

IN THE MATTER OF
TOLPIN STUDIOS, INC.

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

Docket 2950. Complaint, Oct. 16, 1936—Decision, July 7, 1937

Where a vitreous, translucent, and glazed ware designated, described, and known as china, was and had been, for some 150 years, made at Limoges, France, and had long been exported therefrom into the various countries of Europe and America, and particularly into the United States, and had acquired a favorable reputation in the latter country as a china of utility and beauty, and had come to possess a goodwill which developed an increasingly popular demand for the products of said city, and china made at said city and imported into the United States had long been widely and generally known as Limoges china, and word "Limoges" applied to and used in describing or designating china or chinaware had long since come to signify and mean, and still signified and meant, china made at Limoges in France; and thereafter, a corporation engaged in processing and decorating foreign and domestic made, undecorated china or chinaware products, and in offering, selling and distributing certain of its decorated china or chinaware products to wholesale and retail dealers, including department stores and auctioneers, and purchasers thereof in various States—

Branded, imprinted, and otherwise caused to appear, words and description "Limoges" and "French Decoration" on its said products, notwithstanding fact products thus described and referred to were not, as thus represented, made in, and did not originate in Limoges, France, but were obtained by it from other countries, and said products were not decorated in France or with French designs and decorations peculiar to country of France and French artistry;

With result of placing in the hands of dealers selling its products means by which to mislead and deceive consuming public into purchase of its china or chinaware products, and with tendency and capacity to mislead and deceive, and with effect of misleading and deceiving, members of public and of retail trade into false and erroneous belief that representations thus made by said branding and imprinting were true, and that products thus represented as "Limoges" originated and were made in said city, and that products represented by words "French Decoration" were decorated in France and with French designs and decorations, as above set forth, and of thereby causing members of public and of retail trade to buy and deal in its products in lieu and in place of competing products of competitors, and of thus diverting trade to it from its competitors who do not misbrand, or falsely and misleadingly label, mark, or otherwise misrepresent their products:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Jay L. Jackson for the Commission.

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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 Tolpin Studios, Inc., a corporation, hereinafter designated 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 charge in that respect as follows:

PARAGRAPH 1. Respondent, Tolpin Studios, Inc., is now, and since 1927 has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Its office and principal place of business are located at 2129 West Van Buren Street in the city of Chicago in said State. It has been since its said organization, and now is, engaged in purchasing and decorating imported china and chinaware, and in its sale to wholesale and retail dealers, including department stores and auctioneers, in commerce between and among the State of Illinois and the various other States of the United States and the District of Columbia. It transports from its said place of business or causes to be transported therefrom, such china and chinaware when sold, to purchasers in the various States of the United States other than the said State of Illinois and in the District of Columbia.

In the course and conduct of its said business, respondent has been and is in substantial competition in interstate commerce with individuals, partnerships, and corporations engaged in offering for sale and selling china, chinaware, earthenware, glassware, and other pottery in like commerce.

PAR. 2. There is now, and for more than one hundred and fifty years approximately there has been manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which is now, and has been during said period of time, designated, described, and known as china by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the Nineteenth Century, china, as it gradually came to be called, began to be exported from Limoges in France, into the various countries of Europe and America and particularly into the United States of America and into and through the several States thereof. Such china immediately thereupon acquired a favorable reputation in the United States, as china of utility and beauty resulting in the estab-

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lishment of a goodwill which developed from time to time an increasing popular demand for the products of Limoges. In 1927 when respondent was incorporated, this china manufactured at Limoges in France and imported into the United States had long been widely and generally known as Limoges china. The word "Limoges" applied to, or used in describing or designating china or chinaware, had for many years theretofore come to signify and mean, and ever since has signified and meant, and now signifies and means, china manufactured at Limoges, France.

PAR. 3. In the course and conduct of its business, it has been and is the practice of respondent to buy china and chinaware which is imported by it directly, or is purchased from the importers thereof. Said china and chinaware are produced in Japan, China, Czechoslovakia, and other countries, plain and undecorated, and are known and described by the trade as "blanks." Thereupon the respondent decorates such imported products and imprints, stamps, paints, or otherwise impresses on some of it, or causes it to bear pictorial representations of French scenes and designs or other decorations illustrative or suggestive of Limoges china or chinaware, or characteristic of France and causes the same to bear the following or similar legends:

Limoges
French
Decoration
Hand-painted

Respondent has also offered for sale and sold other china and chinaware decorated by it with scenes painted thereon suggestive and characteristic of countries in which it was neither produced nor decorated.

