

Complaint

IN THE MATTER OF

NATHAN HOFFMAN, DOING BUSINESS UNDER THE
TRADE NAME HOFFMAN ENGINEERING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2207. Complaint, July 13, 1934—Decision, Mar. 18, 1935*

Where an individual engaged in the manufacture and sale of a device for use in connection with the ignition system of automobiles, falsely represented in newspapers and periodicals and on the containers thereof that it would cause the motor to start more readily and have more power and speed and to run more smoothly, coolly, and economically, with less carbon accumulation and trouble; with effect of deceiving and misleading the public and inducing purchase of said device in reliance upon the truth of said statements and representations, and of diverting trade in amplifying appliances or units for use in connection with the ignition systems of automobile engines, from competitors, to their substantial injury and prejudice and that of the public:

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

Mr. Edward E. Reardon for the Commission.

Mr. Anthony J. Wolf, of New York City, for respondent.

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 Nathan Hoffman, doing business under the trade name Hoffman Engineering Company, hereinafter referred to as respondent, has been and now is 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, Nathan Hoffman, is a citizen of the State of New York, residing in the City of New York, and he is and has been doing business under the trade name Hoffman Engineering Company with a place of business in New York City at all times since on or about March 23, 1933.

PAR. 2. The respondent is and has been during all the times above mentioned engaged in the business of the manufacture and

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of the sale of an accessory or device sold under the name "Super-Fyre Amplifying Unit" for use in connection with the ignition system used in operating an automobile engine, which the respondent has sold and caused to be sold to purchasers, dealers therein for resale to the public, and to members of the public located in various States of the United States other than New York, and the respondent has caused the said accessory or device when so sold by him to be transported from New York, or from the State of origin of the shipment, to, into, and through States other than New York, or the State of origin of the shipment, to the purchasers.

PAR. 3. During all the times above mentioned other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, have been engaged in the business of the sale of various accessories or devices for use in connection with the ignition system used in operating automobile engines, to purchasers residing in various States of the United States other than the State of the seller, or the State of origin of the shipment, dealers therein, who have purchased the same for resale to the public, and to members of the public for use or consumption, and the said sellers have, respectively, during said times caused the accessories or devices when so sold by them to be transported from the State of the seller to, into, and through States other than the State of the seller or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondent during all the times above mentioned is and has been in substantial competition in interstate commerce in the sale of the said Super-Fyre Amplifying Unit.

PAR. 5. The respondent during all the times above mentioned has caused advertisements of his Super-Fyre Amplifying Unit to be published and circulated in newspapers, magazines, and periodicals among the people of the United States containing, among many other similar statements, statements to the effect that the said Super-Fyre Amplifying Unit by means of its use above referred to, caused the automobile engine in connection with whose ignition system it was used to have more power and speed, to be smoother in its running, and to cause less accumulation of carbon or less mechanical trouble by reason of the accumulation of carbon, and to cause the automobile engine to be started more easily, and to keep the motor cool and save gas in its operation, and to obtain more mileage from its use in the operation of an automobile from a certain quantity of gas.

PAR. 6. Respondent's accessory or device in its use in connection with the ignition system of automobile engines has no effect, and it has had no effect in any way upon the performance or the result

of the performance of such engines and it does not accomplish and it has not accomplished in its use any of the various things claimed by respondent, through his agents or salesmen and in advertisements mentioned and referred to in paragraph 5 hereof, to be done by it; and the statements and representations, mentioned and referred to in said paragraph 5, which were made by respondent in advertisements and which were also made by him, by his agents and salesmen verbally to the members of the trade and public, are and have been each and every one false representations of material facts in connection with the sale of his accessory or device; and the respondent knew when the said statements and representations were published and made, or with the exercise of ordinary care on his part should have known that they were false and that they were when made not known to be false by the members of the trade and public, purchasers and prospective purchasers, to whom they were published and made.

PAR. 7. The statements and representations made and caused to be made by the respondent, mentioned and referred to in paragraph 5 hereof, have the capacity and tendency to mislead and deceive, and they have misled and deceived purchasers of respondent's accessory or device, dealers who have purchased the same for resale to the public, and members of the public who have purchased it for use or consumption into believing that the said statements and representations were and are true, and, in reliance upon that belief, into purchasing and using the respondent's accessory or device. The said statements and representations of the respondent have the further capacity and tendency to divert trade and they have caused trade to be diverted from the competitors of respondent, mentioned and referred to in paragraph 3 hereof, to the respondent.

