

IN THE MATTER OF
SINNOCK & SHERRILL, INC.

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

Docket 3421. Complaint, May 12, 1938—Decision, Jan. 10, 1939

Where a corporation engaged in manufacture of emblem jewelry and of penknives which were made in such a manner as to cause a thin gold shell or covering to be placed upon or over, and to conceal completely, a base metal filling, so that in completed product entire casing or covering or handle of the knife, with exception of skeleton holding blades, appeared to be of gold, as marked thereon as below indicated, and in sale and distribution of said knives in commerce among other States, along with other manufacturers of gold penknives who advertise and sell their products in commerce as aforesaid and in the District of Columbia, and who do not in any manner misrepresent their products, and with others who make penknives of part gold and part base metal mountings and sell and ship their products in commerce as aforesaid and disclose the true composition and character of their said products, and all of whom suffer loss in trade as result of its methods of doing business as below set forth, and, as thus engaged, in competition with others engaged in sale and distribution of like or similar products—

Caused figures and letters 10K and 14K to be stamped, branded, or imprinted upon the bails of its aforesaid penknives, manufactured as above set forth, and thereby represented to members of purchasing public and purchasers that entire casing or mountings thereof were composed wholly of gold of the fineness in quality represented thereon, facts being they were not thus composed as above set forth, in accordance with practice of jewelry manufacturers generally and, more specifically, manufacturers of solid gold penknives, of using such figures and letters to indicate mountings consisting solely of gold of 10K or 14K fineness respectively, nor in accordance with the significance of said figures and letters, as understood by substantial portion of retail dealers and members of purchasing public, as descriptive of the process of manufacture of solid gold knives, and as designating the quality, quantity, character, and fineness of the gold thereon, and as serving as representations to the general purchasing public that the mountings of said knives thus marked or branded consisted of gold of the fineness indicated;

With result that substantial portion of such dealers and members of such public were misled by its said methods and representations into erroneous and mistaken belief that its said knives were solid gold of the thickness, fineness, and character indicated by the mounting or handle thereof, and including the brass or other base metal filler, and of thereby placing in the hands of unscrupulous retailers instrument and means whereby they might perpetrate fraud upon substantial portion of such public through enabling them falsely to represent, offer, and sell its said products as superior or equal to other manufacturers' penknives properly branded as to gold content and fineness, and with tendency and capacity to mislead

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and deceive substantial portion of said public into erroneous belief that said representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced as aforesaid, that number thereof bought substantial quantity of said knives and trade was unfairly diverted from others engaged in sale of similar products among the States, and who truthfully advertise and represent the same:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Morton Nesmith for the Commission.

Goldman & Frier, of New York City, for trustee of respondent.

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 Sinnock & Sherrill, Inc., a corporation, 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. The respondent Sinnock & Sherrill, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and stock-room located at 15 Maiden Lane in the city of New York, State of New York. Respondent owns, operates, and controls a manufacturing plant located in the city of Newark, State of New Jersey. Respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing emblem jewelry and penknives and in selling and distributing such products in commerce as hereinafter set out principally to the retail trade.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said emblem jewelry and penknives, when sold, to be transported from its principal place of business in New York and from its factory in New Jersey to purchasers thereof located at various points 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 emblem jewelry and penknives so sold and distributed 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 said business, the respondent is now, and has been in substantial competition with other indi-

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viduals, firms, and corporations engaged in the business of manufacturing emblem jewelry and penknives and in selling and distributing such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The respondent, Sinnock & Sherrill, Inc., in the manufacture of its penknives first purchases from cutlery manufacturers or others, the skeletons. A completed knife consists of the skeleton, together with the mountings. The skeleton of a knife consists of the blades with the brass or steel sides riveted to and enclosing them. The mounting of a knife is that part which is attached to the sides of the skeleton to make the completed knife. The respondent, in its manufacture of mountings for its penknives, causes a thin gold shell or covering to be placed upon and over a base metal filling (usually brass) and then causes the thin gold shell or covering, together with the filling, to be attached to or riveted upon the skeleton of the knife. The thin gold shell or covering is so folded over the entire metal or brass filling, including the edges thereof, that in the finished product of respondent the metal or brass filling is completely concealed.

PAR. 5. Jewelry manufacturers generally, and more specifically, the manufacturers of solid gold penknives, have generally adopted the use of certain terms in describing solid gold penknives and the figures and letters 10K and 14K when used as a designation on penknives indicate that the mountings thereof consist solely of gold of 10K or 14K fineness respectively. The figures and letters 10K and 14K so used are descriptive of the process of manufacture of solid gold knives and designate the quality, quantity, and character of the gold thereon and serve as representations to the general purchasing public that the mountings of said knives so branded consist of gold of the fineness indicated. The purchasing public so understand said custom and representations made thereby.

