

Complaint

IN THE MATTER OF
THE GEOGRAPHICAL PUBLISHING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2239. Complaint, Oct. 18, 1934—Order, Nov. 26, 1934*

Consent order requiring respondent, its agents, etc., in connection with the sale and offer in interstate commerce of atlases, books, magazines, journals, and other publications, to cease and desist from advertising, publishing, or representing in any manner that—

- (a) Its salesmen or solicitors are from or with "The National Geographic Society" or represent said society, or that certain of the subscriptions sold and offered by it include the National Geographic Magazine, or that its salesmen or solicitors ever were agents for the National Geographic Society and authorized to take subscriptions for said magazine, or ever were photographers in the employ of said society or that they represent "The Geographic"; or
- (b) The National Geographic Society is or was a subsidiary of it, or that an atlas sold and in some cases given as a premium by its salesmen or solicitors is or ever was sponsored or published by said society or prepared thereby, although published by it.

Mr. John W. Hildrop for the Commission.

COMPLAINT

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, having reason to believe that The Geographical Publishing Company, a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. That said respondent, The Geographical Publishing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Chicago, in said State.

PAR. 2. That said respondent is now and for a number of years last past has been engaged in printing and publishing maps, atlases, and books, and in the sale of said products has caused the same to be distributed from its place of business in the State of Illinois to

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purchasers thereof located in various States of the United States, other than the State of Illinois, and said respondent has also been and is now engaged in the securing and sale of subscriptions to various periodicals on the club or combination subscription plan, which periodicals are thereafter shipped and distributed by the several publishers thereof from the State or States of the Union in which they are published to purchasers thereof located in various States of the United States other than the State or States in which the said periodicals are published. In the course and conduct of its business as aforesaid, The Geographical Publishing Company was and is in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. The National Geographic Society is a corporation organized under the laws of the District of Columbia in the year 1888 as a scientific and educational association not organized for profit. It publishes a periodical known as the "National Geographic Magazine", which is not sold on news stands or by subscription, but is distributed among the members of said National Geographic Society as one of the privileges accruing from the payment of annual dues. The said National Geographic Society has acquired a valuable goodwill in its said magazine on account of the interest and accuracy of the contents of the same; the magazine of said society being well and favorably known to the reading public of the United States, and the members of said National Geographic Society being scattered throughout the United States.

PAR. 4. In the course and conduct of its aforesaid business in the publication, sale, and distribution in commerce of its maps, atlases, and books, and in the securing of subscriptions to periodicals published and distributed in commerce by other concerns, the respondent, through its salesmen or solicitors, has made and makes the following statements and representations to customers and prospective customers in soliciting the sale of and selling its own products and in soliciting and securing subscriptions to the periodicals of said other concerns:

(a) That the said salesmen or solicitors were "from the National Geographic Society";

(b) That they were "with the National Geographic Society";

(c) That they were "representing the National Geographic Society";

(d) That certain of the subscriptions which they took included the National Geographic Magazine;

(e) That they were subscription agents for the National Geographic Society and authorized to take subscriptions for the National Geographic Magazine;

(f) That they were photographers in the employ of the National Geographic;

(g) That they represented "the Geographic";

(h) That the National Geographic Society was a subsidiary of The Geographical Publishing Company;

(i) That an atlas which they were selling, and which in some cases was given as a premium was sponsored by the National Geographic Society;

(j) That the atlas referred to was published by the National Geographic Society;

(k) That the atlas referred to was prepared by the National Geographic Society, although published by the Geographical Publishing Co.;

when in truth and in fact there was no connection between the National Geographic Society and The Geographical Publishing Company; when in fact neither The Geographical Publishing Company nor its representatives were agents for or representatives of the National Geographic Society and were not authorized to solicit subscriptions for any of its publications; and when in fact the National Geographic Society did not prepare, sponsor, or publish the atlas sold and distributed by The Geographical Publishing Company. The said salesmen or solicitors of The Geographical Publishing Company, being duly authorized by respondent and acting in the course of their employment, further stated and represented to customers and prospective customers that the sale or subscription offers or plans which they submitted were made only to a limited number of persons in certain prescribed classifications; when in truth and in fact, no such special or limited plans were followed or carried out.

