

Complaint

IN THE MATTER OF

B. ROSENBERG, AN INDIVIDUAL, TRADING AS GLOBE
SUPPLY COMPANY

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

Docket 1963. Complaint, July 7, 1931—Decision, Oct. 5, 1931

Where an individual engaged in the business of assembling, selling and distributing knives and other cutlery to jobbers and wholesale and retail dealers, sold certain knives and cutlery made of carbon steel plated with chromium and so prepared as to imitate stainless steel, branded and labeled as "Stainless" or "Globe Stainless"; with tendency and capacity to deceive ultimate purchasers of said product into the erroneous belief that they were made of stainless steel, and to divert trade to him from competitors selling and distributing knives and cutlery truthfully stamped, branded, or labeled, and otherwise injure such competitors, and with result of causing to be placed in hands of retail dealers therein the means of committing a fraud upon ultimate purchasers of aforesaid products:
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.

Mr. J. Butler Walsh 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, an individual engaged as Globe Supply Co. in the sale and distribution to jobbers, wholesalers and retail dealers in cutlery, and to the general public, of knives and other cutlery manufactured and sold in simulation of such products made of "stainless steel," and with principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to composition or 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, as charged, engaged as above set forth, in competition with other individuals and concerns dealing in products of the same kind and nature as himself, and in competition with those dealing in knives and other cutlery made of true stainless steel, i. e.,

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an alloy of steel containing not more than 0.70 per cent of carbon and from 9 to 16 per cent of chromium, come to be known to the general public as "stainless steel" and to be so designated on the blade of cutlery, describes and designates his aforesaid products as "stainless" or as "Globe Stainless" in his advertisements, newspapers and periodicals of national circulation, and in circulars and other like literature distributed among the trade and general public and on the blades of his knives and cutlery, and on the containers thereof; fact being cutlery so sold by him is made of carbon steel plated with chromium, and so prepared as to imitate the true or genuine stainless steel as above set forth.

The aforesaid designation, as alleged, is false and misleading and has the capacity and tendency to deceive purchasers of respondent's product into the belief that products in question are made of stainless steel as aforesaid, "and to divert to the respondent the trade of competitors engaged in selling in interstate commerce products of the same kind and nature as those of respondent which said products are truthfully advertised and described, and to divert to respondent the trade of competitors engaged in the manufacture and in selling in interstate commerce stainless steel cutlery made and manufactured as hereinbefore described and truthfully advertised and described," and said practices, as charged, are to the prejudice of the public and competitors and constitute unfair methods of competition.

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, the Federal Trade Commission on July 7, 1931, issued complaint against the above respondent and caused the same to be served on July 10, 1931, in which complaint respondent was charged with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

By notice contained in said complaint against said respondent, respondent was notified and required within thirty days from the date of service of the same, unless the time therefor was extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's Rules of Practice with respect to answers and failure to answer, said provisions being set forth in said notice and providing in part as follows:

Failure of the respondent to appear or file answer within the time as above provided for shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint. (Rule III, subdivision 3.)

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he during the thirty-day period specified in the complaint therein or at any time, made or filed answer to said complaint.

Thereafter this proceeding came on for final hearing and the Commission having duly considered the failure of respondent to appear and answer and deeming that thereby the respondent has admitted all of the allegations of the complaint and has authorized this Commission to find said allegations to be true pursuant to the rule aforesaid, and the Commission being fully advised in the premises makes this its report, stating its findings as to the facts and its conclusion therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, B. Rosenberg, an individual trading as Globe Supply Co., has his principal place of business in the City of New York, State of New York. He is now and for more than one year last past has been engaged in the business of assembling and selling and distributing to jobbers and wholesale and retail dealers, located in various States of the United States, knives and other cutlery; causing said products when so sold to be shipped or transported in interstate commerce from his principal place of business in the State of New York as aforesaid to the said purchasers thereof located in States other than the State of New York. Such jobbers and wholesale dealers sell said knives and cutlery to retail dealers, who, together with such retail dealers as purchase direct from respondent, sell the same to the ultimate purchasers thereof. In the course and conduct of his business, respondent is in competition with corporations, partnerships, and other individuals engaged in the sale and distribution of knives and cutlery in interstate commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Said respondent in the course and conduct of his said business as described in paragraph 1 hereof has, for more than one year last past, caused to be stamped, branded, and labeled and now causes to be stamped, branded, and labeled the said knives and cutlery with the term and designation "stainless" or "globe stainless" and said knives and cutlery are now and have been for more than one year last

