

IN THE MATTER OF
THE LONG-KOCH COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1252—May 4, 1926

SYLLABUS.

Where a corporation engaged in the manufacture and sale of pocketknives or penknives; acting in disregard of the collective action of the great majority of the members of the industry condemning and discontinuing the practice, branded as 10-karat, or 14-karat, knives as the case might be, knives with base metal shells so fitted into and covered by thin gold shells as to give the mountings the appearance and rigidity of one piece of all gold, and so sold the same in competition with truthfully marked and represented genuine gold-mounted penknives or pocketknives with mountings composed of gold exclusively, and with similar knives with mountings not so composed; with the intent and effect of causing its dealer customers to display, offer and sell its aforesaid knives to the consuming public as and for genuine 10-karat, or 14-karat gold-mounted knives, with the capacity and tendency to induce the purchase and sale thereof by many of the trade and purchasing and consuming public as and for such knives, and with the result that trade was unfairly diverted from competitors dealing in genuine gold-mounted knives and those dealing in similar knives, as above set forth: *Held*, That such misbranding, under the circumstances set forth, constituted an unfair method of competition.

Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture, sale, and distribution in interstate commerce in wholesale and/or retail quantities of jewelry, including watch chains, cuff links, knives and kindred products and with principal offices and manufacturing plant in Newark, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

According to the complaint, respondent, for more than one year prior thereto, caused the mountings of its knives, composed of a metal or metals other than gold, but covered or veneered therewith in whole or in part, to be falsely represented and described by marking or stamping the same "10K" or "14K," respectively, such marks being "intended and calculated by respondent to mislead and deceive the purchaser into the erroneous belief that the complete or entire mounting of said product contains such number of parts or proportions of

gold as represented by said marks, inscriptions or stamps, '10K' and '14K,' respectively," and intended by respondent to induce the public to purchase its said knives.

The aforesaid acts and things, as alleged, are all to the prejudice of the public and respondent's competitors, a considerable number of whom "manufacture and sell in interstate commerce knives, the mountings of which are marked or stamped with the symbols '10K' or '14K,' respectively, which said mountings are composed in whole of the required number of parts or proportions of gold as indicated by said brand, stamp or symbol used generally in the jewelry trade to denote or designate the percentage of gold or number of parts or proportions of gold in said product, * * * sold in competition with the product of respondent."

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 23d day of December, 1924, issued, and immediately thereafter served a complaint upon the Long-Koch Co., a corporation, hereinafter referred to as respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence introduced in support of allegations of the complaint and on behalf of the respondent before a trial examiner of the Federal Trade Commission, theretofore duly appointed. Thereupon, this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Long-Koch Co., is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business in the city of Newark, in said State. Since the issuance of said complaint on the 23d day of December, 1924, and for more than two years prior thereto, respondent has been engaged, as hereinafter set forth, in the business of manufacturing, or mounting, and selling and distributing knives of a certain character, commonly known as pocketknives or penknives,

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and more particularly described hereinbelow. Respondent sold in excess of 250,000 of said knives at the rate of approximately 50,000 per annum. Its customers consisted of a large number of wholesale and retail jewelers, department stores, mail-order merchants, and similar retailers, located throughout the several States of the United States, which retail customers resold said knives to the consuming public and said wholesale customers resold the knives to other retailers who in turn sold same to the consuming public. In furthering the sale and distribution of said knives, respondent employed traveling salesmen who during all the time aforesaid offered for sale and sold said knives for and on behalf of respondent to its customers throughout the United States. Respondent also from time to time received by mail, and filled, orders for said knives from many of its customers located in various States. In carrying on aforesaid business respondent caused said knives when so sold to be transported in interstate commerce from its place of business in the State of New Jersey through and into other States of the United States and to be delivered to the respective purchasers thereof in such other States. In the course and conduct of its business, as aforesaid, respondent was at all times herein mentioned in direct active competition with many individuals, partnerships and other corporations engaged in the sale and distribution throughout the United States of gold mounted pocketknives or penknives.

PAR. 2. The aforesaid knives sold and distributed by respondent consist of the following parts, those comprising the skeleton being grouped under the words "The Skeleton," and those comprising the mounting being grouped under the words "The Mounting."

THE SKELETON

One base-metal spring.

Two base-metal blades (the blades however vary in number and kind, as for instance, a knife may have one or more blades and one blade may be a finger-nail file, bottle opener, cutting blade, or similar part).

Two base-metal scales or sides.

Two base-metal rivets which are used for the purpose of riveting the spring, blades and scales together thus forming a mechanical unit and constituting what is known as the skeleton or movement of the knife.

THE MOUNTING

Two base-metal shells consisting of brass in the case where the gold used in the mounting is yellow gold, and consisting of German silver, a base metal, where the gold used in the mounting is white gold.

Two gold shells. In some of respondent's knives these shells were of 10-karat gold and in the others 14-karat gold.

One gold bale or loop, which is generally used for attaching the knife to a chain.

One gold rivet used in riveting the bale and mounting to one end of the knife movement.