PAR. 8. The above acts and things done and caused to be done by the respondent are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the above-named respondent charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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The respondent having filed his answer herein to the complaint, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for final hearing on the briefs filed on behalf of the Commission and the respondent, and upon oral argument by counsel for the Commission and for the respondent, and the Commission having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Nathan Hoffman, is a citizen of the State of New York, residing in the City of New York, and he is and has been doing business under the trade name Hoffman Engineering Company, with a place of business in New York City at all times since on or about March 23, 1933.

PAR. 2. The respondent is and has been during all the times since on or about March 23, 1933, engaged in the business of manufacture and of the sale of an accessory or device sold under the name "Super-Fyre Amplifying Unit" for use in connection with the ignition system of automobiles, and which the respondent has sold and caused to be sold to purchasers, dealers therein for resale to the public, and to members of the public located in various States of the United States other than New York, and the respondent has caused the accessory or device when so sold by him to be transported from New York; or from the State of origin of the shipment, to, into, and through States other than New York or the State of origin of the shipment, to the purchasers.

PAR. 3. During all the times since on or about March 23, 1933, other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, have been engaged in the business of the sale of various accessories or devices for use in connection with the ignition system used in operating automobile engines to purchasers residing in various States of the United States other than the State of the seller, or the State of origin of the shipment, to dealers therein, who have purchased the same for resale to the public, and to members of the public for their use or consumption, and the sellers have, respectively, during said times caused the accessories or devices when so sold by them to be transported from the State of the seller to, into, and through States

other than the State of the seller or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondent during all the times since on or about March 23, 1933, is and has been in substantial competition in interstate commerce in the sale of his so-called Super-Fyre Amplifying Unit with the individuals, firms, and corporations referred to in paragraph 3 hereof as the sellers.

PAR. 5. The respondent during all the times since on or about March 23, 1933, has caused advertisements of his Super-Fyre Amplifying Unit to be published and circulated in newspapers, magazines, and periodicals among the people of the United States containing, among many other similar statements, statements to the effect that his Super-Fyre Amplifying Unit, by means of its use in connection with the ignition system of automobiles, caused the automobile engine in connection with which it was used to have more power and speed, to be smoother in its running, and to cause less accumulation of carbon or less mechanical trouble by reason of the accumulation of carbon, and to cause the automobile engine to be started more readily, and to keep the motor cool and save gas in its operation, and to obtain more mileage from its use in the operation of an automobile from a certain quantity of gas than would be obtained without the use thereof.

PAR. 6. The respondent's so-called Super-Fyre Amplifying Unit in external appearance consists of a porcelain socket fitted into a metal housing at the end of which is a metal terminal. The directions for installing the appliance in the ignition system of an engine are printed on the carton in which the appliance is sold, and are:

Remove high tension wire from coil or center of distributor. Insert terminal end of unit pushing all the way down. Insert wire in socket of unit.

The porcelain socket fits into the metal housing. Sunk into the socket into which it is directed that the high tension wire of the ignition system be inserted, is a metal screw, the head of which is seven-eighths of an inch below the socket opening. Into this seven-eighths inch of the socket the high tension wire which is inserted extends, and comes in contact with the metal screw. This metal screw, as shown in one of the respondent's appliances, Commission's Exhibit No. 2, extends all the way from its head, where it is in contact with the end of the high tension wire inserted in the porcelain socket, extending into and through the metal housing to the terminal end of the appliance which, according to the directions for installation of the appliance, is inserted and pushed all the way down on

the center of the distributor, making a continuous metal connection from the end of the high tension wire to the coil or center of the distributor. Within the metal housing and surrounding the screw, there is a coil of metal wire one end of which rests against a metal plate on the base of the porcelain socket.

This wire coil is held pressed against the metal base of the porcelain socket by means of two metal disks at the other end of the wire coil. The metal disks are separated, or are supposed to be physically separated from each other, by mica washers, and mica is a nonconductor of electrical current. The wire coil, by means of the metal plate on the base of the porcelain socket with which it comes in contact, is in electrical contact with the screw which also touches the metal plate where it emerges from the porcelain socket. Regardless of the mica washers, the wire coil is also in physical, and therefore electrical, contact with the other end of the screw by means of the metal disks through which the screw extends at the other end of the wire coil, to where it is attached beyond to the metal terminal of the appliance, thus forming a straight conductor throughout the length of the wire coil. The wire coil does not affect the passage of electric current through the screw extending throughout the appliance, and the appliance is a straight conductor of electric current, exactly as if the length of the high tension wire of the ignition system was increased by so much as the length of the respondent's appliance.