In truth and in fact, the china and chinaware decorated by respondent and bearing the legend

Limoges
French
Decoration
Hand-painted

have not been and are not produced in Limoges, France or in any other part of France, have not been and are not Limoges china or chinaware, have not been and are not decorated or painted in France, but in the United States of America. The so-called "blanks" so decorated by respondent have been cheaper or less expensive for decorating purposes than Limoges china or chinaware. Respondent has been enabled by such practices, that is to say, by selling as and for Limoges china or chinaware so-called "blanks" produced in other

countries than France and decorated by it in the United States, to derive a more substantial profit than could have been acquired or derived by it if the china or chinaware offered for sale and sold by it had been Limoges china or chinaware decorated or hand-painted at Limoges, France.

It has also been one of the practices of respondent to remove, erase or eliminate from so-called "blanks" or to cover with a design of some kind, the word or words stamped or appearing on such blanks or undecorated china or chinaware, indicating, as required by law, the country in which such china or chinaware originated or was produced. By this practice respondent has been enabled to evade, preclude, and nullify the purpose of the law by concealment or suppression of the origin of such china or chinaware or of the place of its manufacture or production, and more easily to convey the impression that it is Limoges china or chinaware and has been painted and decorated at Limoges or elsewhere in France, or that it has been produced and decorated in the country or countries, suggested or indicated by scenes painted thereon typical or characteristic of such country or countries.

PAR. 4. In competition with respondent there are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling Limoges china or chinaware, decorated and undecorated, in the United States and still other individuals, partnerships, and corporations offering for sale and selling china or chinaware, decorated and undecorated, produced in the United States and in other countries of Europe and Asia than France, who have truthfully represented, stamped, branded, and described it.

PAR. 5. The aforesaid practices of respondent described in paragraph 3 hereof, have had and have, and each of them has had and has, the capacity and the tendency to mislead and deceive, have misled and deceived, and do mislead and deceive the purchasing or consuming public into the belief that the china or chinaware offered for sale and sold by respondent described and designated as in paragraph 3 hereof, has been produced at Limoges, France, and has been decorated, processed and painted in Limoges, France, and that other china and chinaware offered for sale and sold by it was produced in the country suggested by scenes painted thereon typical or characteristic of such country, and in the purchase of such china or chinaware in reliance upon such erroneous belief or beliefs.

The aforesaid practices of respondent have had, and have the capacity and tendency to, and do, unfairly divert trade to respondent from its competitors mentioned in paragraph 4 hereof, and, as a

result, of such practices of respondent injury has been and is being done to such competitors in commerce among and between the various States of the United States.

PAR. 6. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices 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.

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 October 16, 1936, issued, and on October 19, 1936, served, its complaint in this proceeding upon respondent, Tolpin Studios, Inc., charging it 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 respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, except the allegations of the last sub-paragraph of paragraph 3 of said complaint, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs, and oral arguments having been waived, and the Commission having duly considered the same and being now 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, Tolpin Studios, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2129 West Van Buren Street, in the city of Chicago of said State.

PAR. 2. Said respondent engages, and prior and subsequent to the 16th day of October 1936, has been engaged, in the business of

processing and decorating foreign and domestic made undecorated china or chinaware products, and in selling, offering for sale, and distributing the same in commerce among and between the various States of the United States, and in the District of Columbia, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from the State of Illinois to various States of the United States other than the State of Illinois, and to and in the District of Columbia, in the course and conduct of which said respondent has been, and is, in competition with other corporations, firms, partnerships, and individuals engaged in the sale, offering for sale, and distribution of decorated china or chinaware products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. There is now, and for more than one hundred and fifty years approximately there has been, manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which is now, and has been during said period of time, designated, described, and known as china by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the Nineteenth Century, china, as it gradually came to be called, began to be exported from Limoges in France, into the various countries of Europe and America and particularly into the United States of America and into and through the several States thereof. Such china immediately thereupon acquired a favorable reputation in the United States as china of utility and beauty resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the products of Limoges. In 1927, when respondent was incorporated, this china manufactured at Limoges in France and imported into the United States had long been widely and generally known as Limoges china. The word "Limoges" applied to, or used in describing or designating china or chinaware, had for many years theretofore come to signify and mean, and ever since has signified and meant, and now signifies and means, china manufactured at Limoges, France.

