

Complaint

IN THE MATTER OF

WHOLESALE RADIO SERVICE CO., INC.

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

Docket 2458. Complaint, June 26, 1935—Order, July 22, 1935

Consent order requiring respondent corporation, in connection with the sale in interstate commerce of hacksaw blades, to cease and desist from using the word "Tungsteel", or words of similar import, to describe such blades until and unless the steel from which they are manufactured contains tungsten metal in such quantity and proportion as to be steel commonly known and described as tungsten steel.

Mr. Edw. W. Thomerson 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 Wholesale Radio Service Co., Inc., a corporation, hereinafter referred to as respondent, 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business in the city of New York, State of New York, and with branch offices and places of business in the city of Newark, State of New Jersey, and in the city of Atlanta, State of Georgia.

PAR. 2. Respondent is now and has been for the several years last past engaged in the mail-order wholesale business, offering for sale and selling, among other things, hacksaw blades to customers located at various points in the several States of the United States, and in causing said hacksaw blades, when so sold, to be transported from its said place of business located in the States of New York, New Jersey, and Georgia, as above alleged, into and across the several States of the United States to the said purchasers thereof located at various points in said several States of the United States

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other than New York, New Jersey, and Georgia. Other corporations and partnerships, associations and persons, who do not use the methods used by the respondent as hereinafter alleged, have been and are likewise engaged in offering for sale and selling hacksaw blades in said commerce among the several States of the United States. Respondent, in the course and conduct of its business as aforesaid, is in substantial competition with such other corporations and partnerships, associations and persons so engaged in offering for sale and selling said products in said commerce.

PAR. 3. Hacksaw blades are used throughout the several States of the United States to cut steel and such users of such blades believe that hacksaw blades which contain tungsten metal in a proper content are more durable and more desirable for that purpose than are hacksaw blades which do not contain tungsten metal in a proper content. Such users prefer a hacksaw blade containing tungsten metal to a hacksaw blade which does not contain such metal. It is more expensive to manufacture hacksaw blades containing tungsten metal in the proper content than it is to manufacture hacksaw blades not containing tungsten metal in proper content, and blades containing tungsten metal sell for a higher price than do blades which do not contain tungsten metal. The term "tungsten steel" and "tungsteel" are used in the trade and among users of hacksaw blades as meaning that blades so designated contain tungsten metal in proper content. Hacksaw blades which contain tungsten metal in proper content and hacksaw blades which do not contain said metal in proper content are similar in appearance and cannot be distinguished by the users thereof from a casual examination of such blades. Hacksaw blades which do not contain tungsten metal are not as salable as and are inferior to blades which do contain tungsten metal. Hacksaw blades containing tungsten metal in proper content are considered by users to be of first quality, flexible, fast cutting, and long lived.

PAR. 4. Respondent, within the two years last past, in the course and conduct of its business in said commerce as aforesaid, has advertised, sold, and distributed certain hacksaw blades under the name "Tungsteel" and has distributed to users and purchasers of hacksaw blades in said commerce, a certain catalog which contains the following representations concerning said blades:

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HACKSAW BLADES

Made of Tungsteel. Strictly First Quality Very flexible. Fast cutting and long lived. Fully guaranteed. Shpg. wt. 1 lb.

Stock No.	Size	Per doz. Your cost
XP 14965-----	8"	39¢
XP 14966-----	10"	49¢
XP 14967-----	12"	59¢

and in truth and in fact, said hacksaw blades did not and do not contain any tungsten metal at all, were and are not first quality and were and are not flexible, fast cutting and long lived.

PAR. 5. The acts and practices of the respondent in designating, advertising, and representing its hacksaw blades as hereinabove set forth are misleading and deceptive and have the tendency and capacity to and do confuse, mislead and deceive a substantial part of the users and purchasers of such blades into the erroneous belief that such hacksaw blades contain tungsten metal in proper content. The acts and practices of the respondent have the tendency and capacity to induce users and purchasers of hacksaw blades who desire blades containing tungsten metal to buy and use respondent's said hacksaw blades instead of blades which do contain tungsten metal in proper content, thereby substantially diverting trade to respondent from competitors of respondent who manufacture and sell hacksaw blades containing tungsten, and from competitors who manufacture and sell hacksaw blades which do not contain tungsten and who do not so misrepresent their products.

PAR. 6. The above acts and practices of the respondent are all to the injury and prejudice of the public and of the competitors of respondent, and constitute unfair methods of competition 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".

ORDER TO CEASE AND DESIST

This proceeding coming on for hearing by the Federal Trade Commission upon the record, including the complaint and the answer of the respondent, in which answer it waives hearing of the charges set forth in the complaint, refrains from contesting the proceedings, and, pursuant to Rule V of the Rules of Practice and Procedure,

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consents that the Commission may make, enter, issue, and serve upon it, without trial, evidence, findings as to the facts, or other intervening procedure, an order to cease and desist from the violations of law charged in the complaint, and the Commission, having duly considered the matter, and being fully advised in the premises, finds that the respondent 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 the respondent, Wholesale Radio Service Co., Inc., a corporation, cease and desist from using, directly or indirectly, the word, "Tungsteel", or a word or words of similar import or meaning, alone or in connection with any other word or words to brand, designate, or describe hacksaw blades sold or offered for sale by it in commerce among the several States of the United States and in the District of Columbia, until and unless the steel from which such hacksaw blades are manufactured contains tungsten metal in such quantity and proportion as to be steel that is commonly known and described as tungsten steel.

It is further ordered, That the respondent shall, within 60 days after 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 hereinabove set forth.

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IN THE MATTER OF

HARRY GREENBERG AND LEO JOSEFSBERG, DOING
BUSINESS AS GREENBERG & JOSEFSBERG, G. & J.
MANUFACTURING CO., G. & J. PRODUCTS, AND AMERI-
CAN MERCHANDISE CO.

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

Docket 2303. Complaint, Feb. 27, 1935—Decision, July 23, 1935

Where a firm sold toothpicks, purchased in and imported from, Japan, and packaged in small quantities in cartons, which were of substantially the same size as those theretofore used for a number of years by a competitor engaged in the sale of a similar domestic product, and which in the arrangement of labels, and depictions, colors, and arrangement of printed words and statements thereon contained, and construction, and instructions to user, so closely imitated the labels and cartons of said competitor as to simulate the same; with the effect of confusing, deceiving and misleading the trade and public into the belief that said foreign made and imported toothpicks thus sold by it were the domestic product of said competitor, and into purchasing the same in reliance upon such erroneous belief, and with capacity and tendency so to do, and with the result that it was thereby enabled to and did pass off said toothpicks as and for those of competitors and trade was diverted to it from them:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Edward E. Reardon for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent partners engaged in importing household articles and novelties and with place of business in New York City, with simulating cartons and labels of competitors in violation of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce; in that as charged, they sold toothpicks imported from Japan, in cartons which in size, construction, labels, printed matter thereon contained, color, arrangement, instructions to open and general appearance were identical or substantially identical with those used for 12 years by a competitor for the sale of its domestic products and come to be known by the public for many years as