

Complaint

23 F. T. C.

IN THE MATTER OF
AUTOGRAF TOOTH BRUSH COMPANY, INC., AND HENRY
L. HUGHES, INC.

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

Docket 2497. Complaint, July 17, 1935—Decision, July 10, 1936

Where two corporations engaged in the business of assembling, distributing, and selling tooth brushes, and with a community of interest—

Prominently stamped upon imported handles, on which name of country of origin in very faint type was so placed that insertion of necessarily imported bristles inevitably entirely obliterated or effectively obscured said name of origin, and upon the paper boxes in which the tooth brushes, thus assembled, were packed, the words "Made in U. S. A.";

With effect of deceiving and misleading a substantial number of members of purchasing public into false belief that commodity thus sold and offered was made within the United States and of raw materials produced therein, and that handles thereof were there made and of domestic raw materials, and of purchasing same in such belief, and with capacity and tendency thus to mislead members of such public, among whom there exist an active preference for purchase of goods, when available, of domestic raw materials, entirely, and strong antipathy toward purchase of certain tooth brushes and classes of commodities offered for sale in competition with goods entirely of domestic raw materials; and

With result that trade was diverted to them from competitors, among whom there are those who do not import or use imported handles in the assembling of their products or obliterate or obscure name of country of origin through inserting bristles in the assembling thereof; to their substantial injury and prejudice and to that of the public:

Held, That such acts and practices, under the conditions and circumstances set forth, constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. James W. Bevans, 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 Henry L. Hughes Co., Inc., and Autograf Tooth Brush 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, Henry L. Hughes Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. Respondent, Autograf Tooth Brush Co., Inc., is also a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. Respondent, Autograf Tooth Brush Co., Inc., is a subsidiary corporation of respondent, Henry L. Hughes Co., Inc., and the said respondent, Henry L. Hughes Co., Inc., now owns and has owned ever since the organization of respondent, Autograf Tooth Brush Co., Inc., all of the capital stock of such corporation. Officers of respondent, Henry L. Hughes Co., Inc., are now and have been since the organization of respondent, Autograf Tooth Brush Co., Inc., officers also of said respondent, Autograf Tooth Brush Co., Inc. Respondent, Autograf Tooth Brush Co., Inc., since its organization has been dominated by respondent, Henry L. Hughes Co., Inc., which latter mentioned respondent has dominated and controlled the business and business policies of said respondent, Autograf Tooth Brush Co., Inc. Both respondents are now and have been since 1918 engaged in the manufacture, among other things, of tooth brushes and in the sale thereof between and among various States of the United States, causing such tooth brushes to be transported from their respective places of business to the purchasers thereof, some located in the State of New York and others located in various other States of the United States, and there is now and has been since 1918 a constant current of trade and commerce by both respondents in tooth brushes between and among the various States of the United States. In the course and conduct of their businesses, both respondents are now and have been since 1918 in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tooth brushes between and among the various States of the United States.

PAR. 2. Since the organization of respondent, Autograf Tooth Brush Co., Inc., in 1918, both respondents have sold and still sell, as described in paragraph 1 hereof, tooth brushes designated by them as "Dentrox," upon the handles of which are and have been stamped in plain and legible letters the words "Made in U. S. A." and the additional word "Sterilized." The handles of such tooth brushes were and have been imported from Japan and have had and still have the word "Japan" stamped upon them in a place and in such a manner

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that the subsequent manufacture of such tooth brushes by the insertion of bristles into the handles thereof effectually obscures and obliterates from the vision of purchasers of such brushes the word "Japan." This obscuration and obliteration has been and is done to a degree by which the word "Japan" is discernible and discoverable only through the use of a magnifying glass or through the removal of the bristles.

PAR. 3. The tooth brushes so manufactured, labeled, and sold by respondents are displayed and have been displayed for sale by dealers and are sold to purchasers and users thereof in a container bearing the words "Made in U. S. A.," and such containers bear no words, legends, or symbols to indicate that the handles of such tooth brushes are not made in the United States of America. A substantial number of such purchasers and users have an active preference for merchandise of this nature manufactured wholly in the United States of America.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof corporations, persons, firms, and partnerships who manufacture tooth brushes, the handles of which, and all of which, are made in the United States of America and are so labeled, designated, and branded. There are also among such competitors corporations, partnerships, firms, and individuals who deal in tooth brushes made in Japan and who label and designate such tooth brushes as being made in Japan.

