

Syllabus

IN THE MATTER OF
K & K SUPPLY COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3454. Complaint, June 11, 1938—Decision, Mar. 21, 1939*

Where a corporation engaged in importing, and in buying from local sources, bicycles and bicycle frames, parts, and accessories, and in selling and distributing such products and, as thus engaged, in (1) importing from Japan bicycle parts, accessories, and frames upon which were marked name of country of origin and, in many cases, upon which were set forth, stamped, or marked by decalcomania in said country, words "Made in Japan," in accordance with tariff law and custom regulations of the United States requiring disclosure of source of origin, and in (2) selling and distributing, as aforesaid, bicycle frames and parts and, after assembly, complete bicycles and accessories to purchasers in the various States and in the District of Columbia from its place of business in New York, and including among such products made in Japan, completely assembled bicycles there made and others with frames and essential parts of Japanese origin, to which had been added some American parts, and (3) possessed of number of name plates or emblems, purchased by it from New York manufacturer of such products who had made same for American manufacturer and for wholesale distributor upon order, for use on American-made bicycles;

In selling its Japanese-made bicycle frames, parts and accessories, and bicycles composed of frame and other parts of Japanese origin combined with some American parts, and for purpose of inducing public to purchase such frames and bicycles—

- (a) Placed thereon name plates of American manufacturers and distributors in such manner as to completely cover up notice of origin denoted by words "Made in Japan" or other designation placed thereon in said country; and
- (b) Removed, in many instances, notice of origin denoted by words "Made in Japan" placed thereon as aforesaid, and attached to such bicycles and frames name plates or emblems of American manufacturers, over part on said frames from which notice of origin denoted by words "Made in Japan," had been erased or otherwise obliterated; and
- (c) Furnished, in other instances, name plates or emblems of said American manufacturer, or made for use by New York distributor on American-made bicycles, to customers or dealers to whom it had sold and shipped bicycles and bicycle frames, and by whom such name plates or emblems were placed upon such Japanese bicycle frames in exactly same manner in which said corporation had placed name plates or emblems on bicycles which it had, in many instances, sold and shipped from its place of business to the dealers;

With result of thereby placing in the hands of its retail dealer customers instruments and means of deceiving and misleading public, and with effect of deceiving and misleading prospective purchasers of such bicycles and members of purchasing public, on part of substantial portion of which there is decided preference for such products made in the United States over those

Complaint

28 F. T. C.

made in foreign countries and imported, because of superior quality of former over latter, into erroneous belief that products in question, made in Japan and imported, with source of origin thereon in all cases, were product of American manufacturers, and with result, as direct consequence of such mistaken and erroneous belief induced by such representations, acts, and practices, that substantial portion of said public was induced to purchase such bicycles and frames and purchased substantial number thereof from it and its dealers, and trade was unfairly diverted from others likewise engaged in sale and shipment in commerce in the various States of such products, frames, and accessories, and who truthfully represent the same and do not in any manner use any misrepresentation calculated to deceive trade or purchasing public; to the injury of competition in commerce; and

- (d) Represented as of American manufacture said bicycles or frames which it, in many instances, imported from Japan and, in other instances, purchased from other importers, and which (1) in all instances at time of receipt by it disclosed source of origin by name plate or by decalcomania placed upon head of such frames in Japan, and which (2) at time of sale by it to dealers or by dealers to general public could not be distinguished from those of American origin:

Held, That such acts, practices, and representations 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. Merle P. Lyon for the Commission.

Mr. Jacques D. Del Monte, of New York City, for 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 K & K Supply Co., Inc., a corporation, hereinafter referred to as the 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. Respondent, K & K Supply Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 146 Chambers Street in the city of New York, State of New York. Respondent is now, and has been for many years last past, engaged in the business of buying, selling, and distributing bicycles and bicycle parts and accessories. In the course and conduct of its business respondent imports bicycle frames and bicycle parts manufactured in Japan and sells and distributes said products to purchasers thereof in the various States of the United States. There is now,

and has been at all times mentioned herein, a course of trade and commerce by respondent between and among the various States of the United States, in said bicycle frames and parts manufactured in Japan.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with firms, partnerships, and individuals likewise engaged in the sale and distribution of bicycles, bicycle frames, and parts 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 its said business, respondent assembles said bicycle frames and parts imported by it from Japan together with other parts manufactured in the United States and sells and ships the completed bicycles thus assembled to purchasers thereof located in various States of the United States other than the State from which shipment is made.

