

Complaint

IN THE MATTER OF

ADOLPH WEIN, TRADING AS AMERICAN TOY WORKS

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

Docket 3117. Complaint, Apr. 26, 1937—Decision, Aug. 2, 1937

Where an individual engaged in sale and distribution, to retailers and direct to consuming public, of toys which were not of domestic origin, but which were made in or imported from Japan and other foreign countries, in substantial competition with those engaged in manufacture and distribution of like and similar products and in sale thereof in commerce among the various States and in the District of Columbia, and including among such competitors those who truthfully advertise and represent their products, and many importers of like and similar products who do not in any manner misrepresent the country of origin thereof—

Placed or caused to be placed upon containers of many of the toys sold and distributed by him, words and letters "Made in U. S. A.," notwithstanding fact many of such toys thus sold and distributed by him were not of domestic origin, but were made in or imported from Japan and other foreign countries, and many of said toys thus containered and labeled had imprinted thereon words "Japan" or "Made in Japan";

With effect of misleading and deceiving a substantial portion of purchasing public in the several States and in said District, and causing them erroneously to believe that toys thus packaged, labeled, sold, and distributed by him were made in the United States, and of causing substantial part of such public, because of such erroneous belief, to buy products offered, sold, and distributed by him, and with result thereby of unfair and substantial diversion of trade to him from his competitors; to their injury and that of the public:

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

Mr. S. Brogdyne Teu II for the Commission.

Mr. Joseph C. Kadane, 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 Adolph Wein, trading and doing business as American Toy Works, hereinafter designated as respondent, is now and has been 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, Adolph Wein, is an individual who is now, and has been at all times mentioned herein doing business under the trade name and style of American Toy Works, at 41 East Eleventh Street, city of New York, State of New York.

PAR. 2. Respondent is now and has been engaged in the business of assembling, packing and selling toys to retailers and others for personal use and consumption in commerce as herein set out. Said respondent, being engaged in business as aforesaid, causes said toys when sold to be transported from his principal office and place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia, and there is now and has been at all times mentioned herein a constant current of trade and commerce in said above described products sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now and has been in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of selling toys in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The toys manufactured, labeled and sold and distributed by respondent are displayed and have been displayed for sale to and by dealers, jobbers, retailers, and department stores and are sold to purchasers and users thereof in containers bearing the words "Made in U. S. A.," and such containers bear no words, labels, or symbols to indicate that a substantial part of the toys contained therein and so sold and distributed by respondent are not made in the United States.

In truth and in fact, a substantial part of the toys so labeled, advertised, sold, and distributed by respondent are made in Japan and other foreign countries and purchased by respondent from resident manufacturers' agents of the foreign producers.

PAR. 5. For many years a substantial part of the consuming public has had and expressed a marked preference for toys which are manufactured in the United States over toys manufactured in any foreign country. As a result of this said preference of the purchasing public, they have purchased a substantial quantity of toys domestically manufactured and have refrained from purchasing toys manufactured in any country because of the feeling prevailing among a substantial part of Americans towards toys manufactured in foreign countries.

PAR. 6. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale

toys as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States by inducing them to mistakenly and erroneously believe that the toys offered for sale, sold, and distributed by respondent are manufactured in the United States.

PAR. 7. There are among the competitors of the respondent in commerce as herein described, manufacturers and distributors of toys who truthfully advertise and represent the place of origin of their products.

PAR. 8. The foregoing false and misleading representations on the part of the respondent have induced a substantial number of consuming purchasers of said toys to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid mistaken belief. As a result thereof, trade has been diverted to respondent from competitors engaged in like and similar businesses. As a consequence thereof, a substantial injury has been and is being done by respondent to competition in commerce between the various States of the United States.

PAR. 9. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said 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 April 26, 1937, issued and served its complaint in this proceeding upon respondent, Adolph Wein, an individual trading as American Toy Works, charging him 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 filing of respondent's answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and Joseph C. Kadane, counsel for respondent. Said stipulation was thereafter approved by the Commission and 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 and answer thereto, and the stipulation as to the facts

(respondent having waived the filing of a brief); and the Commission having duly considered 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 Adolph Wein is an individual trading and doing business under the name and style American Toy Works, with his principal place of business in New York, N. Y.

PAR. 2. The respondent is now and has been for more than one year last past engaged in the business of selling and distributing toys to retailers and direct to the consuming public.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from his principal place of business in the State of New York to purchasers thereof located in the States of the United States other than the State from which shipment originated, and in the District of Columbia.

There has been for more than one year last past, and still is, a constant current of trade and commerce in said toys so sold and distributed by respondent between and among the various States of the United States, and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals and with partnerships, firms, and corporations, engaged in the manufacture and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business, as aforesaid, the respondent, in soliciting the sale, and in the selling, of his products, and for the purpose of creating a demand on the part of the consuming public for said products causes, and has for more than one year last past caused, his products to be advertised through the media of labels attached to the containers of said toys or by words and phrases imprinted upon the said toys. In said ways and by said means respondent has made to the general public false and misleading statements with reference to the country of origin of the commodities offered for sale by him.

