

IN THE MATTER OF
HAIR-TEX CORPORATION

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

Docket 2271. Complaint, Dec. 20, 1934—Order, June 11, 1935

Consent order requiring respondent corporation, in connection with the manufacture and sale of upholstery fillings in interstate commerce, to cease and desist from directly or indirectly using or causing to be used the word "Hair" either alone or in connection or conjunction with the letters "Tex" or with any other letters, word or words, or in any way in its advertisements, advertising matter, on its labels or any of its printed matter or in any other place so as to import or imply or which may have the capacity and tendency to confuse, mislead or deceive purchasers or prospective purchasers into the belief that said product is composed of hair, when such is not the fact, provided, however, that nothing herein contained shall prohibit the respondent from using the word "Hair-Tex" if in conjunction therewith the words "Made from Tampico Fibre" appear in its advertisements, labels, and in every other place in conspicuous type.

Mr. Morton Nesmith for the Commission.

Seidman & Seidman and *Mr. Percy H. Moore*, of Cleveland, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Hair-Tex Corporation has been and 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.

PARAGRAPH 1. Respondent, Hair-Tex Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio and having its principal place of business at Cleveland, in the State of Ohio.

Respondent corporation for more than one year last past has been, and is now, engaged in the business of manufacturing, offering for sale and selling upholstery fillings in commerce between and among the several States of the United States. Respondent has caused and still causes its upholstery fillings, when so sold, to be transported from its place of business in the City of Cleveland, State of Ohio,

into and across the several States of the United States to purchasers thereof located at various places in such several States.

Other persons, firms, associations and corporations have been engaged in the manufacture, offering for sale, selling and transporting in said commerce competitive upholstery filling.

In the course and conduct of its said business respondent corporation has been and is in competition with all such other persons, firms, associations and corporations so engaged in the manufacture, offering for sale and selling in said commerce between and among the several States of the United States said competitive upholstery fillings.

PAR. 2. Respondent corporation in the manufacture, sale and offering for sale of its said product, has supplied to its customers located in various States of the United States labels and tags for attachment, and which were attached, to furniture stuffed with the aforesaid product, on which labels and tags the said product was designated and referred to as "Hair-Tex". Respondent's display cards, reading, in part, "This Quality Furniture Filled with Hair-Tex", also were furnished said customers and said cards were used by said customers in locally advertising their merchandise stuffed or filled with said product—when, in truth and in fact, respondent's said product known and designated as "Hair-Tex", although simulating hair in appearance, is not composed of hair, but is composed of a material or materials other than hair.

PAR. 3. The use of said false and misleading statements and representations with reference to respondent's product has the tendency and capacity to deceive and mislead the public into the erroneous belief that said product is composed of hair, and that said statements and representations are true, and to induce the public to purchase said product in and because of said erroneous belief. Respondent's said use of said false and misleading statements and representations has the tendency and capacity to divert trade to respondent and from its said competitors, to the unfair advantage of respondent and to the injury of respondent's competitors and of the purchasing public.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in 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 coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Com-

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mission and the respondent's answer thereto, that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to paragraph (2) of Rule III of the Rules of Practice of the Commission, as amended and revised August 20, 1934, consents that the Commission may make, enter and serve upon the respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That the respondent Hair-Tex Corporation in connection with the manufacture, soliciting the sale of and selling its products in interstate commerce, cease and desist from:

Directly or indirectly using or causing to be used the word "Hair" either alone or in connection or conjunction with the letters "Tex" or with any other letters, word or words, or in any way in its advertisements, advertising matter, on its labels or any of its printed matter or in any other place so as to import or imply or which may have the capacity and tendency to confuse, mislead or deceive purchasers or prospective purchasers into the belief that said product is composed of hair, when such is not the fact provided, however, that nothing herein contained shall prohibit the respondent from using the word "Hair-Tex" if in conjunction therewith the words "Made from Tampico Fibre" appear in its advertisements, labels, and in every other place in conspicuous type.