PAR. 5. The acts and practices of respondents as stated in paragraph 2 hereof have the capacity and tendency to and do mislead and deceive, and have misled and deceived dealers in and ultimate purchasers of tooth brushes into the belief that the tooth brushes so labeled, branded, and designated by the respondents are made in the United States of America and to purchase the tooth brushes so labeled by respondents as described in paragraph 2 hereof, in such erroneous belief. Thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission,

to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 17, 1935, issued and served its complaint in this proceeding upon respondents Autograf Tooth Brush Company, Inc., and Henry L. Hughes, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence, in support of the allegations of said complaint was introduced by Alden S. Bradley, attorney for the Commission, before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by James W. Bevans, attorney for the respondents; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Henry L. Hughes, Inc., is a New York corporation organized under the laws of that State in the year 1918 and has its principal office and place of business in the city of New York, State of New York.

Respondent, Autograf Tooth Brush Company, Inc., is a New York corporation organized under the laws of that State in the year 1923 and has its principal office and place of business in the city of New York, State of New York.

Respondent Autograf Tooth Brush Company, Inc., is a subsidiary of Henry L. Hughes, Inc., a very substantial majority of the stock of the Autograf Company being owned by the Hughes Company. The officers of each of the respondents are the same.

PAR. 2. Respondents and each of them during their entire corporate existence have been engaged in the business of assembling, selling, and distributing tooth brushes to purchasers of the same. In the course and conduct of their business, they have sold, caused to be sold, transported, and caused to be transported, such articles into and through the various States of the United States to the purchasers of the same.

In connection with the assembling of such brushes, respondents annually import approximately 144 gross of tooth brush handles which are in a virtually completed condition, lacking only polishing to be suitable for the insertion of bristles. Substantially all of the handles used by the respondent, in the assemblage as above described, are imported from Japan. Such handles are unsuited for any use other than in the assembling of tooth brushes. Stamped upon such handles, in very faint type, are the letters "Japan." Such letters are, however, stamped in such a place and in such a manner that the subsequent assembling of the tooth brush, by the insertion of bristles necessary to the completed product, must necessarily entirely obliterate or effectually obscure the letters above referred to. Elsewhere upon the handle, respondents stamp or cause to be stamped in prominent and plain letters the words "Made in U. S. A."

The tooth brushes assembled in the manner herein related are packed in paper boxes, or cartons or other packages whereupon appear in bold type the words "Made in U. S. A."

PAR. 3. Respondents now are, and during their entire corporate existence have been, in substantial competition in interstate commerce with other individuals, firms, and corporations who likewise sell, distribute, and transport to purchasers of the same a commodity similar to that vended by the respondent in the manner above related.

Among its competitors, last above-described, are those who do not import or use imported handles in the assembling of tooth brushes vended by them in interstate commerce and who do not, by inserting bristles in the process of assembling, obliterate, or obscure the name of the country of origin.

All of the bristles, as used in tooth brushes, are imported from either China or Russia. None of domestic origin are available.

PAR. 4. The assembling and sale of tooth brushes in the United States is a substantial industry. Approximately twelve concerns assemble and sell in interstate commerce all of the tooth brushes marketed in the United States.

There exists among the members of the purchasing public an active preference for goods and commodities created entirely of domestic raw materials whenever the same are available. There is likewise a strong antipathy toward the purchase of certain classes of commodities, among which are tooth brushes, when any part of such commodity shall have been imported and when the same is offered for sale in competition with goods made entirely from domestic raw materials, whenever the same are procurable.

PAR. 5. The respondents, in the manner aforesaid, represent and imply that the tooth brush so sold and offered for sale is wholly made in

the United States of America; is made of raw materials produced within the United States of America; that the handle thereof is made within the United States of America and of materials produced therein.

A substantial number of the members of the purchasing public are misled and deceived into the false belief that the commodity so sold and offered for sale is manufactured within the United States of America and of raw materials produced therein and that the handle of such brush is manufactured within the said United States of America and of raw materials produced therein, and relying upon such belief have purchased such tooth brushes.