Said skeletons were obtained by respondent from cutlery manufacturers and said parts constituting the mounting were added to, or mounted on, the skeletons by respondent. The two base-metal shells and the two gold shells of the mounting are struck on the same die and are identical in design and shape so that when, as they exist in the completed knife, one of the base metal shells is placed inside each of the gold shells, the two may be held together by friction and fit together so snugly that they have the appearance and rigidity of being one piece of all gold. The gold shell by itself is so thin that, under ordinary uses, it would dent and be springy and liable to collapse under pressure of the fingers. In the completed knife as sold to the trade and consuming public, each scale or side of the skeleton of the knife has fastened to it one of the gold shells which gold shell contains concealed within itself one of the base metal shells. All outside surfaces of the base metal shells are completely covered by the gold shells which form the exposed surfaces of the handle of the knife. The base-metal shells are invisible and their presence in the completed knife as marketed can only be ascertained by the trade and consuming public by dismantling the knife which would necessarily greatly damage it or destroy its usefulness.

PAR. 3. Respondent caused aforesaid knives marketed by it to be branded or marked on the outside of the bale, which is the customary place for branding gold-mounted penknives or pocketknives, with the figures and letter "10K" in the case where the hereinbefore-mentioned gold shells were of 10-karat fineness, and "14K" in the case where said gold shells were of 14-karat fineness. The character of said marks or brands were embossed or raised in relief on the outside or top of the bale and were the only brands or marks used with reference to the mountings of said knives. Said knives were sold by respondent as 10-karat and 14-karat knives or as knives mounted with 10-karat and 14-karat gold respectively; and, as intended by respondent, said knives were displayed, offered for sale, and sold by it to the trade and by its dealer-customers to the consuming public under said brands or marks of "10K" and "14K," respectively, and as knives mounted with 10-karat or 14-karat gold.

PAR. 4. For a great many years the marks "10K" and "14K" as well as similar marks consisting of the letter "K" preceded by one of the other numbers from 10 to 24 inclusive, have been used by manufacturers in connection with gold products, including gold-mounted knives, and relied upon and understood by the trade and

consuming public, as symbols or brands indicating the karat fineness of such gold products, the letter "K" signifying karats and the number preceding it indicating the number of karats. Also for the purpose and with the effect of indicating to the trade and consuming public the fineness of the mountings of gold-mounted knives or of knives the mountings of which consist of gold exclusively, it has been for many years and during all the time herein mentioned the custom and practice of manufacturers of such knives to emboss or engrave the marks or brands "10K" and "14K," or such similar marks as may be applicable, upon the bale of such knives, the bale being generally considered the most suitable place for such marks.

PAR. 5. In May, 1922, a trade practice submittal or conference of manufacturers of gold-mounted knives was held, at which the manufacturers of more than 90 per cent of the entire production of such knives in the United States were represented, including respondent. The subject of the branding of gold-mounted knives was considered, particularly with respect to the kind of knife produced by respondent as aforesaid. As an expression of the views of the industry this conference adopted the following resolution with but one dissenting vote, which dissenting vote was cast by respondent's representative.

1. In our opinion a gold-mounted knife consists of the following: (a) A gold sheet or shell; (b) the knife movement, or skeleton, consisting of scales, rivets, spring, and blades.

2. All parts, including the bale and the rivets, other than the gold shell or sheet, appearing or purporting to be gold, must be of the karat fineness marked on the gold.

3. A knife stamped with a mark indicating the karat fineness, such as 10K, 14K, or 18K, is improperly marked, if, between the skeleton and the gold sheet, any metal composition is inserted by any method whatsoever, unless that inserted part is of the same karat fineness, to wit, 10K, 14K, or 18K.

4. We agree that all parts which appear to be gold must be of the karat fineness indicated. Furthermore we believe that the consumer has the right to assume that a base-metal sheet or other composition inserted under a gold sheet is gold of the karat mark on the gold if the gold sheet covers the edges of the inserted part.

5. Our decision is to the same effect even if the base-metal sheet is affixed to the skeleton or movement instead of to the gold. A knife made of a gold sheet and a stiffening of base metal may well be a legitimate article of trade, but the mark indicating the karat fineness is improper unless the fineness of the gold and the stiffening or inserted part is up to the karat indicated.

Immediately after its adoption, and particularly in January, 1923, said resolution was promulgated throughout the industry and its requirements have since been generally observed by most manufacturers.

PAR. 6. Respondent's use of the marks or brands "10K" and "14K" as and under the circumstances hereinbefore set forth on

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its knives the mountings of which contain two base metal shells covered with and concealed by thin gold shells, was calculated, has, and had the capacity and tendency to mislead and deceive many of the trade and purchasing and consuming public into, and to cause respondent's customer-dealers to buy and resell and the consuming public to purchase said knives in the erroneous belief that the mountings of said knives do not contain said base-metal shells, but that said entire mountings consist of gold of 10-karat fineness in the case where the mark used is "10K," and of gold of 14-karat fineness in the case where the mark is "14K"; whereas in truth and in fact the mountings of said knives were not composed entirely of gold but each mounting contains two shells of base metal, as aforesaid, concealed from view of the purchaser by a thin covering or veneer of gold, which base-metal shells comprise almost one-half of the weight of said entire mounting and because of their presence said mountings test or assay approximately only one-half the number of karats of gold indicated by said marks.