It is further ordered, That respondent, Hair-Tex Corporation, shall within 30 days after the service upon it of a copy of this order, file with the Federal Trade Commission, a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist as hereinbefore set forth.

Complaint

IN THE MATTER OF

VARDI OF LONDON, INC., AND EMIL VARDI, INDIVIDUALLY AND TRADING AS VARDI OF LONDON, AND EMIL POLLAK, INDIVIDUALLY AND TRADING AS NEW ART PLATING COMPANY

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

Docket 2345. Complaint, Mar. 25, 1935—Order, June 11, 1935

Consent order requiring respondents, Vardi of London, Inc., and Emil Vardi, individually and trading as Vardi of London, and representative officers, etc., in the course of or in connection with the sale or distribution of silverware in interstate commerce, and respondent Emil Pollak, individually and trading as New Art Plating Co., his officers, etc., in the course of or in connection with the sale or distribution of silverware in interstate commerce, or preparation of silverware for such interstate sale or distribution, to cease and desist from directly or indirectly using or causing to be used, or aiding or abetting others to use or cause to be used (a) the English hallmark for silverware or any hallmark, stamp, brand, label or other mark or device upon any such silverware which simulates or imitates such English hallmark, unless such silverware has been manufactured in England and has been submitted to Goldsmith's Hall of England and has met the standards prescribed thereby for use of the English hallmark, or (b) any mark, stamp, brand or other device upon or in connection with any such silverware which represents or indicates directly or by implication that such silverware has been manufactured in England or has been submitted to Goldsmith's Hall of England, or has met the tests or requirements prescribed by Goldsmith's Hall of England, or is silverware of a certain hallmark, grade, quality, standard, design or manufacture when such is not true in fact.

Mr. Astor Hogg for the Commission.

Rorke & Kane, of New York City, 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 Emil Pollak individually and trading as New Art Plating Company, Vardi of London, Inc., and Emil Vardi, individually and trading

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as Vardi of London, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act of Congress and in violation of the Act of Congress approved June 16, 1933, known and designated as the National Industrial Recovery 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:

Count 1

PARAGRAPH 1. The respondent, Emil Pollak, trading as New Art Plating Company, is and at all times hereinafter mentioned, has been an individual trading under the name of New Art Plating Company, with his principal place of business in New York City, State of New York. He is engaged in the business of repairing, manufacturing and selling silverware. The sales are made directly to the purchasing public and to wholesalers and retailers principally located in the State of New York. The respondent, Vardi of London, Inc., is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in New York City, State of New York. It is engaged in the business of selling and distributing various kinds of Old English Silver and Old Sheffield Plate. Its sales are to the purchasing public located throughout the United States and in the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia. The respondent, Emil Vardi, an individual trading under the name of Vardi of London, with his principal place of business in New York City, State of New York, is engaged in the business of selling and distributing various kinds of Old English Silver and Old Sheffield Plate. His sales are to the purchasing public located throughout the United States and the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia.

PAR. 2. There are in the United States other persons, firms and corporations engaged in the manufacture, sale and distribution of similar competing products who, pursuant to such sales, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and

with which such other persons, firms and corporations, respondents are, and at all times hereinafter mentioned have been, in active and substantial competition.

PAR. 3. In England there exists an outgrowth of the Guild System which requires that articles made of silver be submitted to Goldsmith Hall where such articles are assayed. If and when such articles of silver as are assayed are found to be of the standard prescribed, the Hall causes certain marks to be stamped upon the article. These marks and imprints, called hallmarks, so placed on the article, indicate the place and year of manufacture. The practice of using hallmarks in England dates back several centuries. These well known and understood hallmarks, when impressed upon the silver, convey to the purchasing public the information that the article of silverware is Old English and of ancient origin, and Old English Silverware and Sheffield Plate that have been manufactured and stamped and imprinted with the genuine English hallmark have for many years enjoyed widespread popularity, good will and demand among the using public throughout the United States, many of whom believe and consider that Old English Silverware and Sheffield Plate bearing the genuine English hallmark is superior in quality and other desirable characteristics, including antiquity, to silverware manufactured in the United States; and many of the using and purchasing public throughout the United States purchase Old English Silverware and Sheffield Plate bearing the imprint of the English hallmark, which silverware has been imported into the United States in preference to silverware manufactured in the United States.