PAR. 7. In the case of another of respondent's appliances, Commission's Exhibit No. 1 for example, the screw which emerges from the porcelain socket, instead of extending all the way through from the porcelain socket to the metal terminal of the appliance, ends in a small bakelite tube or socket, into which another screw coming from the metal terminal of the appliance is inserted. This latter screw may be turned until it is in contact with the first screw coming through from the porcelain socket, in which case it forms a continuous physical as well as electrical contact, as is the case where only one screw is used as in Commission's Exhibit No. 2. Or, the second screw may be turned only so far that it will leave a small gap between its end and the end of the first screw.

If in the case of the appliance, Commission's Exhibit No. 1, a small gap would be created within the bakelite socket between the ends of the two screws, there would nevertheless be no interruption of the flow of current by reason of the gap, as shown as follows:

There is a wire coil in the appliance, Commission's Exhibit No. 1, such as already spoken of in the case of the appliance, Commission's Exhibit No. 2, which is in contact with the metal plate at the base

of the porcelain socket and thereby contacts the first screw. It also contacts the second screw by means of metal disks at its opposite end, notwithstanding mica washers between the disks, thus forming a continuous conductor around the gap, if any, within the bakelite tube; the disks each being in contact with the second screw and consequently in electrical contact with each other, even though physically separated from one another by the mica washers.

PAR. 8. Some of respondent's latest constructed appliances were made with a small shoulder in the porcelain socket, the purpose of which as claimed by the respondent was to make the lower end of the socket of smaller diameter than the high tension wire inserted in the socket, and to prevent the wire from coming quite in contact with the head of the screw extending through the appliance, thus causing interruption of the electric current by means of the small gap so created.

PAR. 9. The respondent sells and has sold its appliance without any reference to, or recommendation concerning, the size of the cable in the ignition systems of automobiles. Approximately 90 percent of all automobiles in the United States use 7 millimeter cables in their ignition systems, and cables of such size, if not provided with brass clips fitted to their ends, would make actual contact in any of respondent's appliances with the screw referred to, notwithstanding the shoulder with which the porcelain sockets of some of the appliances were furnished, and the appliances would thus be and remain straight conductors. If, however, a brass clip such as is frequently used were fitted on the end of the cable inserted in the porcelain socket of appliances provided with a shoulder, a slight gap would result between the end of the high tension wire and the head of the screw which extends from the porcelain socket to the terminal end of the appliance.

PAR. 10. A spark plug normally has a very high resistance, which is measured in millions rather than thousands of ohms. A carbon deposit on the spark plug, caused by the operation of the engine, reduces the resistance of the spark plug because electricity will flow through the deposit of carbon. If the deposit of carbon is of sufficient thickness and coherence, the resistance will be so reduced that the electric current will flow along the carbon deposit on the porcelain insulator to the shell of the spark plug instead of striking across the electrode. In order that the gap, if any, in the bakelite socket in respondent's appliance, Commission's Exhibit No. 1, or the gap, if any, in the porcelain socket between the end of the screw and the high tension wire, would cause a spark plug to fire because of interruption of the electric current, a condition would have to exist

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where the spark plug was fouled to such an extent that its resistance was reduced from millions of ohms to between 5,000 and 50,000 ohms, and the respondent's appliance would have to be adjusted to that condition so as to have the gap small enough, or of the right dimensions, according to the measure of the lowered resistance of the spark plug.

The possibility that a spark plug would become so fouled that its resistance would be only between 5,000 and 50,000 ohms is very rare. Even if respondent's appliance had a gap that caused the electric current flowing through it to be interrupted, and the dimensions of that gap were specially adjusted to the particular amount of resistance of a fouled spark plug which it was intended to cause to fire, respondent's appliance would be without practical value because of the very rare occurrence of the above stated conditions in which it might function, and the statements and representations made and caused to be made by the respondent, in connection with the sale of his Super-Fyre Amplifying Unit and concerning its use, were and are, in effect, untrue.

