

IN THE MATTER OF
THE BALL COMPANY, INCORPORATED

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

Docket 3293. Complaint, Jan. 4, 1938—Decision, Jan. 27, 1938

Where a corporation engaged as wholesale jeweler in sale of diamonds and diamond rings to purchasers at points in various other States, in substantial competition with others engaged in offer and sale of such products to dealers and members of the general public in commerce among the various States and in the District of Columbia, and including many competitors who do not misrepresent, as below set forth, their said products and basis of their guarantees—

Represented and implied, through certificates and guarantees given by it on sheets similar to those commonly used for security certificates, and featuring, in arrangement and type, words "Federal Trade Commission" as part of statement certifying that "diamond ring sold this day to ----- of ----- is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION" (together with picture of dome of Capitol above an eagle), that diamonds thus sold by it were in fact perfect in accordance with required Commission standard and had been inspected, found and certified as such by aforesaid Government agency, facts being Commission had neither fixed nor promulgated any standard for perfect or other diamonds, or inspected, found, or certified said or any other as perfect diamonds, and said statements, representations, and implications were deceptive, misleading, and false;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of its said diamonds and diamond rings by reason of erroneous and mistaken beliefs thus induced, and with result that substantial trade, as consequence thereof, was unfairly diverted to it from those of its said competitors who do not misrepresent their guarantees or aforesaid products; to the injury of competitors in commerce:

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

Mr. Wm. T. Chantland 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 Ball Company, Incorporated, 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 Commis-

sion that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Ball Company, Incorporated, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal business at 58 East Washington Street, Chicago, Ill., and with branches at Cleveland, Ohio; Birmingham, Ala.; Denver, Colo.; San Francisco, Calif.; and St. Paul, Minn. Respondent is now and for some time past has been engaged in business as a wholesale jeweler selling among other items diamonds and diamond rings. Respondent in the course and conduct of its business sells and distributes its diamonds and diamond rings to dealers and members of the public and causes said wares, when sold, to be transported from the State of Illinois and the other States of origin of its shipments, to purchasers thereof located at points in the various States of the United States other than the State of origin of such shipments. There is now, and has been during all the times herein mentioned, a course of trade in commerce in diamonds and diamond rings between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent is now, and has been during all the times herein mentioned, engaged in substantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling diamonds and diamond rings to dealers and members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of certain of its said diamonds and diamond rings, respondent distributes among and issues to the purchasers of said rings, a "Diamond Ring Guarantee" and certificates printed on fancy bordered lithographed sheets similar in size, form, and general characteristics to some of those commonly used for stock and security certificates, with blank spaces for numbers, amounts, signatures, and text, on each of which appears as part of the guarantee the following: "This is to certify that the Garland diamond ring sold this day to _____ of _____ is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION." The words "Federal Trade Commission" are in prominent black block capital letters in a separate line near the center of each certificate.

The said certificates and guarantees constitute and are representations by respondent that the diamonds sold by it, when accompa-

nied by such certificates and guarantees, are in fact perfect in accordance with a standard required by the Federal Trade Commission. The intent of respondent in so representing and guaranteeing its said diamond rings, and the effect thereof, is to mislead and deceive dealers and other purchasers of such diamond rings into the erroneous belief that the Federal Trade Commission has in fact fixed and promulgated a required standard for perfect diamonds, and that these diamonds of respondent meet that requirement.

In truth and in fact the Federal Trade Commission has neither fixed nor promulgated any standard for perfect or other diamonds.

The general form, arrangement and text of said guarantee certificate is also intended by respondent to imply, and it does imply, that the diamonds sold with such certificates and guarantees have been inspected, found, and certified by a United States Government agency, to wit: The Federal Trade Commission, to be perfect diamonds. To aid in such implication, the certificate has on its face a picture of the dome of the United States Capitol at Washington, D. C., above an eagle, the United States emblem bird. In truth and in fact the Federal Trade Commission has neither inspected nor found nor certified said diamonds to be perfect diamonds.

All of said statements, representations, and implications are deceptive, misleading, and false, and tend to and do deceive and mislead dealers and other purchasers into the purchase of said diamonds and diamond rings in the erroneous belief that said representations and implications are true.

PAR. 4. There are among the competitors of respondent many who do not so misrepresent their diamonds and diamond rings, and the basis of their guarantees.

PAR. 5. The acts and practices of the respondent as above alleged in the course of selling and offering for sale its diamonds and diamond rings in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, substantial trade has been unfairly diverted to the respondent from those of its competitors referred to in paragraph 4 hereof who do not misrepresent their guarantees or their diamonds and diamond rings. In consequence thereof, injury has been, and is being, done to respondent's competitors in commerce among and between the various States of the United States.