PAR. 7. Respondent's aforesaid knives are of unusual construction and differ from those generally manufactured and sold to the public as genuine gold-mounted knives, in that respondent's knife contains the hereinbefore-mentioned base-metal shells concealed within, and forming a part of, the mounting; whereas said genuine gold-mounted knives contain no base metal concealed within their mountings, which mountings are composed exclusively of gold. Said knives of respondent were sold and distributed in competition with truthfully marked and represented gold-mounted penknives or pocketknives, and similar knives mounted with other products or substances, marketed by respondent's competitors; and the misleading practices of respondent as set forth above has and had the capacity and tendency to, and does, unfairly divert trade from said competitors.

CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record and the Commission having made its findings as to the facts and its conclusion that the respondent has

violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, the Long-Koch Co., a corporation, its officers, agents, representatives, servants, and employees cease and desist from using the marks, symbols, or brands "10K" and "14K", or marks, symbols or brands of similar import,

(1) Upon or in connection with any gold-mounted knife or knives sold by respondent in interstate commerce when the karat fineness of the entire mounting of such knife or knives is less than the number of karats indicated by the number in such respective mark, symbol or brand used;

(2) Upon or in connection with any knife or knives sold by respondent in interstate commerce when the mounting thereof contains any base metal, covered, faced, veneered or otherwise concealed with gold unless such marks, symbols or brands be accompanied by words or other marks clearly indicating and showing the quantity of gold of such karat fineness represented by said marks, symbols or brands, which is actually used in said mounting.

It is further ordered, That respondent, the Long-Koch Co., a corporation, shall, within sixty days after the service upon it of a copy 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 hereinbefore set forth.

Dissent by Commissioner Humphrey

I vote "no" and dissent from the issuance of the order because the evidence fails to show any unfair practice on the part of the respondent. The practice complained of is not in conflict with the law but may be in conflict with the trade practice submittal. The submittal itself is in conflict with the statute. The order is not justified on the facts found and is not capable of being enforced. The question in this case is not the amount of gold used but whether or not the manufacturer or jeweler shall make the case. If the case is made by the manufacturer then the same amount of gold in exactly the same way is held to be proper but the same case if made by a jeweler in two pieces instead of one, then it is held to be improper. There is no question of the amount of gold used in the case. The respondent has by ingenuity invented a new method of making knives, using the same amount of gold but making a better knife and a better looking knife. The practice is one to be commended rather than condemned.

Syllabus

IN THE MATTER OF
MID-WEST RETAIL COAL ASSOCIATION ET AL.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1118—May 15, 1926

SYLLABUS.

Where a membership corporation composed of retail coal dealers, one of the principal objects of which was directed at relieving the situation created by the purchase and sale of coal in carload lots by church organizations, farm clubs or bureaus, farmers elevator companies, cooperative societies, etc., in competition with "regular" dealers engaged in the retail coal business throughout the year, and equipped with office, telephone connection, storage bins, private weighing scales, delivery vehicles, etc.; and the members of such corporation;

- (a) Applied the designation and description "snow bird" to coal shipped to the aforesaid organizations, etc., and to the shippers and recipients thereof, with the exception of those using coal industrially for steam purposes;
- (b) Requested of and secured from the members and others information as to "snow birds" and "snow bird" shipments, advising and cooperating with the members in securing the same;
- (c) Advised "snow bird" vendors that it was against the policy of the association and its members and that of "regular" retail coal dealers to purchase coal for their own trade from those who made shipments in carload lots to consumers direct or to those designated as "snow birds," when located in the territory served by one or more regular dealers, and endeavored to persuade such vendors to refuse to supply further consumers and snow bird dealers with coal;
- (d) Set forth the aforesaid policy through articles and editorials in the association paper from time to time, and represented to coal producers, jobbers and wholesalers, that lists containing the names of those who sold coal to consumers, or "snow birds," or permitted others who obtained coal from them, so to sell the same, in the members' territory, would be published in such paper;
- (e) Published lists of "snow bird" shippers, shipments, and consignees, together with articles and editorials, urging the members and the regular retail trade to confine their purchases to producers, etc., who made it a policy not to ship "snow bird," coal, and denouncing "snow bird" shippers and consignees;
- (f) Acted in combination and agreement with a corporation engaged in the publication of a "Coal Dealers' Blue Book" and in supplying subscribers with an exchange service consisting of confidential information relative to the business, credit, etc., of individuals and concerns engaged in the coal business, which book and service constituted one of the most influential sources in the United States for the kind of information therein provided and particularly for the territory herein concerned, in listing certain dealers and shippers as "snow birds," as above set forth, and later in eliminating