PAR. 11. The statements and representations caused by the respondent to be made in advertisements, as above set forth, and on the cartons in which his appliance, Super-Fyre Amplifying Unit, was sold to the effect that, by means of the use of respondent's appliance in connection with the ignition system of automobiles, the automobile engine was caused to have more power and speed, to be smoother in its running, and to have less accumulation of carbon or less mechanical trouble caused by accumulation of carbon, and to cause the automobile engine to be started more readily, and to keep it cool and save gas in its operation, and that by the use of the appliance more mileage was obtained in the operation of an automobile from a certain quantity of gas than would be obtained without the use of the appliance, were and are each and all of them false representations to members of the public, users and consumers thereof, of material facts in connection with the sale of the respondent's said Super-Fyre Amplifying Unit, and they have the capacity and tendency to deceive and mislead the public, and they have deceived and misled the public, purchasers of appliances designed for use in connection with the ignition system of automobile engines, into the belief that the said statements and representations of the respondent were true, and in reliance upon such erroneous belief, into purchasing the respondent's appliance.

PAR. 12. In consequence of the practices of the respondent above set forth, trade in amplifying appliances or units used in connection with the ignition system of automobile engines was diverted to the

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respondent from competitors, to the substantial injury and prejudice of such competitors and to the substantial injury and prejudice of the public.

CONCLUSION

The practices of the respondent, Nathan Hoffman, doing business under the trade name Hoffman Engineering Company, under the conditions and circumstances described in the foregoing findings, were to the prejudice and injury of competitors of the respondent and were to the prejudice and injury of the public, and were unfair methods of competition in commerce and constitute a violation of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, testimony and evidence introduced, and upon briefs on the part of the Commission and the respondent; and the Commission having made its findings as to the facts and its conclusion that respondent, Nathan Hoffman, doing business under the trade name, Hoffman Engineering Company 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 respondent, Nathan Hoffman, doing business under the trade name, Hoffman Engineering Company, or under his own or any other trade name, his agents, representatives and employees, in the sale and offering for sale in interstate commerce of amplifying units or appliances for use in connection with the ignition system of automobile engines, do—

Cease and desist from representing or causing it to be stated or represented to dealers or others, or to members of the public, directly or indirectly, either verbally or in advertisements in newspapers, circulars, or other publications, or on labels, or by means of the radio, that the appliance or device designated Super-Fyre Amplifying Unit, or by any other name, will, when used in connection with the ignition system of an automobile engine, affect the operation of the spark plugs of the ignition system, so as to cause the engine to have more power and speed, to be smoother in its running, to have less accumulation of carbon and less mechanical trouble from accumulation of carbon, to cause the engine to start more readily, and

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to save gas in the operation of the engine, and that by the use of the said appliance or device more mileage can be obtained from a certain quantity of gas than would be obtained without the use of the said appliance or device;

Unless and until the said appliance or device is in fact so constructed and so adjusted to the resistance of fouled spark plugs of an ignition system with which it is sold to be used, that the appliance or device will interrupt the electric current of the ignition system to the extent necessary to cause the fouled spark plugs to fire, which, before the appliance or device was used, would not fire.

It is further ordered, That the respondent, Nathan Hoffman, shall within 30 days after the service of this order file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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IN THE MATTER OF
L. HELLER & SON, INC., AND THE HELLER-
DELTAH CO., INC.

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

Docket 2146. Complaint, Jan. 10, 1934—Order, Mar. 20, 1935

Consent order requiring respondent corporations, their agents, etc., in connection with sale, advertisement, and offer of imitation pearls in interstate commerce, to cease and desist from—

Representing directly or indirectly, or causing retailers or others so to represent, that the usual and customary retail prices received for said respondent's imitation pearls, necklaces, or other articles made with them, whether under their trade names or otherwise, are greater than the actual prices at which said articles have been or are customarily offered to the public, through (a) fictitious prices placed on (1) display cards for attachment to containers in which offered and sold to dealers or public, or (2) labels attached to said articles or supplied to dealers for such purpose, for display; (b) use of such prices in advertisements of said articles, in newspapers, catalogs, or other publications; or (c) establishment thereof through the radio.

Mr. Edward E. Reardon for the Commission.