PAR. 6. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondent's competitors

and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 January 4, 1938 issued, and on January 6, 1938 served, its complaint in this proceeding upon respondent, The Ball Company, Incorporated, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, the respondent filed an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which 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 answer, no briefs having been filed or oral arguments heard, 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, The Ball Company, Incorporated, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal business at 58 East Washington Street, Chicago, Ill., and with branches at Cleveland, Ohio; Birmingham, Ala.; Denver, Colo.; San Francisco, Calif.; and St. Paul, Minn. Respondent is now and for some time past has been engaged in business as a wholesale jeweler selling among other items diamonds and diamond rings. Respondent in the course and conduct of its business sells and distributes its diamond rings to dealers and members of the public and causes said wares, when sold, to be transported from the State of Illinois and the other States of origin of its shipments, to purchasers thereof located at points in the various States of the United States other than the State of origin of such shipments. There is now, and has been during all the times herein mentioned, a course of trade in commerce in diamonds and diamond rings between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent is now, and has been during all the times herein mentioned, engaged in sub-

stantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling diamonds and diamond rings to dealers and members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of certain of its said diamonds and diamond rings, respondent distributes among and issues to the purchasers of said rings, a "Diamond Ring Guarantee" and certificates printed on fancy bordered lithographed sheets similar in size, form, and general characteristics to some of those commonly used for stock and security certificates, with blank spaces for numbers, amounts, signatures, and text, on each of which appears as part of the guarantee the following: "This is to certify that the Garland diamond ring sold this day to ----- of ---- is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION." The words "Federal Trade Commission" are in prominent black block capital letters in a separate line near the center of each certificate.

PAR. 4. The said certificates and guarantees constitute and are representations by respondent that the diamonds sold by it, when accompanied by such certificates and guarantees, are in fact perfect in accordance with a standard required by the Federal Trade Commission. The intent of respondent in so representing and guaranteeing its said diamond rings, and the effect thereof, is to mislead and deceive dealers and other purchasers of such diamond rings into the erroneous belief that the Federal Trade Commission has in fact fixed and promulgated a required standard for perfect diamonds, and that these diamonds of respondent meet that requirement. The general form, arrangement, and text of said guarantee certificate is also intended by respondent to imply, and it does imply, that the diamonds sold with such certificates and guarantees have been inspected, found, and certified by a United States Government agency, to wit, the Federal Trade Commission, to be perfect diamonds. To aid in such implication, the certificate has on its face a picture of the dome of the United States Capitol at Washington, D. C., above an eagle, the United States emblem bird.

PAR. 5. All of said statements, representations, and implications are deceptive, misleading, and false in that the Federal Trade Commission has neither fixed nor promulgated any standard for perfect or other diamonds or inspected or found or certified said or any other diamonds to be perfect diamonds.

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PAR. 6. There are among the competitors of respondent many who do not so misrepresent their diamonds and diamond rings, and the basis of their guarantees.

PAR. 7. The acts and practices of the respondent as above alleged in the course of selling and offering for sale its diamonds and diamond rings in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, substantial trade has been unfairly diverted to the respondent from those of its competitors referred to in paragraph 6 hereof who do not misrepresent their guarantees or their diamonds and diamond rings. In consequence thereof, injury has been, and is being, done to respondent's competitors in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, The 'Ball Company, Incorporated, 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 of respondent whereby respondent admits all the material allegations of the complaint to be true, and waives 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, The Ball Company, Incorporated, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of diamonds and diamond rings in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly, or in any form or manner by implication, representing:

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1. That the Federal Trade Commission has fixed or promulgated any standard for perfect or other diamonds;

2. That the Federal Trade Commission has inspected said diamonds, or that it has found and certified them to be perfect diamonds;

3. That an agency of the United States Government has fixed or promulgated any standard for perfect or other diamonds, until and unless a standard has been fixed or promulgated by such an agency;

4. That an agency of the United States Government has inspected said diamonds, or that it has found and certified them to be perfect diamonds, until and unless such an agency has inspected said diamonds and found and certified them to be perfect.

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.

Order

IN THE MATTER OF
THE ELI LILLY & COMPANY
MODIFYING CEASE AND DESIST ORDER

Docket 155. Order, January 28, 1938

Order modifying Commission's prior cease and desist order in 1 F. T. C. 442, directed against respondent's resale price maintenance practices in connection with resale by its wholesale distributors of respondent's drugs, pharmaceuticals, and similar products, so as to permit, as in said below modifying order specified, resale price maintenance agreements covering resale of commodities where lawful for intrastate transactions under statute, law, or public policy of particular State or other jurisdiction concerned.

Mr. Simon Michelet, of Washington, D. C., for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The respondent herein, The Eli Lilly & Company, by its attorney, Simon Michelet, Esq., having filed with this Commission its motion to modify the order to cease and desist issued herein on May 27, 1919, in the light of the provisions of Title VIII of the Act of Congress, approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes," and the Commission having duly considered the said motion and being fully advised in the premises,

Now, therefore, it is hereby ordered, That the said motion be and the same is hereby granted, and that the said order to cease and desist be and the same is hereby modified so that as modified immediately following the proviso immediately after subparagraph numbered (6) of the said order the following be and the same is hereby added:

Provided, That nothing herein contained shall prohibit contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and *Provided*