PAR. 5. That the statements and representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the belief that the respondent is an agent for or a representative of the National Geographic Society, or that the National Geographic Society has prepared, sponsored, or published the atlases sold and distributed by respondent, or that the respondent was connected with the National Geographic Society in some way or that the National Geographic Society had authorized the respondent to solicit subscriptions to its publications, or that the salesmen or solicitors of the respondent were offering subscription offers or plans to a limited

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number of persons in certain prescribed classifications when such were not the facts. That said representations of respondent have had and do have the tendency and capacity to induce members of the public to purchase its aforesaid products and to purchase from respondent subscriptions to the publications of other concerns because of the erroneous beliefs engendered, as above set forth, and to divert trade or tend to divert trade to respondent from concerns likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 6. The above acts and things done by respondent are all to the injury and prejudice of the public and to the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing before the Federal Trade Commission upon the respondent's amended answer waiving all further procedure and consenting that the Commission may make, enter, and serve upon it an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises—

It is now ordered, That the respondent, the Geographical Publishing Company, a corporation, its agents, representatives, officers, servants, and employees, in connection with the sale or offering for sale in interstate commerce, its atlases, books, magazines, journals, and other publications, whether printed and published by respondent or not, cease and desist from advertising, publishing, or representing in any manner:

(a) That its salesmen or solicitors engaged in the distribution and sale of the said products of the respondent are from National Geographic Society.

(b) That such salesmen or solicitors are "with the National Geographic Society."

(c) That such salesmen or solicitors are representing the National Geographic Society.

(d) That certain of the subscriptions for which the salesmen and solicitors of respondent are selling and/or offering for sale include the National Geographic Magazine.

(e) That such salesmen or solicitors are or ever were subscription agents for the National Geographic Society and authorized to take subscriptions for the National Geographic Magazine.

(f) That such salesmen or solicitors are or ever were photographers in the employ of National Geographic Society.

(g) That such salesmen and solicitors represent "The Geographic."

(h) That the National Geographic Society is or was a subsidiary of The Geographical Publishing Company, the respondent herein.

(i) That an atlas which said salesmen and solicitors of respondent are selling and which in some cases is given as a premium, is or ever was sponsored by the National Geographic Society.

(j) That the atlas referred to was published by the National Geographic Society.

(k) That the atlas referred to was prepared by the National Geographic Society, although published by The Geographical Publishing Company, the respondent herein.

It is further ordered, That the respondent shall, within 60 days from the date of 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 herein set forth.

IN THE MATTER OF
AMERICAN MERCHANDISE CO., INC.,¹ AND HARRY
GREENBERG AND LEO JOSEFSBERG, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME GREEN-
BERG & JOSEFSBERG, ETC.

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

Docket 2238. Complaint, Oct. 11, 1934—Order, Nov. 30, 1934

Consent order requiring respondents Greenberg and Josefsberg, doing business as Greenberg & Josefsberg, G. & J. Manufacturing Co., etc., their agents, etc., to cease and desist, in connection with the sale in interstate commerce of imported metal measuring tapes in domestic coil cases, and cuticle scissors—

- (a) Selling metal tapes made in a foreign country and sold in a coiling case marked "made in the U. S. A.", as a single article, unless the name of the country of origin of the metal tapes is distinctly and plainly marked on the tapes on the part thereof readily accessible to view to a purchaser or a prospective purchaser; and
- (b) Representing or causing dealers to represent, by means of cards or labels, upon which or in connection with which cuticle scissors are sold by the respondents that such scissors are hardened, tempered, and heavy nickel-plated, unless and until they are in fact made of hardened steel and tempered and heavy nickel-plated; and

Ordered further, That the complaint be and is dismissed against respondent American Merchandise Co., Inc., for the reason that said respondent is not and never has been engaged in business.

Mr. Edward E. Reardon for the Commission.

Mr. Reuben Speiser, of New York City, for respondent.

COMPLAINT

Count 1

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, having reason to believe that the American Merchandise Co., Inc., and Harry Greenberg and Leo Josefsberg, copartners, doing business under the trade name of Greenberg & Josefsberg, and under the trade name G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., hereinafter re-

¹ Complaint dismissed as to respondent American Merchandise Co., Inc., for the reason that said respondent is not and never has been engaged in business.

ferred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in 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, American Merchandise Co., Inc., is a corporation, incorporated on or about June 18, 1933, under the laws of the State of New York, and having its usual and principal place of business at the same place as the place of business of the other respondents in the City of New York at all times since its incorporation.

PAR. 2. Respondents Harry Greenberg and Leo Josefsberg are and have been copartners, doing business under the trade name, Greenberg & Josefsberg, and having at all times since, on, or about January 21, 1930, a usual place of business in the City of New York.