Hays, St. John, Abrahamson & Schulman, of New York City, and
Tilson, Stanley & McCuen, of Washington, D. C., for respondents.

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 L. Heller & Son, Inc., and the Heller-Deltah Co., Inc., hereinafter referred 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, L. Heller & Son, Inc., is a corporation, incorporated and existing under the laws of the State of New York since in or about the year 1919 and having a place of business at number 15 West Forty-seventh Street, Borough of Manhattan, City of New York, N. Y.

PAR. 2. Samuel Heller, Milton J. Heller, and Ernest S. Heller are residents of the City of New York and are and have been, respec-

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tively, the president and treasurer, the vice president, and the secretary of the respondent, L. Heller & Son, Inc.; the said individuals are and have been the board of directors of the respondent, L. Heller & Son, Inc., since prior to the date, hereinafter referred to, of the incorporation of the respondent, The Heller-Deltah Co., Inc.

PAR. 3. Respondent, The Heller-Deltah Co., Inc., is a corporation, incorporated and existing under the laws of the State of New York since in or about the year 1929 and having a place of business at number 8 West Thirtieth Street, Borough of Manhattan, City of New York, N. Y.

PAR. 4. Meyer F. Cartoon is a resident of the City of New York and he and Ernest S. Heller and Milton J. Heller, above mentioned, are and have been respectively, the president, the secretary, and the treasurer of the respondent The Heller-Deltah Co., Inc., and together they are and have been its board of directors since on or about the date of its incorporation.

PAR. 5. The respondent The Heller-Deltah Co., Inc., was organized as a corporation subsidiary of the respondent L. Heller & Son, Inc. Its business and business policies and all of its activities are and have been controlled and directed at all times since its incorporation by the respondent L. Heller & Son, Inc., through its officers and directors, a majority of whom have also constituted at all said times a majority of the officers and directors of The Heller-Deltah Co., Inc.

PAR. 6. The respondent L. Heller & Son, Inc., is and has been during the times above mentioned engaged in the business of importing merchandise into the United States, including imitation pearls, jewelry, and perfumes from France, Spain and other countries and in the sale of such merchandise, including imitation pearls, necklaces and other such articles made with them by itself and through its subsidiary corporation The Heller-Deltah Co., Inc., to wholesale and retail dealers located throughout the United States to whom it has sold the same during said times.

PAR. 7. The respondent The Heller-Deltah Co., Inc., is now and, during all the times since its incorporation, has been engaged in the business of the sale of merchandise, jewelry, and perfumes, including imitation pearls and necklaces and other such articles made with imitation pearls, to wholesale and retail dealers located throughout the United States to whom it has sold the same during the said times.

PAR. 8. The respondents, during the times above mentioned, have caused the merchandise, imitation pearls and necklaces and other such articles made with them, and jewelry and perfumes, mentioned and referred to in paragraphs 6 and 7 hereof, when sold by them

respectively, to be transported from the State of New York, or from the State of origin of the shipment thereof, to, into, and through other States to the purchasers.

PAR. 9. During the times above mentioned other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the business of the importation and in the sale of merchandise, imitation pearls, necklaces, and other articles made with them, jewelry and perfumes to wholesale and retail dealers throughout the United States to whom they have respectively sold the same and the said sellers have caused the merchandise, imitation pearls, necklaces, and said other articles, jewelry and perfumes, when so sold by them respectively, to be transported to, into and through States other than the State of the seller or the State of origin of the shipment, to the purchasers.

PAR. 10. The respondents during the times above mentioned have been and they are in substantial competition in interstate commerce in the sale of merchandise, imitation pearls, necklaces and other articles, jewelry and perfumes, with the other individuals, firms, and corporations referred to in paragraph 9 hereof.

PAR. 11. During and long prior to the times mentioned herein imitation pearls produced in France and the articles such as necklaces made with them have long been esteemed and considered by a very substantial number of the dealers in such articles and by the public in the United States as finer and more desirable for the uses for which such articles and imitation pearls are bought by the members of the public, than the imitation pearls produced in other countries or the necklaces or other such articles made with them; and the imitation pearls produced in France as well as the necklaces or other articles referred to made with them have been during the times above referred to considered more valuable and they have sold and still sell throughout the United States for comparatively higher prices than the imitation pearls produced in said other countries or than the said articles produced from them.

