

Syllabus

IN THE MATTER OF

MAX KENNER AND SAMUEL GRAUBARK, COPARTNERS
TRADING AS AMUSEMENT NOVELTY SUPPLY COM-
PANY

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

Docket 1763. Complaint, Feb. 21, 1930—Decision, Apr. 16, 1931

Where a firm engaged in sale of novelty goods such as knives, pipes, dolls, etc., to jobbers, retailers, and circus and amusement park concessionaires; in describing their products through catalogues, price lists, and other printed advertising matter,

- (a) Represented canes, manicure sets, toilet sets and other articles as "amber", "pearl on amber", "gold on amber" and "grained ivory" and brooches sold for \$6 a dozen as "cameo", facts being former articles were pyroxylin or celluloid and contained no gold, ivory or pearl, and latter were not made of that substance ordinarily known to public and trade as cameo;
- (b) Represented handles of carving sets as "stag" and articles such as bread and serving trays and water pitchers, as "engraved", facts being said handles were not carved from antlers and said trays, etc., had not been engraved, but were etched or stamped;
- (c) Falsely represented rayon goods containing no silk as "silk" and "rayon silk", and billfolds, key cases and other articles not made of seal leather, as "genuine pin seal" and "genuine hudson seal"; and
- (d) Applied words "Army and Navy" to field glasses neither purchased from nor made by or for the United States Government, nor in accordance with its specifications or requirements, and applied to jewelry, belt buckles, cuff button sets, stick pins and other articles words "Sapphire", "platinoid finish" or "diamond", as the case might be, facts being so-called sapphires were imitation and synthetic stones, belt buckles, etc., contained no platinum, and "diamonds" were not carbons in their crystalline state, entitled to be so designated;

With capacity and tendency to mislead and deceive customers and ultimate purchasers from such customers in respect of the substance and character of aforesaid articles and to divert trade to said firm from competitors similarly engaged without thus misrepresenting their merchandise:

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

Mr. PGad B. Morehouse for the Commission.

McGovern, Erb & Lehr of Buffalo, N. Y., for respondents.

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Max Kenner and Samuel Graubark, individuals engaged as partners under the name Amusement Novelty Supply Co., in the advertisement, offer and sale of such novelties as knives, pipes, watches, etc., to purchasers in the various States, and with their principal office and place of business in Elmira, N. Y., with advertising falsely or misleadingly as to composition, nature, source and origin of products dealt in, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged, as above set forth, make false and misleading representations in their catalogues, price lists and other printed advertising matter as to the articles dealt in by them, as follows:

Canes, manicure sets, toilet sets and other articles as "amber", "pearl on amber", "gold on amber", and "grained ivory" and brooches sold for \$6 a dozen as "cameo", facts being articles first referred to contain no gold, ivory or pearl but are pyroxylin or celluloid and brooches are not of that substance commonly known to the trade and public as "cameo".

Handles of carving sets as "stag" and articles such as bread and serving trays and water pitchers as "engraved" facts being said handles are not carved from antlers and trays and pitchers are not engraved, but etched or stamped.

Certain rayon goods containing no silk as "silk", and billfolds, key cases and other articles containing no seal as "genuine pin seal".

Field glasses neither purchased from nor made by nor for the United States Government nor in accordance with its specifications or requirements as "Army and Navy".

Certain jewelry as "sapphires", stones being imitation and synthetic, and certain belt buckles, cuff button sets and other articles containing no platinum as "platinoid finish".

Stones in stick pins and other jewelry as "diamond", facts being such stones are not carbons in their crystalline state and can not fairly and truthfully be described as diamonds.

