

IN THE MATTER OF
ADOLPH WEIN DOING BUSINESS 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 3528. Complaint, Aug. 5, 1938—Decision, Dec. 30, 1938

Where an individual engaged in assembling, packing, selling, and distributing crayons, dolls, and toys to retailers and other purchasers for resale to members of purchasing public—

- (a) Included in descriptive legend set forth on labels of containers of crayons sold and distributed by him for resale by purchasers thereof to members of the purchasing public in various States and in District of Columbia, words "10 Hexagon Giant Crayons," notwithstanding fact crayons therein contained numbered only eight;
- (b) Made use of such words as "American Toy Works, New York, N. Y., U. S. A." in course and conduct of his business as aforesaid, and thereby represented that he was the manufacturer of merchandise dealt in by him as aforesaid, facts being he was merely an assembler of such merchandise and not manufacturer thereof, and did not own or control any such factory or plant for the purchase of the output of which, directly, there has long been preference on part of substantial portion of members of purchasing public as affording substantial savings as well as other advantages; and
- (c) Represented, through words and phrases aforesaid and such words and phrases as "Made in U. S. A., American Toy Works, New York, N. Y.," that the toys, dolls, and other merchandise dealt in by him were made by him as aforesaid and in the United States, facts being substantial number of units comprising toy sets which he sold and distributed were made in Japan and purchased by him from manufacturers' resident agents and thereafter assembled by him into toy sets which he sold and distributed, and were not domestic dolls and toys, long preferred by substantial portion of members of purchasing public to those made in a foreign country, and including Japan, and which, by reason thereof, substantial portion of such public refrained from buying;

With effect of misleading and deceiving substantial portion of such public into erroneous and mistaken belief that such statements and representations were true, and that packages aforesaid contained 10 crayons, and dolls and toys in question were made in the United States and it was the manufacturer thereof, and of causing substantial portion thereof, because of said erroneous and mistaken beliefs, to purchase substantial quantity of its said products, and with result that trade was thereby diverted unfairly to him from his competitors who truthfully advertise and represent the place of manufacture of their merchandise and their business status; to the injury of competition in commerce:

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

Mr. S. Brogdyne Tew II for the Commission.

Mr. David K. Kadane, of Silver Spring, Md., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Adolph Wein, an individual, trading and doing business as American Toy Works, hereinafter referred to as respondent, has violated the provisions of the 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. Adolph Wein is an individual trading and doing business as American Toy Works, with his principal office and place of business located at 3724 Twenty-fourth Street, city of Long Island, State of New York.

PAR. 2. Respondent is now and has been engaged in the business of assembling, packing, and selling crayons, dolls, and toys to retailers and others in commerce as herein set out. Respondent, being engaged in the business as aforesaid, causes said crayons, dolls, and 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. There is now, and has been at all times mentioned herein, a course of trade in said above-described products sold by respondent in commerce 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, and with firms, partnerships, and corporations also engaged in the business of selling crayons, dolls, and toys in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The crayons 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 false and misleading descriptions as to the number of crayons contained in a given package. The containers bear the label: "Skippy Crayons—Assorted Colors. 10 Hexagon Giant Crayons."

In truth and in fact, the containers bearing the above-described label do not contain 10 crayons, but contain only 8 crayons.

Further, the respondent, through the use of such words and phrases as "American Toy Works, New York, N. Y., U. S. A.," "ATWO product," "Made in U. S. A., American Toy Works, N. Y." and others

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of like and similar import, represents to purchasers and prospective purchasers of toys, dolls, and other products sold and distributed by him that he is a manufacturer of the products, and also that the products sold and distributed by him are manufactured in the United States. In truth and in fact, a substantial number of the units making up the toy sets sold and distributed by respondent are not manufactured in the United States, but are purchased by respondent from resident manufacturers' agents of the producers of such toys located in Japan. After the purchase of the said units the respondent assembles the units into toy sets and sells and distributes them in commerce, as herein set out.

The respondent is merely an assembler of the products sold and distributed by him and is in no sense a manufacturer. He does not own or control a manufacturing plant in which the products or the units of the products sold and distributed by him are manufactured.

PAR. 5. For many years a substantial part of the consuming public has had, and has expressed, a marked preference for dolls and toys which were manufactured in the United States of America over dolls and toys manufactured in any foreign country, including Japan. As a result of this said preference of the purchasing public, they have purchased a substantial quantity of dolls and toys domestically manufactured and have refrained from purchasing toys manufactured in any other country.

PAR. 6. For many years a substantial part of the purchasing public has expressed, and has had, a marked preference for products sold and distributed to the public by the manufacturers of the same. The public is generally aware of the economies prevailing, as well as other advantages, when products are bought from the manufacturer direct. It places confidence in the manufacturers of such products and purchases a substantial volume of merchandise from the manufacturer direct, for this reason.

