

Complaint

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IN THE MATTER OF

ISAAC SHAININ, BERNARD SHAININ, SOLOMON SHAININ
AND JESSE SHIENSIN, A PARTNERSHIP TRADING
UNDER THE FIRM NAME AND STYLE OF I. SHAININ &
COMPANYCOMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1780. Complaint, Apr. 7, 1930—Decision, Mar. 10, 1931*

Where a firm engaged in sale of Chinese art goods, vases and semiprecious stones, imported and sold, described and invoiced as "rose quartz" beads, beads carved from rose quartz and artificially dyed to supply the distinctive natural rose tint lacked by such particular beads and long associated by trade and public with beads sold under aforesaid designation, without disclosing to wholesaler vendees the essential and material fact that said inferior and less costly beads had been so dyed or artificially colored or tinted; with capacity and tendency to mislead and deceive such vendees into believing said heads to be those possessing the natural rose color and in large demand for necklaces by reason thereof, and to induce their purchase in reliance on such belief, and put into the hands of dealers means of misleading their own dealer customers, prospective customers, or consumers, as the case might be, and thereby divert trade to said firm from competitors engaged in selling as rose quartz beads, beads possessing such natural rose color, without artificial heightening, deepening, dyeing or tinting:

Held, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Isaac Shainin, Bernard Shainin, Solomon Shainin, and Jesse Shensin, partners, engaged in the importation and sale of Chinese art goods, vases, and semiprecious stones to wholesale jewelry dealers, with misrepresenting nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent partners, as charged, engaged as above set forth, import, offer and sell, and by invoice or otherwise describe and designate as and for rose quartz beads, beads cut or carved from so-called quartz, and so dyed as to acquire and have the deep rose color long and still identified by the public with genuine rose quartz beads carved from quartz in Germany, Switzerland and elsewhere,

without advising or disclosing that the color of their said beads has been and is imparted by dyeing same. Said beads, purchased by them at a cost substantially less than that of rose quartz beads with the genuine natural color of deep rose, are inferior in quality thereto, worth less, and sell for less than rose quartz beads as known to the public, and command no demand among the consuming public in their natural color.¹

Said offer for sale or sale by respondents, as alleged "as or for rose quartz beads, of beads cut or carved from quartz in China and dyed or colored to resemble or simulate the natural, deep rose color associated by the purchasing public with the name or designation rose quartz beads, without disclosing the essential and material fact that such beads have been dyed to resemble or simulate the deep rose color so associated by the public with the designation or name rose quartz beads, has had and has the capacity and tendency to mislead and deceive the public into the belief that such so-called rose quartz beads so offered for sale or sold by the respondents have the natural instead of artificial color, and to induce their purchase in reliance on such erroneous belief" and respondents' said practice, as further alleged, "has furnished and furnishes wholesale and retail dealers in jewelry the means by which they have been and are enabled to mislead and deceive their customers and prospective customers into the purchase of such so-called rose quartz beads in the belief that they have been and are the natural colored rose quartz beads known to the trade and the public as such.

"Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest 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 issued and served a complaint upon respondents Isaac Shainin, Bernard Shainin,

¹As set forth in the complaint, "there are, and for many years last past have been, offered for sale and sold in commerce among and between the various States of the United States, beads cut or carved from quartz in Germany, Switzerland, and elsewhere, which, on account of their natural deep rose color, have been described, designated and known, and now are described, designated, and known as rose quartz beads. There has been and is a large demand for such beads for necklaces for women because of such deep rose color, and the designation rose quartz beads has come to signify and mean, and signifies and means to the trade and the public, beads cut or carved from quartz having the natural, deep rose color."

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Solomon Shainin and Jesse Shensin, trading under the firm name and style of I. Shainin & Company, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answers, hearings were duly held before an examiner of the Commission theretofore appointed for such purposes. Testimony and evidence were introduced in support of the complaint and on behalf of respondents. Thereupon it was stipulated and agreed in course of the hearing, subject to the approval of the Federal Trade Commission, by and between the attorney for the Commission and the attorney for respondents that introduction of further evidence either on behalf of the Commission or the respondents, report of the trial examiner, briefs and oral arguments, would be and were waived and that the Federal Trade Commission may proceed forthwith to file its report stating its findings as to the facts and conclusion drawn therefrom, and to dispose of this matter by an appropriate order to cease and desist, and this proceeding having come on for final decision and the Commission being fully advised in the premises hereby approves the said stipulation between the attorney for the Commission and the attorney for respondent, and files this its report in writing stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Isaac Shainin, Bernard Shainin, Solomon Shainin and Jesse Shensin, trading under the firm name and style of I. Shainin & Company, have been since 1907 and are now engaged in the sale in commerce among and between the various States of the United States of Chinese art goods, vases and semiprecious stones. In the course of such business they have imported and do import into the United States from foreign countries beads cut from rose quartz and used in necklaces for women. Respondents sell such product to wholesalers in such jewelry in the various States of the United States, in competition with individuals, partnerships and corporations similarly engaged in interstate commerce. Such wholesale dealers thereupon sell to retail dealers for resale to the consuming public.