As a means of inducing individuals, firms and corporations to purchase its knives the respondent caused and still causes the figures and letter 10K and 14K to be stamped, branded or imprinted upon the bails of said knives. Respondent thus represents to members of the purchasing public that the mountings of its said penknives are composed wholly of gold of the fineness and quality represented.

PAR. 6. In truth and in fact the respondent's penknives so marked, branded, or designated as 10K or 14K do not have mountings composed wholly of gold of the character and quantity indicated. The only gold therein consists of the thin outer shell or covering which is placed over and which conceals the metal or brass filling.

PAR. 7. There are a number of competitors of respondent who manufacture and sell in commerce as herein described penknives, the mountings of which are marked or stamped with the symbols "10K or 14K" respectively, and which said mountings are in fact composed wholly of the required number of parts or proportions of gold as indicated by said brands, stamps, or symbols used generally in the jewelry trade to denote or designate the percentage of gold or number of parts or proportions of gold in said product.

PAR. 8. Respondent's acts and practices in stamping or imprinting the figures and letters 10K and 14K on the bail of its product and the representations made thereby, have a tendency and capacity to mislead and deceive, and were intended and calculated to, and do, mislead and deceive the retail trade and the purchasing public into the erroneous belief that the complete or entire mounting of respondent's knives consists solely of 10K or 14K gold respectively and into the purchase of respondent's products on account of such beliefs so induced. Said practices of respondent also place in the hands of unscrupulous retailers an instrument and means whereby said retailers may perpetrate a fraud upon a substantial portion of the purchasing public by enabling them to falsely represent, offer for sale and sell respondent's said penknives as being superior to other articles not so branded and as being equal to penknives properly so branded as to gold content and fineness.

PAR. 9. The aforesaid acts and practices of respondent have a tendency and capacity to, and do, cause trade to be diverted unfairly to respondent and the dealers in its products from those competitors of respondent referred to in paragraph 7 who do not misrepresent the character, quality or value of their respective products. As a consequence thereof, injury has been done 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.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all 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 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 May 12, 1938, issued, and on May 31, 1938, served its complaint in this proceeding upon respondent, Sinnock & Sherrill, Inc., charging it with the use of unfair methods

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of competition and unfair and deceptive practices and acts in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed its answer thereto admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Sinnock & Sherrill, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal office, storeroom, and place of business at No. 15 Maiden Lane, New York City, State of New York. It maintains a factory or manufacturing plant at 120 South Street, Newark, N. J. Respondent has been for more than 3 years last past engaged in the business of manufacturing and selling emblem jewelry and penknives, which said emblem jewelry and penknives have been manufactured at its manufacturing plant located in the city of Newark, State of New Jersey, during all of which time it has been selling and distributing such products in commerce among and between various States of the United States other than the States of New York and New Jersey, in which the respondent's principal office and manufacturing plant are located and from both of which shipments are made. In the course and conduct of its business respondent has been in competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business respondent, in the sale of its products and for the purpose of inducing the public to purchase said products, has used, caused, and still causes, the figures and letters 10K and 14K, indicating the fineness of the gold, to be stamped, branded or imprinted upon the bails of said penknives, which penknives have been manufactured in such manner as to cause a thin gold shell or covering to be placed upon or over a base metal filling (usually brass) and then causes the thin gold shell or covering, together with the filling, to be attached to or riveted upon the skeleton of the knife. The said gold shell or covering is so folded and

impressed over the entire metal or brass filling including the edges thereof, that in the finished products of respondent the metal or brass filling is completely concealed, in such manner as to make it appear that the entire casing or covering or handle of the penknife with the exception of the skeleton holding the blades is of the 10K or 14K gold which is stamped, branded or imprinted upon the bails of the said knives as set forth above. Respondent thus represents to the members of the purchasing public and purchasers that the entire case or mountings of its said penknives are composed wholly of gold of the fineness and quality represented thereon.

Jewelry manufacturers generally and more specifically the manufacturers of solid gold penknives, have generally adopted the use of certain terms in describing solid gold penknives, and the figures and letters 10K and 14K when used as a designation on penknives indicate that the mountings thereof consist solely of gold of 10K and 14K fineness, respectively. The figures and letters 10K and 14K so used are descriptive of the process of manufacture of solid gold knives and designate the quality, quantity, character, and fineness of the gold thereon and serve as representations to the general purchasing public that the mountings of said knives, so marked or branded, consist of gold of the fineness indicated. The representations by the respondent are similar to those generally used in the trade.