The foregoing "statements, representations, and practices of the respondents, and each of them", as alleged, "have the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the various States of the United States as to the

quality, substance, and value of the products so advertised, offered for sale, and sold; and the aforesaid acts and things", as charged, "are to the prejudice of the public and the competitors of the respondents 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

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 the respondents, Max Kenner and Samuel Graubark, copartners trading as Amusement Novelty Supply Co., charging them with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

The respondent Max Kenner having entered his appearance and filed his answer to the complaint herein, and the respondent Samuel Graubark having failed to answer, hearings were had and evidence was introduced upon behalf of the Commission and respondents before a trial examiner of the Commission duly appointed thereto.

Thereupon this proceeding came on for final hearing, counsel for respondents having waived the filing of brief and oral argument, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents are individuals who, since prior to the year 1926, have been engaged in a partnership enterprise trading as the Amusement Novelty Supply Co. in the city of Elmira, State of New York. Samuel Graubark or "Graubart", as he is also known, has not been connected with this partnership for a number of years, and Max Kenner is now and has been for two years last past sole proprietor. The business consists of selling and distributing in commerce between and among the various States of the United States various novelty goods, such as knives, pipes, dolls, toilet sets, pocket books, canes, pillows, field glasses, and imitation jewelry, to jobbers, retailers, circus and amusement park concessionaires, and causing the said goods when sold to be shipped from their place of business at Elmira, N. Y., to the purchasers thereof located in various

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other States of the United States. In the course and conduct of the aforesaid business respondents are in competition with other corporations, individuals, and partnerships engaged in selling and distributing in interstate commerce articles of a like nature.

PAR. 2. In the course and conduct of their aforesaid business, by the circulation and use of catalogues, price lists, and other printed advertising matter, respondents have represented and do represent to their purchasers and prospective purchasers in the various States of the United States, through the use therein of such words as "amber", "pearl on amber", "gold on amber", and "grained ivory" in connection with certain canes, manicure sets, toilet sets, and other articles so sold, advertised, and offered for sale, that said articles contain the substances so quoted, whereas in truth and in fact said articles contain no gold, ivory, or pearl, and are of pyroxylin or celluloid materials; through the use of the word "cameo" that certain brooches sold in dozen lots for \$6 per dozen are of the substance ordinarily and commonly known to the public and trade as "cameo", whereas in truth and in fact such is not the case; through use of the word "stag" in connection with certain carving sets that the handles of the pieces thereof are carved from antlers, whereas in truth and in fact such is not the case; through use of the word "engraved" in connection with certain articles such as bread and serving trays and water pitchers, that said articles have been subjected to the process commonly and ordinarily known and recognized as engraving, whereas in truth and in fact said articles are not engraved but are etched or stamped; through the use of the word "silk" and the words "rayon silk" in connection with certain rayon goods, that said goods are composed in whole or in part of silk, whereas in truth and in fact said goods contain no silk; through use of the words "genuine pin seal" and "genuine hudson seal" in connection with billfolds and key cases and other articles, that the said articles are made of seal leather, whereas in truth and in fact there is no seal in the composition of said articles; through the use of the words "Army and Navy" in connection with certain field glasses, that said articles were purchased from or were manufactured by or for the United States Government, or made in accordance with specifications or requirements of the United States Government, whereas in truth and in fact the said field glasses neither were purchased from nor manufactured by or for the United States Government nor made in accordance with its specifications or requirements; through the use of the word "sapphire" in connection with certain jewelry, that said jewelry is of the substance known as "sapphire", when in truth and in fact said stone is of

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imitation and synthetic stones; through the use of the words "platinoid finish" in connection with certain belt buckles, cuff-button sets, and other articles, that said articles contain some platinum, when in truth and in fact said articles contain no platinum; through use of the word "diamond" in connection with certain stones in stick pins and other jewelry, that said stones are carbons in their crystalline state, whereas in truth and in fact the said stones are not carbons in their crystalline state and can not fairly and truthfully be described as diamonds. All of these representations are admitted by respondents to have been made, and are acknowledged by them to be untrue.