Section 304 of the United States Tariff Act of 1930, in force now and at all times herein referred to, governing the importation of foreign-made goods, requires imported bicycle frames to be properly marked at the time of importation to indicate the country of origin. The bicycle frames imported by respondent from Japan in many instances bore no name plates, and the words "Made in Japan" were marked on the head of the frame by decalcomania or other similar process which could easily be covered, obliterated, or removed so as to escape the notice and attention of prospective purchasers.

At various times during the year 1936, respondent purchased large quantities of brass name plates or bicycle emblems bearing the name and insignia of the Shapleigh Hardware Co., St. Louis, Mo.; and in many instances respondent placed said brass name plates or emblems on the imported bicycle frames in such manner and with such effect as to cover or conceal the words "Made in Japan" placed thereon by decalcomania mark pursuant to the provisions of the Tariff Act of 1930 heretofore set forth. In many other instances, where said brass name plates or emblems were of insufficient size to cover the mark "Made in Japan," said mark was erased or otherwise obliterated or removed by respondent. Said brass name plates or emblems are oval in shape, with a large letter "S" and the words "Shapleigh Special," "Shapleigh Hardware Co., St. Louis, U. S. A.," thereon.

PAR. 4. The use by respondent of the name plates or emblems bearing the words "Shapleigh Special," "Shapleigh Hardware Co., St. Louis, U. S. A." on the frames of the bicycles offered for sale and sold by it, served, and now serves, as a representation to the purchasing

public that said bicycles or bicycle frames were and are the products of the Shapleigh Hardware Co. of St. Louis, Mo.; and the obliteration, removal, or concealment by respondent of the mark "Made in Japan" on said bicycle frames as hereinabove described, served and now serves as a representation to the purchasing public that said bicycles or bicycle frames were and are manufactured in the United States; when in truth and in fact said bicycles or bicycle frames were and are neither products of the Shapleigh Hardware Co. of St. Louis, Mo., nor products manufactured in the United States.

PAR. 5. A substantial portion of the purchasing public has indicated and has a decided preference for bicycles and bicycle frames and parts manufactured in the United States over such articles manufactured in foreign countries and imported into the United States.

PAR. 6. There are now and have been competitors of respondent selling and distributing bicycles and bicycle frames and parts in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the nature, character, origin, or manufacturer or distributor of the products offered for sale and sold by them.

PAR. 7. The use by respondent of a name plate or emblem of the Shapleigh Hardware Co. of St. Louis, Mo., on the frames of the bicycles or bicycle frames offered for sale and sold by it, and the obliteration or concealment in any manner whatsoever of the words "Made in Japan" or other words to indicate that said articles are imported and not of domestic manufacture, had and has a capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of its bicycles and bicycle frames into the erroneous belief that said articles are the products of the Shapleigh Hardware Co. of St. Louis, Mo., and that they are of domestic manufacture.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been and is induced to purchase bicycles and bicycle frames from respondent, and thereby trade has been, and is, diverted unfairly to respondent from competitors named in paragraphs 2 and 6 hereof. As a result 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.

PAR. 8. 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, under date of June 11, 1938, issued and served its complaint in this proceeding upon the respondent, K & K Supply Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the said act.