PAR. 12. On or about the year 1914 certain imitation pearls were produced or created in France of a kind and quality distinct and superior to many other imitation pearls then being made in France and imported and sold in the United States. They were imported from France and sold to dealers and resold by them to the public throughout the United States as "La Tausca" imitation pearls or in the form of necklaces or other such articles made with them under the trade name or trade mark "La Tausca" from the time they were first produced or created in 1914 until on or after the year 1929 as hereinafter set forth.

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For excellence of quality and perfection of reproduction the imitation pearls described herein, created in France and imported and sold in the United States under the trade name or trade mark "La Tausca" received the gold medal—the highest award at the Panama-Pacific Exposition in 1915 and grand prize medal at the Sesquicentennial Exposition in 1926.

PAR. 13. During all of the times above mentioned and referred to the use of the trade name or trade mark "La Tausca" in connection with the sale of imitation pearls and under which the imitation pearls were sold, as set forth in paragraph 12 hereof, indicated to the public of the United States and still indicates the French origin and the excellence of quality and perfection of reproduction of the said imitation pearls either loose, unset or unstrung or in necklaces or other articles in which forms the said imitation pearls are and have been sold and also indicated and still indicates to the public of the United States that the said imitation pearls are of the same kind and quality as those mentioned and referred to in paragraph 12 hereof.

PAR. 14. The right to the use of the trade name or trade mark "La Tausca" in connection with the sale of imitation pearls was the right or property of a certain individual, firm, or corporation from 1914 to on or about 1926. In the latter year the exclusive right to its use was transferred or sold to respondent L. Heller & Son, Inc., by whom or by its subsidiary The Heller-Deltah Co., Inc., the said trade mark has been since and now is owned and controlled.

PAR. 15. Since on or about 1929 when the respondent The Heller-Deltah Co., Inc., was incorporated and began business the respondents have caused imitation pearls produced in countries other than France to be imported from countries other than France of a kind and quality other than and different and inferior to the imitation pearls mentioned in paragraph 12 hereof; they have caused such imitation pearls, necklaces and other articles made with them to be sold throughout the United States as set forth in paragraphs 6, 7, and 8 hereof under the trade name or trade mark "La Tausca."

In connection with the sale of these different and inferior imitation pearls and necklaces and other articles made with them the respondents delivered to purchasers with each box or package containing the same a printed card on which appeared the following statements:

LA TAUSCA NECKLACE
HIGHEST AWARD PANAMA-PACIFIC EXPOSITION, 1915
GRAND PRIZE SESQUICENTENNIAL EXPOSITION, 1926
GUARANTEED

In pamphlets or folders containing illustrations of imitation pearls and necklaces made with them which the respondents distributed or caused to be distributed throughout the trade and public in the United States in connection with the sale of the above inferior imitation pearls there were, among others, statements as follows:

LA TAUSCA GUARANTEE

La Tausca received the gold medal—highest award at the Panama-Pacific World's Fair 1915—and the grand prize medal at the Sesquicentennial International Exposition 1926.

La Tausca Pearls alone received this recognition for excellence of quality and perfection of reproduction.

The guarantee price card establishes the value of La Tausca Pearls. The price is guaranteed by the makers and is backed by twenty years of service, quality and reliability.

PAR. 16. Neither the said inferior imitation pearls produced in countries other than France nor the necklaces or other articles made with them, which respondents sold and caused to be sold under the trade name or trade mark "La Tausca", as set forth in paragraph 15 hereof, received the awards mentioned in said paragraph 15.

PAR. 17. The usual, regular and customary retail prices of the necklaces and other articles, referred to in paragraph 12 hereof, made with the "La Tausca" imitation pearls described in said paragraph, at which they are and have been resold by dealers to the public for use or wear, were during all the times above mentioned, from approximately \$5 to as much as \$500, respectively, varying according to the number and quality of the imitation pearls and the value of the clasps, boxes or cases or other accessories used in their completion or usually sold with them.