PAR. 7. The effect of the foregoing false and misleading representations and acts of respondent in marking, branding, offering for sale, and selling crayons, dolls, and toys, as hereinabove referred to, is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to erroneously and mistakenly believe: That the "Skippy Crayons, Assorted Colors" contain 10 hexagon giant crayons; that the dolls and toys offered for sale, sold, and distributed by the respondent are domestic toys made in the United States; and that the respondent is a manufacturer of the dolls and toys sold and distributed by the respondent.

PAR. 8. There are among the competitors of the respondent in commerce, as herein described, manufacturers and distributors of crayons, dolls, and toys who truthfully advertise and represent the place of origin of their products and who truthfully advertise and represent their business status.

PAR. 9. The foregoing false and misleading representations on the part of the respondent have induced a substantial number of the consuming purchasers of said crayons, dolls, and toys to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid mistaken beliefs. As a result thereof trade has been diverted unfairly to respondent from competitors engaged in like and similar business who do not engage in similar practices. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce between the various States of the United States and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of the 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 5th day of August 1938 issued, and subsequently served, its complaint in this proceeding upon respondent, Adolph Wein, an individual, trading and doing business as American Toy Works, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 10th day of September 1938 the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, 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 as American Toy Works and having his principal

office and place of business at 3724 Twenty-fourth Street, city of Long Island, State of New York.

PAR. 2. Respondent is now, and has been during all the times mentioned herein, engaged in the business of assembling, packing, selling, and distributing crayons, dolls, and toys. The respondent sells and distributes such merchandise to retailers and other purchasers thereof for resale to members of the purchasing public. Respondent causes such merchandise, when sold by him, to be transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals and with partnerships, firms, and corporations engaged in the business of selling and distributing crayons, dolls, and toys. Among such competitors in said commerce are many who truthfully advertise and represent the place of manufacture of their merchandise, and who truthfully advertise and represent their business status.

PAR. 4. In the course and conduct of his business as aforesaid, the respondent causes the crayons which he sells and distributes to the retailers and other purchasers to be packed in containers bearing the label, "Skippy Crayons—Assorted Colors. 10 Hexagon Giant Crayons." The crayons packed in the containers bearing such label are resold by such purchasers from the respondent to members of the purchasing public situated in various States of the United States and in the District of Columbia.

In truth and in fact the containers bearing the above described label do not contain 10 crayons but contain only 8 crayons.

PAR. 5. In the course and conduct of his business as aforesaid, the respondent, through the use of such words and phrases as "American Toy Works, New York, N. Y., U. S. A.," "ATWO product," "Made in U. S. A., American Toy Works, New York, N. Y.," and others of like and similar import, represents to purchasers and prospective purchasers, situated in various States of the United States and in the District of Columbia, of his toys, dolls, and other merchandise, that he is the manufacturer of such merchandise and that such merchandise was manufactured in the United States. In truth and in fact a substantial number of the units comprising the toy sets, sold and distributed by respondent, are not manufactured in the United States

but are manufactured in Japan and are purchased by the respondent from the manufacturers' resident agents. Subsequent to the purchase by the respondent of the said units made in Japan the respondent assembles the units into toy sets and sells and distributes such sets as aforesaid. The respondent is merely an assembler of the merchandise sold and distributed by him and is not a manufacturer of such merchandise. Respondent does not own or control the manufacturing plant in which such merchandise is manufactured.

PAR. 6. A substantial portion of the members of the purchasing public have had for many years, and now have, a preference for dolls and toys which were manufactured in the United States over dolls and toys manufactured in a foreign country, including Japan. As a result of this preference a substantial portion of the purchasing public have purchased substantial quantities of dolls and toys manufactured in the United States and have refrained from purchasing dolls and toys manufactured in a foreign country.

PAR. 7. A substantial portion of the members of the purchasing public have had for many years, and now have, a preference for purchasing merchandise directly from the manufacturer of such merchandise. There has been during all of such times an understanding and belief existing among a substantial number of such members of the purchasing public that a substantial financial saving could be obtained, as well as other advantages, by purchasing merchandise directly from the manufacturer of such merchandise.

PAR. 8. The use by respondent of the foregoing false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and that said packages of crayons contain "10 Hexagon Giant Crayons," that said dolls and toys were made in the United States and that the respondent is the manufacturer of said merchandise, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's merchandise. As a result trade has been diverted unfairly to respondent from his competitors in said commerce who truthfully advertise and represent the place of manufacture of their merchandise and who truthfully advertise and represent their business status. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Adolph Wein, trading as American Toy Works, or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of toys in interstate commerce and in the District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing that any of said toys made in Japan or in any other foreign country are made in the United States.
2. Representing, through use of such trade name American Toy Works, or in any other manner or through any other means or device, that respondent is a manufacturer of toys.
3. Representing that the boxes of crayons sold and distributed by respondent contain any definite number of crayons other than the number actually so contained in said boxes.

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.