PAR. 4. In the course and conduct of respondent's business, as above described, respondent offered for sale, sold, and distributed certain of its decorated china or chinaware products to wholesale and retail dealers, including department stores and auctioneers, and purchasers thereof in various States of the United States, on which products respondent branded, imprinted, and otherwise caused to appear, the words and description "Limoges" and "French Decoration," thereby representing that the products bearing the word "Limoges" originated and were made in the city of Limoges

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and the country of France, and that the products bearing the words and description "French Decoration" were decorated with French designs and decorations peculiar to the country of France and to French artistry and that the same were decorated in France; whereas, contrary to the representations so made, respondent's products so described and referred to were not made and did not originate in Limoges, France, but were obtained by respondent from countries other than the country of France, and the same were not decorated in France or with French designs and decorations peculiar to the country of France and French artistry.

PAR. 5. The branding, imprinting, and representations of respondent, as described and referred to in the foregoing paragraphs, have placed and place, and each of them has placed and places, in the hands of dealers selling the products of respondent the means by which to mislead and deceive the consuming public into the purchase of respondent's china or chinaware products, and the same have had and have, and each of them has had and has, the tendency and capacity to mislead and deceive, and did and do mislead and deceive, members of the public and of the retail trade into the false and erroneous belief that the representations made by said branding or imprinting are true and that the products so represented as "Limoges" originated and were made in Limoges, France, and that the products so represented by the words "French Decoration" were decorated in France and with French designs and decorations peculiar to the country of France and French artistry, all thereby causing members of the public and of the retail trade to buy and deal in products of respondent in lieu and in place of competing products of competitors of respondent, in consequence of which trade has been and is diverted to respondent from its competitors who do not misbrand or falsely and misleadingly label, mark, or otherwise represent their products.

CONCLUSION

The aforesaid acts and practices of the respondent, Tolpin Studios, Inc., are 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, 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 and the answer filed

herein on May 21, 1937, by respondent admitting all the material allegations of the complaint to be true, except the allegations of the last sub-paragraph of paragraph 3 of said complaint, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondent, Tolpin Studios, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of china or chinaware products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Branding, labeling, marking, or otherwise causing the word "Limoges" to appear on china or chinaware products of respondent, or in any way representing said products, or causing said products to be represented, as Limoges china or chinaware when such products have not had their origin and have not been manufactured in the city of Limoges, in the country of France;

2. Branding, labeling, marking, or otherwise causing the words "French Decoration" to appear on china or chinaware products of respondent, or in any way representing said products, or causing said products to be represented, as products decorated in France or with French designs and decorations peculiar to the country of France and to French artistry when such products were not decorated in France and the designs and decorations appearing thereon were not and are not French designs and decorations peculiar to the country of France and to French artistry.

It is further ordered, that the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
THE TIMES SALES COMPANY, INC., ET AL.

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

Docket 2801. Complaint, May 14, 1936.¹—Decision, July 9, 1937

Where a corporation and three individuals engaged, as the case might be, as executive officers thereof in carrying on or continuing the business of said corporation or in conducting the business successor thereto, engaged in selling, by direct solicitation of purchasers in various States and in the District of Columbia, through their agents thereunto authorized, a certain encyclopedia, supplement or revision service, certificate evidencing membership in the "Bureau of Research," and certain magazines, in combination, for specified sums and under specified terms, through the medium of printed contract forms, altered at times by certain agents through writing thereon different and other terms than those covered by printed form and different and other magazines than those provided for and authorized—

Represented and insisted to purchasers and signers of such altered contracts that the printed terms of the contracts put them on notice of selling agents' limitation of authority in such respect, and through letters, collection agents, and attorneys, disavowed and denied the authority of the selling agents to make such alterations, and represented and insisted that such contracts were legally enforceable against signers, according to printed terms thereof, as if unaltered in writing and regardless of written alterations in printed terms appearing on face thereof, and sued and threatened purchasers and signers with suit for legal enforcement of same and for collection of the unpaid portion of the consideration, and thereby, through force, duress, and undue influence, and under false pretenses that said contracts were legally enforceable against signers without reference to written alterations in printed terms thereof, converted acts and conduct of said selling agents to the benefit and profit of their business, and achieved sale and distribution of said "combination sale" encyclopedia deal, inclusive of books, services, and magazines; Facts being printed terms of notices set forth in contracts were not sufficient to put purchasers and prospective purchasers and signers on notice that selling agents were without authority to make alterations or changes in writing on face of contracts over printed terms thereof with respect to time or terms under which consideration was to be paid or payable, or to the effect that said agents' authority to substitute magazines was limited to certain periodicals only, but it was consistent with such printed terms and provisions that such alterations or changes should take precedence over the other, and said contracts, as thus altered, were not in fact subject to legal enforcement, except in accordance with said alterations and changes;

¹ Complaint published as amended as of July 9, 1937.