PAR. 4. In the course and conduct of his business, the respondent, Emil Pollak, individually and trading as New Art Plating Company, has, at the instance and request and under the direction of Vardi of London, Inc., and Emil Vardi, an individual trading as Vardi of London, and others likewise engaged in the sale and distribution of silverware in interstate commerce, willfully, knowingly, corruptly and fraudulently, by the use of prints, stamps, dyes, false British Assay Office marks and imitation hallmarks simulating the Old English hallmark, counterfeited and misbranded modern silverware, manufactured in the United States and which was not Old English Silverware or Sheffield Plate; and such stamping, hallmarking and imprinting on such American manufactured modern silverware indicated, conveyed and does indicate and convey to the purchasing public located throughout the various States of the United States that the said silverware so hallmarked or stamped is of antique origin and possesses other desirable characteristics not common to modern silverware manufactured in the United States. After so

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fraudulently stamping, hallmarking and imprinting such silverware, the respondent, Emil Pollak, individually and trading as New Art Plating Company, delivers and has delivered said spurious product to respondents, Vardi of London, Inc., and Emil Vardi, trading as Vardi of London, and others, which respondents Vardi of London, Inc., and Emil Vardi, trading as Vardi of London, and others, with the aid, assistance, encouragement, knowledge, acquiescence and cooperation of the said Emil Pollak, individually and trading as New Art Plating Company, have sold and do sell and distribute said falsely marked modern silverware to the purchasing public located throughout the various States of the United States in the way and manner set out in paragraph 1 hereof.

PAR. 5. The aforesaid fraudulent stamping and hallmarking of said modern silverware, as aforesaid, and the sale and distribution thereof in the manner hereinabove set out, had and have the capacity to and do mislead and deceive many of the purchasing public of the United States into the belief that said silverware so fraudulently marked and counterfeited with the hallmark simulating the English hallmark, is manufactured in England and imported into the United States and is of antique origin, and said public purchase said silverware in that belief, when in truth and in fact said silverware, so fraudulently hallmarked and imprinted, sold and distributed, is not of English manufacture nor of antique origin.

PAR. 6. By his conduct in so misbranding and marking such silverware, all as hereinabove set out, the respondent, Emil Pollak, trading as New Art Plating Company, places in the hands of Vardi of London, Inc., and Emil Vardi, trading as Vardi of London, and others, an instrument and means whereby they may and do commit fraud upon a substantial portion of the purchasing public of the United States by selling such spurious product under the pretense and offer that it is of genuine quality and Old English Silverware, which had been assayed and hallmarked in England.

PAR. 7. There are, among the competitors of respondents mentioned in paragraph 2 hereof, many who deal in and sell Old English Silverware and Sheffield Plate which has been genuinely manufactured and hallmarked in England and imported into the United States, and who rightfully and lawfully represent said silverware to be such. There are others of such competitors who manufacture and sell silverware manufactured in the United States and who in no manner whatsoever represent said silverware to be manufactured in England and who in no manner counterfeit the English hallmark on silverware. The respondents' acts and practices, all as in this complaint hereinbefore set out, tend to and do unfairly

divert business from and otherwise injure and prejudice said competitors.

PAR. 8. For about ten years last past respondents have engaged in the acts and practices under the aforesaid circumstances and conditions and with the results hereinbefore set out.

PAR. 9. The above alleged methods, acts and practices of the respondents are all to the prejudice of the public and to respondents' competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning 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".