PAR. 3. Respondents, Harry Greenberg and Leo Josefsberg are and have been copartners doing business under the trade names G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., at all times since, on, or about January 21, 1930, at the same place of business mentioned and referred to in paragraph 2 hereof.

PAR. 4. During all of the times above mentioned, the respondents, respectively, are and have been engaged in the importation of merchandise, household articles, and novelties, including the metal measuring tapes mentioned and referred to in paragraphs 5, 7, and 8 hereof, from foreign countries to the United States, and in the business of the sale of such merchandise, and other articles of domestic manufacture, such as cuticle scissors, including the cuticle scissors mentioned and referred to in paragraphs 2, 3, 4, and 5 of the second count herein, to individuals, firms, and corporations, dealers therein and users thereof, located throughout the various States of the United States.

PAR. 5. The respondents, during all the times above mentioned and referred to, have caused and still cause the articles or products mentioned and referred to in paragraph 4 hereof, when sold by them, respectively, to be transported from the State of New York, or the State or origin of the shipment, to, into, and through other States and the District of Columbia to the purchasers.

PAR. 6. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States, are and have been engaged in the business of the manufacture and of the importation

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and of the sale of household articles and novelties, including metal measuring tapes and cuticle scissors, to dealers for resale by them to the public, and to members of the public, purchasers and users thereof, located in the District of Columbia and in the various States of the United States. The sellers have caused the merchandise, including metal measuring tapes and cuticle scissors when so sold by them, respectively, to be transported from the State of the seller or from the State of origin of the shipment, to, into, and through other States and the District of Columbia, to the purchasers.

PAR. 7. During all the times above mentioned and referred to the respondents are and have been in substantial competition in interstate commerce in the sale of household articles and novelties, including metal measuring tapes and cuticle scissors with the other individuals, firms, and corporations, referred to as sellers in paragraph 6 hereof.

PAR. 8. During the times above mentioned the respondents, respectively, imported and caused to be imported certain metal measuring tapes from Czechoslovakia which they caused to be sold, coiled, respectively, in a case provided with a coiling spring to which one end of the tape was permanently attached. The case, coiling spring, and other parts used in encasing the tape were caused by respondents to be made, and the measuring tape and the case and coiling spring to be assembled, in the United States for sale as a single complete product. The case, at all times when sold by respondents, as set forth in paragraph 4 hereof, and when resold by dealers to the public, was stamped on the outside with the legend "Made in U. S. A."; the metal tape was stamped, immediately at the end attached to the coil spring, with the legend "Made in Czechoslovakia", so that the legend was not visible and could not be read unless the tape was fully drawn out of its case.

PAR. 9. Among the purchasers of metal tapes and other household articles and novelties, there are many dealers therein and users thereof in the United States who prefer to buy and use such articles of domestic manufacture, rather than those produced in foreign countries.

PAR. 10. The metal tapes of respondent above referred to were displayed for sale by dealers and sold to purchasers, users thereof, coiled in their cases, and the manner in which the cases and tapes were respectively marked "Made in the U. S. A." and "Made in Czechoslovakia", as above set forth, tended to and did prevent purchasers from observing the legend "Made in Czechoslovakia" on the metal tapes at the time of purchase, so that purchasers and prospective purchasers, dealers and members of the public, upon reading

the legend "Made in the U. S. A." on the cases were deceived into the belief that the case and the tape were one complete article, all parts of which were made in the United States.

PAR. 11. The practices of the respondents, respectively, in causing the tapes and their cases to be assembled, marked, and sold as above set forth, had the capacity and tendency to deceive and mislead members of the public, dealers in and users of metal tapes and they were thereby deceived and misled into purchasing the said metal tapes of the respondents in preference to metal tapes produced by American manufacturers and the respondents have thus caused trade to be diverted to them from their competitors.

PAR. 12. The above acts and things done and caused to be done by the respondents are and were each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Count II

PARAGRAPH 1. Repeats and realleges each and every allegation contained in paragraphs 1, 2, 3, 4, 5, 6, and 7 of count I hereof, as fully and completely and with the same force and effect as if the same were set forth herein and said paragraphs are hereby charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. During all the times above mentioned the cuticle scissors mentioned and referred to in paragraphs 4, 5, 6, and 7 hereof, were not manufactured by the respondents or by either of them. The respondents caused the said cuticle scissors to be manufactured by others of cold-rolled steel and to be mounted upon paper cards on which the respondent caused the following statements and representations to be printed:

Solid Steel Scissors—Heavy Nickel Plated—Hardened, Tempered, Sharp—A. G. & J. Product.