PAR. 6. Many of the toys sold and distributed by the respondent are sold in containers upon which the respondent places, or causes to be placed, the words and letters "Made in U. S. A.". Many of the toys so sold and distributed by the respondent in the containers bearing the words and letters "Made in U. S. A." are not made in the

United States, and are not of domestic origin, but are made in, or imported from, Japan and other foreign countries. Many of the toys so packaged in containers bearing the words and letters "Made in U. S. A." have imprinted thereon the word "Japan" or the words "Made in Japan" which indicates the country from which they were imported. Said containers bear no words or symbols to indicate that any part of the contents thereof are not made in the United States but in a foreign country.

PAR. 7. For many years a substantial part of the consuming public has had, and has expressed, a marked preference for toys which are manufactured in the United States over toys manufactured in any foreign country. As a result of the said preference of the purchasing public, they have purchased and still purchase a substantial quantity of toys domestically manufactured, and have refrained from purchasing toys manufactured in any foreign country because of the feeling prevailing among a substantial part of Americans toward toys manufactured in foreign countries.

PAR. 8. Among the competitors of the respondent engaged in said commerce mentioned in paragraph 4 hereof are manufacturers and distributors of like and similar products who truthfully advertise and represent their respective products, and among such competitors are many importers of like and similar products who do not in any manner misrepresent the country of the origin of their respective products.

PAR. 9. The use by the respondent of the words "Made in U. S. A." on the containers in which such imported toys are packaged, sold, and distributed misleads and deceives a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, and causes them erroneously to believe that the toys so packaged, labelled, sold, and distributed by the respondent were, and are, manufactured in the United States; and causes a substantial part of the purchasing public, because of such erroneous belief, to purchase the products offered for sale, sold, and distributed by the respondent. As a result of such erroneous belief, there has been and is an unfair and substantial diversion of trade to the respondent from its competitors in said commerce to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforementioned acts and practices of the respondent Adolph Wein 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,

Order

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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 of respondent, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Joseph C. Kadane, counsel for respondent, 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, Adolph Wein, an individual, his representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of toys in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through price lists, circulars, labels, containers, or any other form of printed matter, or by radio broadcasting, or in any other manner, that any of said toys made in Japan or any other foreign country are made in the United States.

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

Syllabus

IN THE MATTER OF
THE AMERICAN DIRIGOLD CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2814. Complaint, May 21, 1936—Decision, Aug. 3, 1937*

Where a corporation engaged in manufacture and sale of an alloy, containing no gold but composed chiefly of aluminum and copper, and of highly polished flat and hollow tableware and other articles fabricated therefrom, and so finished that they had color, appearance and luster of 14-karat or 18-karat gold, depending upon discernment of particular observer, in direct and substantial competition with those engaged in manufacture, sale and distribution, in commerce among the various States and in the District of Columbia, of similar tableware and other articles of the same general kind and for the same purposes, composed, as case might be, of sterling silverware, silver-plated ware, and other materials—

Included word "Dirigold" in its corporate name, and thus named, designated, and described said alloy and ware made therefrom, and stamped said word on each article made from said alloy and sold by it as aforesaid, and featured same in trade-mark used by it and placed upon its letterheads and other printed matter, and thereby falsely represented that said tableware and other articles contained gold, and through tolerance of use by its retail dealers of predecessor's advertising literature containing many statements, phrases and descriptive terms calculated, in connection with said word "Dirigold," to describe said ware, to create belief that same contained gold, such as "Color and Beauty of Gold," " * * * the alluring golden color and finish," etc., "SOLID not plated," "Golden Anniversaries * * * the ideal gift for such momentous occasions," became responsible for such use and representations made therein, and failed, through such qualifications as "contains no gold" on its price lists and letterheads, and through said phrase on some of aforesaid folders, but not on its address slips and envelopes, nor in connection with reproduction of its aforesaid trade-mark, nor with stamping of its said ware, nor with its corporate name, nor in all instances where said word was used in print, to reach all members of the public, nor all those coming in contact with said name, nor all members of the public shopping for flat and hollow ware, nor all those who actually purchase its said ware;

With result that some members of the public were in fact misled through such inherently misleading designations used as aforesaid, which, together with misleading implications thereof, served to attract prospective customers to ware thus designated and to cause them to look with favor thereon by reason thereof, and with tendency and capacity to lead members of the public, informed by many, but not all, retailers and clerks selling said ware of aforesaid fact, to believe that said ware, thus designated, contained at least some gold, and to induce them to buy same because of erroneous belief engendered as above set forth, and to divert trade to it from competitors engaged in sale in interstate commerce of flat, hollow and other ware adapted to and used for same general purposes, and with effect of