Count 2

PARAGRAPH 1. The respondent, Emil Pollak, trading as New Art Plating Company, is and at all times hereinafter mentioned has been an individual trading under the name of New Art Plating Company, with its principal place of business in New York City, State of New York. He is engaged in the business of repairing, manufacturing and selling silverwear. The sales are made directly to the purchasing public and to wholesalers and retailers principally located in the State of New York. The respondent, Vardi of London, Inc., is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in New York City, State of New York. It is engaged in the business of selling various kinds of Old English Silver and Old Sheffield Plate. Its sales are to the purchasing public located throughout the United States and the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia. The respondent, Emil Vardi, an individual trading under the name of Vardi of London, with his principal place of business in New York City, State of New York, is engaged in the business of selling and distributing various kinds of Old English Silver and Old Sheffield Plate. His sales are to the purchasing public located throughout the United States and the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia.

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PAR. 2. As one of the grounds for this paragraph of this complaint, the Federal Trade Commission reiterates, adopts and relies upon all matters and things set out in paragraphs 2 to 8, inclusive, of count 1 hereof, to the same extent as though each and all of the allegations thereof were set out at length and in full in this paragraph. Further, Emil Pollak, trading as New Art Plating Company, in the manufacture, sale and distribution of silverware in the United States and in the sale and distribution of Old English Silverware has failed and refused and does fail and refuse to mark his products with the manufacturer's name or with a registered trade mark for the purpose of identifying the maker of such silverware.

PAR. 3. On December 23, 1933, pursuant to the provisions of the National Industrial Recovery Act, the President of the United States made, issued and approved a Code of Fair Competition for the silverware manufacturing industry, which became effective on December 23, 1933. Such Code has been and is now in full force and effect and became and still is binding upon every member of said industry.

The said National Industrial Recovery Act, Section 3, Article B, provides "If the President shall have approved any such Code, the provisions of such Code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such act, as amended."

In Article VIII, under the heading of Trade Practices of said Code, appears the following: "No member of the industry shall fail to adequately mark all products with the manufacturer's name or registered trade mark or with some other such mark which shall have been registered with the Code Authority for the purpose of identifying the makers, but no member of the industry shall falsely mark or brand any product of the industry which has a tendency to mislead or deceive customers or prospective customers, whether as to the grade, quality, quantity, substance, character, nature, origin, size, finish or preparation of any produce of the industry or otherwise."

Notwithstanding the said provisions of said Code of Fair Competition respondent, Emil Pollak, trading as New Art Plating Company, continues to and does use said methods of competition hereinabove alleged and described and has resorted to and indulged in

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the practice of fraudulently hallmarking and branding modern American manufactured silverware with an imitation Old English hallmark, as set out in count 1 hereof, and in failing and refusing to mark his products with the manufacturer's name or registered trade mark in the manner hereinabove set forth.

PAR. 4. The above alleged methods, acts and practices of the respondent, Emil Pollak, trading as New Art Plating Company, are and have been in violation of the standards of fair competition as set forth in said Code of Fair Competition. Such violation of such standards in the aforesaid transactions in interstate commerce, and which affect interstate commerce in the manner set forth above, are in violation of Section (3) of the National Industrial Recovery Act, and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

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 March 25, 1935, 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 June 10, 1935, the respondents filed their amended answers to the said complaint, wherein the respondents 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 silverware, and the Commission being fully advised in the premises:

It is now ordered, That the respondents, Vardi of London, Inc., and Emil Vardi, individually and trading as Vardi of London, their respective officers, agents, representatives, servants and employees, in the course of or in connection with the sale or distribution of silverware in interstate commerce, and that the respondent, Emil Pollak, individually and trading as New Art Plating Co., his officers, agents, representatives, servants and employees, in the course of or in connection with the sale or distribution of silverware in interstate commerce, or in the course of or in connection with the preparation of silverware for such interstate sale or distribution, cease and desist:

(1) From directly or indirectly using or causing to be used, or aiding or abetting others to use or cause to be used, the English hall-

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mark for silverware or any hallmark, stamp, brand, label or other mark or device upon any such silverware which simulates or imitates such English hallmark, unless such silverware has been manufactured in England and has been submitted to Goldsmith's Hall of England and has met the standards prescribed thereby for use of the English hallmark.