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past resold to the public by said retailers, stamped, branded, and labeled with said term and designation. The term or designation "stainless" or "stainless steel" stamped, branded, or labeled on knives and cutlery denotes an alloy of steel containing not more than 0.70 per cent carbon and from 9 to 16 per cent of chromium, whereas the knives and cutlery sold by the said respondent are not in fact made of such alloy of steel but are made and manufactured from carbon steel plated with chromium and so prepared as to imitate stainless steel.

Par. 3. The term or designation "stainless" or "globe stainless," so stamped, branded, or labeled on said knives and cutlery has the tendency and capacity to deceive ultimate purchasers of said knives or cutlery into the erroneous belief that said knives or cutlery are made of stainless steel and to divert trade to said respondent from his competitors who sell and distribute in interstate commerce knives and cutlery which are truthfully stamped, branded, or labeled, and otherwise injures such competitors and the said use by respondent of the term or designation "stainless" or "globe stainless" as a stamp, brand, or label on his said knives and cutlery, causes to be placed in the hands of said retailers the means of committing a fraud upon ultimate purchasers of knives or cutlery so stamped, branded, or labeled.

CONCLUSION

The acts and things done by 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

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 7th day of July, A. D. 1931, issued its complaint against B. Rosenberg, an individual trading as Globe Supply Co., respondent herein, and caused the same to be served upon said respondent on the 10th day of July, 1931, in which complaint it is charged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The respondent not having filed an answer to the complaint, and failure to file answer within the time provided by the Rules of Practice and Procedure by the Commission being deemed an admission of the allegations of the complaint, and to authorize the Commission to find them to be true and to waive hearings on the charges set forth in the complaint, all of which the respondent had due notice of, and the Commission having made its findings as to the facts and its conclusion that the respondent had 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 respondent, B. Rosenberg, trading as Globe Supply Co., his agents, representatives, and employees do cease and desist from doing, directly or indirectly, any and all of the acts herein designated and set forth in connection with the sale or offering for sale in interstate commerce or in the District of Columbia of knives and cutlery, as follows:

PARAGRAPH 1. Using the word "stainless" as a part of his trade name or brand or otherwise as a stamp, brand, or label upon or for knives and cutlery or in advertising the same, unless such knives and cutlery are made of steel containing not more than 0.70 per cent carbon and from 9 to 16 per cent chromium.

PAR. 2. It is further ordered that respondent within 60 days from and after the date of service upon him of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
HELENA RUBINSTEIN, INCORPORATED

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

Docket 1884. Complaint, Dec. 12, 1930—Decision, Oct. 19, 1931

Where a corporation engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof to retailers throughout the United States; in pursuance of a merchandising system adopted by it and directed to fixing and maintaining prices specified by it for resale of its products, in cooperation with its dealers,

- (a) Fixed uniform prices at which its dealers should resell its products to the public and made it generally known to the trade that it expected and required all dealers handling said products to resell same at such fixed prices; and
- (b) Entered into contracts, agreements, and understandings with its dealers for the maintenance by them of said resale prices as a condition of opening accounts with them or continuing their supply of its products;

With the result that competition among its dealers in the distribution and sale of its products was suppressed, dealers were constrained to sell the same at the prices fixed by it and prevented from selling said products at such lower prices as they might desire, and purchasers thereof were deprived of the advantages in price which they would otherwise obtain from a natural and unobstructed flow of commerce under methods of free competition:

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

Mr. Alfred M. Craven for the Commission.

Mr. Henry M. Flateau, of New York City, for respondent.

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 York corporation, engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof to retailers, and to some extent to wholesalers, and with principal office and place of business in New York City, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting use of unfair methods of competition in interstate commerce.

Respondent, as alleged, for many years last past, has enforced and enforces a merchandising system adopted by it directed to the fixing and maintaining of uniform minimum resale prices specified