PAR. 6. The acts and practices of the respondents, as above related, have the capacity and tendency to and do, in fact, deceive and mislead members of the purchasing public into the false belief that in purchasing the commodity of the respondent, as described herein, they are purchasing a commodity made entirely from materials of domestic origin.

PAR. 7. In consequence of the acts and practices of the respondent above set forth, trade in tooth brushes was and is diverted to the respondents from competitors in interstate commerce, to the substantial injury and prejudice of such competitors and to the substantial injury and prejudice of the public.

CONCLUSION

The aforesaid acts and practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and constitute a violation 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 having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Alden S. Bradley, counsel for the Commission, and by James W. Bevans, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 ordered, That the respondents, Henry L. Hughes, Inc., a corporation, and Autograf Tooth Brush Company, Inc., a corporation, their officers, agents, employees, and representatives, in connection with the sale or offering for sale of tooth brushes in interstate commerce do forthwith cease and desist from:

(1) Representing through the medium of labelling, stamping, or imprinting upon the handle of tooth brushes sold or offered for sale, that such tooth brushes were and are made wholly in the United States of America, when in fact they are not.

(2) Representing through the medium of labelling, stamping on, or imprinting upon the handle of tooth brushes sold or offered for sale, that such tooth brushes were and are made in the United States of America when in fact the handles of such tooth brushes have been imported from a foreign country and the name of the country of origin has been effectively obliterated and obscured.

(3) Representing or causing to be represented, by imprinting upon the boxes, cartons, or other packages wherein tooth brushes are placed prior to the sale or offering for sale of the same, the words "Made in U. S. A.," or other words of similar import and meaning, that the same were made in the United States of America when the handles of such tooth brushes have been imported from some foreign country.

It is further ordered, That the respondents Henry L. Hughes, Inc., a corporation, and Autograf Tooth Brush Company, Inc., a corporation, and each of them, shall within 60 days after service upon them 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 they shall have complied with this order.

Syllabus

IN THE MATTER OF

SANDERSON ADJUSTMENT BUREAU, INC., AND H. J. SULLIVAN, INDIVIDUALLY AND AS PRESIDENT AND TREASURER THEREOF

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

Docket 2597. Complaint, Oct. 24, 1935—Decision, July 10, 1936

Where a corporation and an individual, its president and treasurer, engaged in sale of collection systems through agents solicited and supplied with reference letters, property of its founder and use of which, outside said corporation's city, was unauthorized following said founder's sale of his stock therein, as was subsequent use of his said collection system in question; in carrying on said business through agents whom they (1) contacted by advertising in financial and business opportunity columns of the daily papers as an old established concern, offering an opportunity to make \$500 a month the year round, and seeking men with capital to invest to act as district managers, branch managers, or other representatives, and (2) purported to employ as such, and with whom they (3) entered or sought to enter into agreements whereby, thus employed, they were ostensibly assigned specified exclusive territories and were required to obligate themselves to buy a designated number of such systems, varying according to particular applicant's capital, and at a specified price, and to resell same at a rate likewise fixed, and with guarantee that if money collected by purchaser did not equal 10 times original cost of system, full price was to be refunded by it, and whereby it further undertook to (1) spend in local periodical and newspaper advertising 5 percent of amount invested by applicants as district managers, etc., and (2) to assist them in making field productive by sending traveling representatives or supervisors, experienced in recruiting salesmen, to spend a minimum of 3 days a month with such district managers, and to devote their entire efforts to developing a sales organization for such systems, but subject to provision that district managers, etc., must have placed initial orders and ordered 150 systems a month for 3 months, and (3) to refund sum paid by them, contingent, however, upon compliance with instructions of agreement and demand within 3 months of date of sale and furnishing of conclusive evidence of strict compliance with said instructions of agreement, limited by language thereof to written representations therein contained—

- (a) Represented to applicants, contacted as aforesaid, that it was an old, established, Atlanta corporation and afforded an opportunity to make earnings in excess of \$500 a month the year round, and that it was an old established concern of high integrity and standing, engaged in sale of collection systems in great demand, and that it offered rare opportunities for exceptional earnings and permanently high paid connections to those who agreed to represent it, and had men earning \$500 a week, and that reliable men, with managerial ability and from \$400 to \$1,000 to invest, should earn in excess of \$500 and up to \$1,500 a month, the year round, in sale of said systems, and that minimum earnings for agent should be \$50 a week;