(2) From directly or indirectly using or causing to be used, or aiding or abetting others to use or cause to be used, upon or in connection with any such silverware any mark, stamp, brand or other device which represents or indicates directly or by implication that such silverware has been manufactured in England or has been submitted to Goldsmith's Hall of England, or has met the tests or requirements prescribed by Goldsmith's Hall of England, or is silverware of a certain hallmark, grade, quality, standard, design or manufacture when such is not true in fact.

It is further ordered, That the charges set out in count 2 of the complaint be and they are, hereby, dismissed.

It is further ordered, That the respondents, Vardi of London, Inc., and Emil Vardi, individually and trading as Vardi of London, and Emil Pollak, individually and trading as New Art Plating Co., within 60 days after 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 the order to desist hereinbefore set forth.

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IN THE MATTER OF
JAMES KELLEY

MODIFYING CEASE AND DESIST ORDER

Docket 1610. Order, June 15, 1935

Order granting motion of Commission's chief counsel to modify a cease and desist order entered against said respondent in Docket 1610, on April 7, 1930, 13 F. T. C. 284, 290, prohibiting certain misrepresentations by said respondent, his representatives, etc., in connection with the sale of fountain pens, as hereinbelow set forth.¹

Mr. Martin A. Morrison for the Commission.

Koenig, Bachner & Koenig, of New York City, for respondent.

ORDER

In the above-entitled matter, there was this day submitted for the consideration of the Commission:

¹ The entire order against respondent in said case, charged and found to have practiced various unfair methods of competition in connection with the conduct of a mail-order jobbing business in fountain pens, pencils, and specialties purchased from manufacturers and resold to street fakers and peddlers, and doing no manufacturing, though assembling certain of the pens dealt in, and with only a few employees, as reported in 13 F. T. C. 284 et seq., follows as thus modified:

It is now ordered, That respondent, James Kelley, his representatives, agents, servants and employees forthwith cease and desist from—

(1) Representing that he is a manufacturer of fountain pens, pencils and specialties, until and unless said James Kelley engages in the actual manufacturing of fountain pens, pencils and specialties.

(2) Representing that the business of the said James Kelley is that of a large mail order concern, unless and until the volume of business done by the said James Kelley is such as is usually done by a large mail order concern.

(3) Representing that purchasers from the said James Kelley save the "middleman's profit", until and unless said James Kelley manufactures and sells directly to his customers such articles manufactured entirely by him;

(4) Using the name "Iridium" on any part of fountain pens sold by him, until and unless the pen points of such fountain pens are tipped with iridium;

(5) Supplying his customers with fictitious price tags, in the shape of rings to encircle said fountain pens, bearing the figures \$2.50, \$7, \$8, \$10 or any other sum, and supplying his customers with fictitious price tags in any other form;

(6) Assisting, abetting and advising by the use of fictitious price tags and fictitious prices the resale by his customers of fountain pens sold by him to them;

(7) Furnishing his customers with coupons advertising that ultimate purchasers of fountain pens from such customers may obtain such fountain pens at a large reduction for a short time only from a so-called "regular price", stated in such coupons to be of a much greater amount than the price asked in pretended partial consideration of the surrender of said coupons;

(8) Representing the pen points of his fountain pens as being "Warranted 14K", "Warranted" or "14K", until and unless said pen points are 14 carat gold.

(9) Using as a trade name for fountain pens or for pencils the name "Waterson" or any other name in sound or appearance simulating the name "Waterman", or the name of any other manufacturer of fountain pens or of pencils, or any trade name under which any other fountain pens or pencils are commonly known and sold by any other producer or, dealer in, fountain pens or pencils.

(10) Simulating barrel, levers or cap clips or any other part or parts of fountain pens or of pencils manufactured by L. E. Waterman Company or by any other manufacturers of fountain pens or of pencils.

And it is hereby further ordered, That said respondent, James Kelley, shall on or before the first day of August, A. D. 1935, file with this 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 issued by the Federal Trade Commission in the above-entitled proceeding on the seventh day of April, A. D. 1930, as the said order is amended hereby.