the Clayton Act (15 U.S.C., §19, 38 Stat. 732, as amended by 49 Stat. 718), by permitting the individual Respondents to serve as directors at the same time, of both corporate Respondents, which ship and sell in interstate commerce some of the same classes of products, and are in competition between themselves in the offering for sale, sale and distribution of some of such products.

Thereafter, on January 11, 1961, counsel for the Respondents submitted a Motion To Dismiss, accompanied by a Certificate of Robert I. Donnellan, Secretary of Respondent Pickering Lumber Corporation, showing that, on December 2, 1960, Respondents Frederick H. Dierks and Henry N. Ess submitted their resignations as members of the Board of Directors of Pickering Lumber Corporation to be effective December 31, 1960; that their resignations were accepted; and that they ceased to be directors of Pickering Lumber Corporation on December 31, 1960. Also on January 11, 1961, counsel supporting the complaint submitted his Answer To Motion To Dismiss, stating that he does not oppose said motion, since the interlock of Directors alleged in the complaint has been removed as evidenced by the Certificate filed with Respondents' Motion To Dismiss, and there is no reason to believe a repetition of the condition alleged will occur.

In *Docket No. 7333, Booth-Kelly Lumber Company, et al.*, which presented a similar problem, the Commission held that upon the filing of a motion to dismiss supported by affidavit showing that the Respondents upon whose employment as directors the charge of

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Complaint

an interlocking directorate was based had resigned, no further proceedings in the matter were warranted, and the complaint should be dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant.

In view of this precedent, we are of the opinion that similar action is warranted in the instant proceeding. Accordingly,

It is ordered, That the complaint herein, be, and the same hereby is, dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant.

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 8th day of March, 1961, become the decision of the Commission.

IN THE MATTER OF

THE WARREN WOOLEN CO. ET AL.

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

Docket 8167. Complaint, Nov. 8, 1960—Decision, Mar. 8, 1961

Consent order requiring distributors of woolen fabrics in Stafford Springs, Conn., to cease furnishing to garment manufacturers for attachment to clothing made from its fabrics containing no llama fleece whatsoever, cloth labels bearing the statements "53% Llama, 47% wool" and "Llama-Lure".

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 The Warren Woolen Co., a corporation, and Richard Valentine, William Sorenson and Richard Rugen, 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. Respondent The Warren Woolen Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located in the City of Stafford Springs, State of Connecticut.

Respondents Richard Valentine, William Sorenson and Richard Rugen are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of woolen fabrics to manufacturers of clothing.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of certain of their fabrics, and garments made from said fabrics, respondents have furnished cloth labels to garment manufacturers for attachment by them to garments made from respondents' fabrics, which labels bear the statements, among others, "53% Llama, 47% wool" and "Llama-Lure".

PAR. 5. Through the use of the aforesaid statements, the respondents represented and caused to be represented that said fabric and garments made therefrom contained the fleece of the Llama.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact, respondents' said fabric and the garments made therefrom did not contain any of the fleece of the Llama.

PAR. 7. By the aforesaid act and practice respondents placed means and instrumentalities in the hands of others by and through which they may mislead the public as to the fibers contained in garments manufactured from respondents' said fabrics.

PAR. 8. There is a preference on the part of a substantial portion of the purchasing public for garments made of or containing the fleece of the Llama.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of woolen fabrics of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and practices has

had, and now has, 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 purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DeWitt T. Puckett, Esq., supporting the complaint.

Maxwell M. Merritt, Esq., of *Shepherd, Murtha & Merritt*, of Hartford, Conn., and *James T. Welch, Esq.*, of *Davies, Richberg, Tydings, Landa & Duff*, of Washington, D.C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On November 8, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act by misrepresenting the type of fiber contained in a fabric or in garments manufactured from their fabrics and sold in interstate commerce. A true copy of said complaint was served upon respondents as required by law. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated December 23, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by all of the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director, Associate Director and the Assistant Director of the Commission's Bureau of Litigation. 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 January 9, 1961, the said agreement was submitted to the undersigned hearing examiner for his consideration, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, 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 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. It has been agreed 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 and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement 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 as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;
2. Respondent The Warren Woolen Co. is a corporation existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at Stafford Springs, in the State of Connecticut;
3. Respondents Richard Valentine, William Sorenson and Richard Rugen are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent;
4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;
5. The complaint filed herein states a cause of action against the respondents under the Federal Trade Commission Act; and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondents, The Warren Woolen Co., a corporation, and its officers, and Richard Valentine, William Sorenson and Richard Rugen, 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 fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Llama-Lure," or any other term, word or expression of the same import in connection with fabrics that do not contain the fleece of the Llama; or misrepresenting in any manner the type of fiber contained in the fabric;

2. Furnishing any means or instrumentality to others by and through which they may misrepresent the type of fiber contained in garments manufactured from their fabrics.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPROMISE

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 1961, become the decision of the Commission; and, accordingly:

It is ordered. That the above-named 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 the order to cease and desist.

IN THE MATTER OF

THE GOODYEAR TIRE & RUBBER COMPANY ET AL.

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

Docket 6486. Complaint, Jan. 11, 1956—Decision, Mar. 9, 1961

Order requiring the nation's largest manufacturer of rubber goods, including tires and inner tubes, engaged also in the purchase and resale of batteries, automotive parts and accessories, with net sales in 1954 in excess of one billion dollars, and a large integrated producer and distributor of petroleum products selling such products to over 10,000 service stations and with sales in 1954 totaling more than one-half billion dollars, to cease entering into such contracts as those under which Goodyear paid Atlantic an "override" commission ranging from 7½% to 10% on the net sales of TBA products (tires, batteries, and accessories) to service stations and distributors selling its petroleum products in return for Atlantic's influence and aid in promoting such sales.

Mr. James S. Kelaher and Mr. Peter J. Dias for the Commission. Cahill, Gordon, Reindel & Ohl, of New York, N. Y., by Mr.