PAR. 2. There are and for many years last past have been offered for sale and sold in commerce among and between the various States of the United States beads cut or carved from rose quartz in various foreign countries which have a natural rose color and there has been and is a large demand for them, for necklaces for women, because of

their natural rose color, and the designation "rose quartz beads" has come to signify and mean and signifies and means to the trade and to the public beads cut or carved from rose quartz having a natural rose color, which has not been heightened or deepened by dye or artificial means.

PAR. 3. Respondents have imported into the United States and sold in commerce among and between the various States of the United States beads cut or carved from quartz mineralogically or technically known as rose quartz, some of which have lacked and lack the distinctive rose color which has been and is associated by the trade and the purchasing public with the designation "rose quartz beads." Such beads have been and are dyed or artificially colored or tinted by respondents so that they have had or have the rose color by which the public as aforesaid has long identified and now identifies rose quartz beads. In the course and conduct of their business respondents have offered for sale and sold such artificially colored or tinted rose quartz beads described or designated as "rose quartz beads" by invoice, or otherwise, to wholesale dealers in the various States of the United States without disclosing in such invoices, or otherwise, to purchasers from them, the essential and material fact that such beads have been dyed or artificially colored or tinted. Such beads so dyed or artificially colored or tinted have been and are purchased by respondents at a cost substantially less than the original cost of rose quartz beads having the natural rose color. They are inferior in quality, worth less and have been and are sold by respondents for less than rose quartz beads with the natural rose color, which has not been heightened or deepened by artificial means.

Some time in December, 1929, respondents discontinued their said practice of describing or designating by invoice or otherwise beads offered for sale or sold by them, which had been cut or carved from rose quartz, and which had been colored or tinted, as "rose quartz beads" and adopted the practice which they are now following of describing or designating such beads by invoice and otherwise as "rose quartz beads artificially colored."

PAR. 4. The offering for sale or sale by respondents, described or designated as "rose quartz beads" of beads cut or carved from rose quartz lacking the distinctive rose color, and dyed or artificially colored or tinted so as to have a rose color, without disclosing to purchasers the essential and material fact that such beads have been dyed or artificially colored or tinted, has had and has the capacity and tendency to mislead and deceive purchasers into the belief that the beads offered for sale and sold by them described as "rose quartz beads" have the natural rose color, which has not been imparted,

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heightened, or deepened by dyes or any artificial means, and to induce their purchase in reliance on such erroneous belief.

The said practice of respondents has had the capacity and tendency to put into the hands of wholesale dealers the means to mislead their dealer customers or prospective customers into the belief that they were beads with a natural rose color which had not been heightened or deepened by dye or artificial means, and in turn such practice put into the hands of the dealer the means similarly to mislead and deceive the consuming public, and thereby to divert trade to respondents from competitors engaged in the sale in interstate commerce of beads designated or described as rose quartz beads, which had not been dyed or artificially colored or tinted but had a natural rose color.

CONCLUSION

The practices of said respondents under the condition and circumstances described in the foregoing findings and facts are to the injury of the public and respondents' competitors and are unfair methods of competition in commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and evidence, and it having been stipulated and agreed by and between the attorneys for the Commission and respondents that report of the trial examiner, briefs and oral arguments were and are waived, and that the Federal Trade Commission forthwith may proceed to file its report stating its findings as to the facts and its conclusion drawn therefrom, and to dispose of this matter by an appropriate order to cease and desist, and the Commission having approved such stipulation or agreement between the attorneys for the Commission and the respondents, and having filed its report stating its findings as to the facts and its conclusion drawn therefrom, that the respondents have 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 Isaac Shainin, Bernard Shainin, Solomon Shainin and Jesse Shensin, trading under the firm name and style

of I. Shainin & Company, cease and desist directly or indirectly from offering for sale or selling in interstate commerce rose quartz beads dyed or artificially colored or tinted, described or designated as "rose quartz beads," unless qualified by word or words in immediate conjunction with such designation "rose quartz beads," and equally as conspicuous, clearly showing that such beads have been or are dyed, or artificially colored or tinted.

It is further ordered, That respondents shall within 60 days from and after service thereof file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