PAR. 3. A substantial portion of retail dealers and members of the purchasing public in conformity with the custom of the manufacturers and jewelry trade in general, understand and believe that penknives offered for sale and sold by the jewelry trade and other stores, on the mountings or bails of which are stamped or imprinted the letters and figures 10K and 14K to be a representation that the said mountings consisting of the entire encasing of the skeleton of said penknives is of 10K or 14K gold and so understanding said custom, and based upon the method of manufacture and the representations of respondent to import and indicate that the penknives manufactured and sold by it were (except the skeleton and blades) solid gold penknives of the fineness and character indicated by the markings 10K and 14K on the mountings or bails, a substantial portion of said retail dealers and members of the purchasing public were misled by the methods and representations of respondent into the erroneous and mistaken belief that respondent's penknives were solid gold of the thickness, fineness, and character indicated by the mounting or handle of same including the brass or other base metal filler.

The respondent's method and manner of manufacturing, representing, and selling said penknives is false, misleading, and untrue. The

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said penknives or the mountings thereof are not gold of 10 or 14 karat fineness or quality as indicated, but consist of a mounting composed for the most part of a base metal and so constructed as to appear as solid gold when in fact only a very small part of said mounting is solid gold.

PAR. 4. There are other manufacturers of gold penknives who advertise and sell and ship their products and are now selling and shipping their products in commerce among and between various States of the United States and the District of Columbia, who do not in any manner misrepresent their products and there are other manufacturers who make penknives of part gold and part base metal mountings, who sell and ship their products in commerce as above who disclose the true composition and character of their penknives, all of whom suffer a loss in trade as a result of respondent's methods of doing business.

The acts, practices, and representations of the respondent place in the hands of unscrupulous retailers an instrument and means whereby said retailers may perpetrate a fraud upon a substantial portion of the purchasing public enabling them to falsely represent, offer for sale and sell respondent's said penknives as superior or equal to other manufacturers' penknives properly branded as to the gold content and fineness.

PAR. 5. The respondent's acts and practices in stamping or imprinting the figures and letters 10K and 14K on the bail of its penknives and the representations made thereby in offering for sale and selling its penknives were and are calculated to, and had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further as a direct consequence of such mistaken and erroneous belief, induced by said representations of respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said penknives with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale of penknives, who ship their said penknives from the States where manufactured into and among other States of the United States and who truthfully advertise and represent their products.

CONCLUSION

The aforesaid acts, representations, and practices of respondent, Sinnock & Sherrill, Inc., have been and are, 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it 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, Sinnock & Sherrill, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate, or other device, in connection with the manufacture, offering for sale, sale, and distribution of its penknives in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Marking or branding its penknives having an outer shell or covering of gold and an inner concealed sheet or filling of base metal with any word, marks or figures indicating gold fineness so as to import or imply that the entire filling and shell of the handle of said penknives with the exception of the skeleton are gold.

2. Marking or stamping any marks or figures on its penknives indicating the fineness of gold of which any part or parts of said penknives are made without correctly indicating the specific part or parts that are so composed.

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

LA PERLA VINEYARD COMPANY AND HARRY EX,
DOING BUSINESS AS S. GOLDENBURG & COMPANY,
RAMSHEAD PRODUCTS COMPANY AND RAMSHEAD
DISTILLING COMPANY, AND AS PRESIDENT OF LA
PERLA VINEYARD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3433. Complaint, May 21, 1938—Decision, Jan. 10, 1939*

Where a corporation engaged in purchasing, processing, bottling, and distributing wines at wholesale to purchasers in other States, and in substantial competition with others engaged in purchasing, processing, and bottling wines, and also with those who own, operate, and control vineyards and manufacture wines from grapes grown therein and sell and distribute their said products in commerce among the States and in said District, and including among competitors aforesaid, thus owning, operating, and controlling vineyards and manufacturing wines from grapes therein, those who use term "vineyard" in their corporate or trade name and in their advertising literature, and those likewise engaged only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business—

- (a) Represented to vendees and ultimate consuming public, through use of word "vineyard" in its corporate name, on letterheads, invoices, and labels attached to bottles in which its wines were offered and sold, and in various other ways, that it was the producer and manufacturer of such products, facts being it neither owned, operated, nor controlled any vineyard, nor made any wine, but purchased its said products in the open market and bottled same on its premises; and
- (b) Represented, through statements appearing upon its stationery and in various other ways, that it owned and operated the famous La Perla Vineyards at St. Helena, Calif., facts being it never at any time owned, operated, or controlled said long well-known vineyard with its 200 acres in grapes and winery thereon;

With effect of misleading and deceiving purchasers of its said wines into the erroneous and mistaken belief that in buying products from it they were dealing with a concern which owned and operated its own vineyards and made therefrom wines which it offered and sold, and were dealing with owners and operators of aforesaid La Perla Vineyards, and that in thus buying its said wine, as from supposed owners and operators, they were gaining saving in middleman's cost, and other benefits, as commonly believed among wholesalers, retailers, and purchasing public, which associate with such direct purchase superior grade of product, considerable saving in price, and other advantages; and

Where an individual engaged as wholesaler and retailer of wines and liquors, and president of aforesaid corporation, as of second company, and in direct control of the business policies and practices of both; and said second