PAR. 18. The respondents, in connection with the sale of the inferior imitation pearls, necklaces and other articles under the trade name or trade mark "La Tausca", as set forth in paragraph 15 hereof, and with the knowledge and intent that their representations would be passed on and made by dealers to members of the public, have represented to dealer purchasers that the said imitation pearls were the genuine "La Tausca" imitation pearls of French origin and that the said necklaces and other articles were made with them; and the respondents, with the said knowledge and intent sold the same to dealer purchasers on the understanding that the respondents would furnish and deliver the same to them prepared for display and resale to members of the public, purchasers for use or wear, put up or encased in display boxes in or on which the corresponding usual, regular and customary retail prices mentioned and referred to in paragraph 17 hereof, respectively, of the genuine "La Tausca"

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imitation pearls, necklaces and other articles would be indicated or exhibited, in addition to furnishing and delivering to the dealers the cards, pamphlets or folders containing the statements described in paragraph 15 hereof.

And the respondents, with the said knowledge and intent have furnished and delivered the said inferior imitation pearls, necklaces and other articles to dealers, so prepared for display and resale, and have furnished and delivered with them the said cards, pamphlets or folders and during said times have caused it to be represented to members of the public that the said inferior imitation pearls, necklaces and other articles were genuine "La Tausca" imitation pearls and that the said prices were the usual, regular and customary prices at which the said inferior imitation pearls, necklaces, and other articles were sold during said times.

PAR. 19. During the times mentioned and referred to in paragraphs 15 and 18 hereof the usual, regular and customary retail prices of the inferior imitation pearls and the necklaces and other articles made with them, referred to in said paragraphs 15 and 18, sold by respondents under the trade name or trade mark "La Tausca" were much lower and substantially less than the usual, regular and customary retail prices of the genuine "La Tausca" imitation pearls and of the necklaces and other articles made with them; for instance, among others, the usual, regular and customary retail price of a necklace sold by respondent made with the said inferior imitation pearls was 70 cents and the usual, regular and customary retail price of the necklace made with the genuine "La Tausca" imitation pearls, with which respondents represented the necklace to be made, as set forth in paragraph 17 hereof, was during said times \$5.

PAR. 20. The practices of the respondents of substituting or passing off to dealers inferior imitation pearls, produced in other countries than France, and necklaces and other articles made with them as and representing the same to be "La Tausca" imitation pearls and necklaces and other articles made with them; of furnishing to dealers boxes or containers for the necklaces and other articles made with the said inferior imitation pearls with the usual, regular and customary retail prices, indicated or exhibited in or on them, of the necklaces and other articles made with genuine "La Tausca" imitation pearls with which respondents represented they were made; of furnishing and delivering the said necklaces and other articles made with the said inferior imitation pearls and the cards, pamphlets and folders described in paragraph 15 hereof to dealers representing that the said inferior imitation pearls had received the

awards mentioned in said paragraph 15; constituted and they each and all were false representations of material facts in the sale of the said imitation pearls, necklaces, and other articles and they were made with the knowledge and intent on the part of respondents that the said false representations would be passed on by the dealers, purchasers from respondents, and by others to members of the public, purchasers for use or wear of the said imitation pearls, necklaces, and other articles made with them.

The above practices of the respondents had the tendency and capacity to mislead and deceive and they have misled and deceived dealers, purchasers from respondents, and caused them, in the belief that the said false representations were true, to pass on and to repeat the same to and thereby to mislead and deceive members of the public, purchasers for use and wear of the said imitation pearls, necklaces and other articles made with them in the particulars, among others, hereinafter set forth.

PAR. 21. The said sale by respondents of the said inferior imitation pearls, necklaces and other articles made with them under the trade name or trade mark "La Tausca" under the representations and conditions above mentioned, had the tendency and capacity to mislead and deceive and they did mislead and deceive purchasers, dealers, and members of the public into the belief that the said inferior imitation pearls and the necklaces and other articles sold by respondents under the trade name or trade mark "La Tausca" were genuine "La Tausca" imitation pearls produced in France and necklaces and other articles made with them; that the said necklaces and other articles made with the said inferior imitation pearls had received the said awards; that the usual, regular and customary retail prices of the said inferior imitation pearls and the necklaces and other articles made with them, at which the same were sold as genuine "La Tausca" imitation pearls and necklaces and other articles made with them, were the usual, regular and customary retail prices for the same, and in reliance thereon into purchasing said inferior imitation pearls, necklaces, and other articles in place of genuine "La Tausca" imitation pearls, necklaces, and other articles and also in place of imitation pearls produced in countries other than France and necklaces and other articles made with them, which were offered for sale and sold by respondents' competitors during said times.