The said scissors were not hardened. They were made of soft steel. They were not tempered. They were not heavy nickel plated.

PAR. 3. The respondents sold the cuticle scissors to dealers, as set forth in paragraph 4 hereof, mounted upon the paper cards above described with the knowledge and with the intent that the scissors would be displayed for resale and resold by the dealers, so mounted, to members of the public who purchase cuticle scissors for use, and

the dealers who purchased them from the respondents, resold them during the times above mentioned, so mounted and described, to members of the public who bought the same for their use.

PAR. 4. The manner in which the cuticle scissors above mentioned and referred to were marked, branded, and described, and offered for sale and sold by the respondent to dealers and through the dealers to the members of the public, as above set forth, had the capacity and tendency to deceive and mislead purchasers of cuticle scissors and they were deceived and misled into the belief that the respondents under the name G. & J. Manufacturing Co. were the manufacturers of the cuticle scissors, and that, as such manufacturers, they had made the scissors of hardened, tempered steel and that the scissors were heavy nickel plated; and in reliance upon such belief into purchasing respondents' cuticle scissors.

PAR. 5. The practices of respondents, respectively, in causing the cuticle scissors to be mounted, described, and sold, as above set forth, had the capacity and tendency to deceive and to mislead members of the public, dealers in and users of cuticle scissors, and they were thereby deceived and misled into purchasing the said cuticle scissors of the respondents in preference to cuticle scissors manufactured of hardened, tempered steel and heavy nickel plated sold by respondents' competitors, and the respondents have thus caused trade to be diverted to them from their competitors.

PAR. 6. The above acts and things done and caused to be done by the respondents are and were each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST AND ORDER OF DISMISSAL

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" (38 Stat. 717), the Federal Trade Commission, on October 11, 1934, issued its complaint against the above named respondents, in which it is alleged that the respondents have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act.

On November 23, 1934, the respondents filed their answers to the said complaint, wherein the respondent, American Merchandise Co. Inc., denies the allegations of the complaint, excepting the allega-

tions respecting its corporate existence, which it admits, and wherein the respondents, Harry Greenberg and Leo Josefsberg, copartners, as above set forth, consent that the Federal Trade Commission may make, enter, and serve upon them in accordance with the provisions of paragraph (b) of rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of metal measuring tapes made in, and imported from a foreign country to the United States, the coiling cases of which, made in the United States, were marked with the legend, "Made in U. S. A.", in such manner as to cause purchasers to believe that the metal measuring tape coiled in them was made in the United States, and in connection with the sale in interstate commerce of cuticle scissors marked:

Sold Steel Scissors—Heavy Nickel Plated—Hardened, Tempered, Sharpened—A. G. & J. Product,

and the Commission being fully advised in the premises:

It is now ordered, That the respondents, Harry Greenberg and Leo Josefsberg, copartners, doing business under the trade name, Greenberg & Josefsberg, and under the trade names, G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., their agents, employees, and representatives, in connection with the sale and the advertising and offering for sale of metal measuring tapes and cuticle scissors in interstate commerce do—

Cease and desist (1) From the sale of metal measuring tapes made in a foreign country and sold in a coiling case marked, "Made in the U. S. A.", as a single article, unless the name of the country of origin of the metal tapes is distinctly and plainly marked on the tapes on the part thereof readily accessible to view to a purchaser or prospective purchaser;

(2) From representing or causing dealers to represent by means of cards or labels upon which or in connection with which cuticle scissors are sold by the respondent that such scissors are hardened, tempered, and heavy nickel-plated unless and until the cuticle scissors so sold and represented are in fact made of hardened steel, and tempered, and heavy nickel-plated.

It is further ordered, That the said respondents, Harry Greenberg and Leo Josefsberg, copartners, doing business under the trade name, Greenberg & Josefsberg, and under the trade names, G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., shall, within 30 days after the date of service upon them of this order, file with the Commission a report in writing, setting forth

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in detail, the manner and form in which they have complied with and are now complying with the order to cease and desist hereinabove set forth.

It is further ordered, That the complaint be and the same hereby is dismissed as to the respondent, American Merchandise Co., Inc. for the reason that said respondent is not and never has been engaged in business.