PAR. 3. The Commission finds that the foregoing representations have a capacity and tendency to mislead and deceive the customers of respondents and the ultimate purchasers from such customers, throughout various States of the United States, into the erroneous belief that, in purchasing various and sundry articles from respondents, they are purchasing articles of a substance, material, and character as described by respondents, and that said misrepresentations have a capacity and tendency to divert trade to respondents from competitors also engaged in interstate commerce, who do not so misrepresent the substance, material, and character of their merchandise.

CONCLUSION

The practices of said respondents and each of them, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to respondents' competitors, 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 considered by the Federal Trade Commission upon the record, the answer of respondent Max Kenner, the respondent Samuel Graubark having been duly served and failed to answer, and both respondents having waived oral argument and brief, and the Commission having made its findings as to the facts and its conclusion 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",

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It is now ordered, That the respondents, Max Kenner and Samuel Graubark, trading as Amusement Novelty Supply Co., and each of them, and all their several agents and employees, in connection with the sale or distribution in interstate commerce of the following articles, do cease and desist as follows:

1. From using the words "amber", "pearl on amber", "gold on amber", "grained ivory", in describing its canes, manicure sets, toilet sets, or other articles, unless and until said articles shall contain or be composed of the descriptive substance.

2. From use of the word "cameo" in describing brooches or other jewelry or ornaments unless and until said jewelry or other ornaments shall be composed of or contain that substance ordinarily and commonly known to the public and trade as "cameo".

3. From the use of the word "stag" in describing carving sets, the handles of the pieces thereof which are not carved from antlers.

4. From the use of the word "engraved" in describing bread and serving trays, water pitchers, and other similar articles, which are not engraved but which are etched or stamped.

5. From the use of the word "silk", whether alone or with the word "rayon", in describing fabrics composed neither in whole nor in part of genuine silk.

6. From use of the words "genuine pin seal" or "genuine hudson seal" in describing billfolds, key cases, or other articles, unless and until said articles shall be composed of or contain genuine seal.

7. From use of the words "Army and Navy" in describing field glasses which were neither manufactured by, for, nor in accordance with specifications or requirements of, the United States Government.

8. From use of the word "sapphire" in describing jewelry which is composed of synthetic or other stone, and which is not of the substance ordinarily known to the trade as "sapphire".

9. From the use of the words "platinoid finish" in describing belt buckles, cuff button sets, or other articles which do not contain any platinum.

10. From use of the word "diamond" in describing any stones which are not diamonds.

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

IN THE MATTER OF
CHERRY BLOSSOMS MANUFACTURING COMPANY

MODIFIED ORDER TO CEASE AND DESIST

Docket 1542. Order, Apr. 27, 1931

Order modifying order in 13 F. T. C. 124, relating to use of the words "Cherry Blossoms" or "Cherry" as a corporate or trade name, brand, label, etc., in connection with the sale of an artificially colored and flavored concentrate, and beverage made therefrom, containing neither product of the cherry or cherry blossom, though with the taste and appearance of such a beverage; as in said order set forth.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent, and testimony and evidence submitted; and the Commission having made its findings as to the facts and adopted its conclusion that respondent has violated section 5 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"; and the Commission having heretofore, to wit, on the 16th day of December, 1929, entered its order upon the respondent requiring it to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that said order should be modified:

Now, therefore, the Federal Trade Commission, under and by virtue of the provisions of Section 5 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", hereby

Orders, That the order to cease and desist heretofore made in this proceeding be, and the same is hereby, modified so that as modified said order shall read as follows, to wit:

It is now ordered, That respondent, Cherry Blossoms Manufacturing Co., its representatives, agents, servants, employees and successors, forthwith cease and desist, in interstate commerce, from:

(1) Using the words "Cherry Blossoms", or the word "Cherry", independently or in conjunction or combination with any other word or words, as its corporate name, or as a trade name for its product or the beverage made therefrom; or using the words "Cherry Blossoms" or the word "Cherry", independently or in conjunction or combination with any other word or words in advertising, or on labels of its product or the beverage made therefrom, except when