In consequence of the above practices of the respondents in the sale of imitation pearls and of necklaces and other articles made with them, and of the above false representations made and caused by them to be made by others, as above set forth, trade in imitation pearls, necklaces and other articles made with them was diverted from respondents' competitors to respondents.

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PAR. 22. 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

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 January 10, 1934, issued its complaint against the above named respondents, in which it is alleged that the respondents are and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On the 18th day of March 1935 the respondents filed an amended answer to the complaint, wherein the respondents severally 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 imitation pearls, and the Commission being fully advised in the premises:

It is now ordered, That the respondents, L. Heller & Son, Inc., and The Heller-Deltah Co., Inc., severally, their agents, employees, and representatives, in connection with the sale and the advertising and offering for sale of imitation pearls in interstate commerce, do—

Cease and desist from representing, directly or indirectly, or from causing retail dealers or others to represent directly or indirectly—

(a) By means of fictitious prices placed on display cards attached or supplied to dealers to be attached to boxes or other containers in which imitation pearls, necklaces, or other articles made with them are displayed, offered for sale, and sold to dealers and to members of the public;

(b) By means of fictitious prices on labels attached or supplied to dealers to be attached to imitation pearls, or to necklaces, or to other articles made with them for display to the public;

(c) By means of fictitious prices in advertisements of imitation pearls, necklaces, or other said articles in newspapers, circulars, catalogs, or other publications;

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(d) Or through fictitious prices established by means of the radio. That the usual and customary prices which retail dealers receive or have received for the imitation pearls, necklaces, or other articles made with them, sold by respondent, whether sold under the trade name or trade mark "La Tausca", or under any other trade name, or without connection with any trade name, are or have been prices greater in amount than the actual prices at which the said imitation pearls, necklaces, or other said articles have been or are, respectively, regularly or customarily offered to members of the public, purchasers or prospective purchasers.

It is further ordered, That the respondents, L. Heller & Son, Inc., and The Heller-Deltah Co., Inc., shall severally, within 30 days after the date of service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with and are now complying with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
**CADILLAC PAINT MANUFACTURING COMPANY AND
H. A. LESSEN**

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

Docket 2118. Complaint, Apr. 10, 1934¹—Decision, Mar. 25, 1935

Where a corporation engaged in the manufacture and sale of paints, varnishes, and paint products through salesmen and the mail, acting at the direction of, or with, its secretary-treasurer and general manager, in control of the operation thereof, and moving spirit therein—

- (a) Represented, branded, and sold as white lead and linseed oil paints, and quality outside house paints, through use of such words as "White lead ground in linseed oil", "durable", "X-Tra Good", "economical", "dependable", "guaranteed", and otherwise, products which did not contain the aforesaid or other ingredients in the requisite quantities and proportions to justify such designation and sale, failed to conform in the matter of ingredients or proportions to the formulæ or notices set forth on the containers thereof, in those cases in which given, were composed, in large and excessive proportions, of unrevealed water, petroleum spirits, cheap and inadequate adulterants and substitutes, inert materials, extenders and fillers, and fell far below paint specifications recognized by reputable manufacturers of first quality, standard products;
- (b) Labeled the containers of many of its products with the names and addresses of fictitious concerns and set forth, under such names, pretended guarantees and representations as to the quantity, quality, composition and nature of the product concerned, and the results to be expected therefrom by the ultimate user in the way of durability or otherwise, with intent of enabling it thereby to avoid the recognized function of a trade name, and make and sell such products without disclosing the place of manufacture and manufacturer thereof, and with effect of misleading purchasers thereof in various cities into believing, rightly, that a genuine functioning concern was back of the paint involved, as set forth on the label, to which they might rightfully look for the faithful performance of the statements, representations, and guarantees covering the product to which such trade-name label was attached;
- (c) Encouraged and aided "factory" and "dollar" stores and similar enterprises in selling at auction and otherwise as "bankrupt stock" and "interstate unclaimed freight", its aforesaid heavily watered and otherwise adulterated products which it sold to dealers at from 60 to 70 cents a gallon, as high-grade house and outside paint, for advertisement and resale by such outlets as extra good, durable, and guaranteed paint at from 99 cents to one dollar a gallon, with asserted saving of more than 50 percent because purchased from the manufacturer", notwithstanding fact it is impossible to make and sell a durable, quality paint at any such price, and reputable manufacturers decline to put their name on such a product; with the

¹ Supplemental and amended.