After the issuance of said complaint, the respondent having entered its appearance by its attorney, Jacques D. Del Monte, Esq., of 80 Wall Street, city of New York, N. Y., respondent thereafter filed its answer to the complaint in which it in part admitted and in part denied the various allegations of the complaint. Thereafter hearings were had and evidence was thereupon introduced in support of the allegations of the complaint and on behalf of the respondent before John J. Keenan, a trial examiner of the Federal Trade Commission, theretofore duly appointed. The evidence was duly recorded and filed in the office of the Commission. A brief was filed on behalf of the Commission in support of the allegations in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, answer and evidence adduced at said hearings, and the Commission having duly considered the same and now being 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. The respondent, K & K Supply Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 146 Chambers Street in the city of New York, State of New York. Respondent is now, and has been for many years last past, engaged in the business of importing, buying from local sources, selling, and distributing in commerce bicycles, bicycle frames, parts, and accessories. In the course and conduct of its business, respondent imports from Japan bicycle frames and bicycle parts and accessories manufactured in Japan; the said bicycle frames are marked with the name of the country of origin and in many instances said bicycle frames carry on said frames, stamped or marked by decalcomania, the words "Made in Japan" which were placed thereon in Japan in accordance with the Tariff Law and Customs Regulations of the United States requiring disclosure of the source of origin. Respondent sells and distributes said bicycle frames, bicycle parts and, after assembly, complete bicycles and accessories to purchaser thereof in

Findings

28 F. T. C.

and among various States of the United States and the District of Columbia, from its place of business at 146 Chambers Street, in the city of New York, State of New York. There is now and has been at all times mentioned herein a continuous course of trade in commerce by respondent between and among various States of the United States in said bicycle frames, bicycle parts, and accessories manufactured in Japan, completely assembled bicycles manufactured in Japan and others with the frame and essential parts of Japanese origin, to which some American parts have been added.

PAR. 2. In the course and conduct of its business, respondent purchased from a manufacturer of name plates or emblems in New York City, N. Y., a large quantity of name plates or emblems which said manufacturer had made for the Shapleigh Hardware Co. of St. Louis, Mo., and a large quantity of other name plates or emblems bearing the name "Motor Bike" thereon which had been made for a wholesale distributor in New York City, N. Y. All of the said name plates or emblems were manufactured upon order for use on American-made bicycles.

The respondent, in the sale of its Japanese-manufactured bicycle frames, bicycles, parts, and accessories, and bicycles composed of frames and other parts of Japanese origin combined with some American parts and for the purpose of inducing the public to purchase said bicycle frames and bicycles, placed thereon name plates of American manufacturers and distributors in such manner as to completely cover up the notice of origin denoted by the words "Made in Japan" or other designation placed thereon in Japan; in many instances respondent has removed the notice of origin denoted by the words "Made in Japan" placed thereon by decalcomania, and attached to said bicycles and bicycle frames the name plates or emblems of American manufacturers over the part on the said bicycle frames from which the notice of origin denoted by the words "Made in Japan" had been erased or otherwise obliterated; in other instances, respondent had furnished its customers or dealers to whom it had sold and shipped bicycles and bicycle frames name plates or emblems of the Shapleigh Hardware Co. or the plates or emblems manufactured for use by a New York distributor on American-made bicycles, which name plates or emblems were placed upon the Japanese bicycle frame by the said retail dealers in exactly the same manner as the respondent had placed the name plates or emblems on the bicycles which it had, in many instances, sold and shipped from its place of business to the dealers; all of the said bicycle frames and bicycles upon which the name plates or emblems were placed by the respondent or its dealers had been manufactured in Japan and im-

ported into the United States with the source of origin on the same. The acts and practices hereinbefore set forth placed in the hands of its retail dealer customers instruments and means of deceiving and misleading the public.

PAR. 3. A substantial portion of the purchasing public has indicated and has a decided preference for bicycles and bicycle frames and parts manufactured in the United States of America because of their superior quality over similar articles manufactured in foreign countries and imported into the United States.

PAR. 4. The use by the respondent of the name plates or emblems of Shapleigh Hardware Co. of St. Louis, Mo., or other American manufacturers representing that the said imported bicycles to which they were attached were products of an American manufacturer or distributor and the obliteration or concealment by the respondent of the Japanese notice of origin denoted by the words "Made in Japan" or other words indicating the Japanese manufacture and origin and the placing thereon of the American manufacturers' name plates or emblems by respondent has a capacity to, and tendency to, and did and does deceive and mislead members of the purchasing public and prospective purchasers of said bicycles into the erroneous belief that said bicycles are the product of American manufacturers; and, as a direct consequence of such mistaken and erroneous beliefs induced by the representations, acts, and practices of respondent as aforesaid, a substantial portion of the purchasing public has been and is induced to purchase bicycles and bicycle frames and have purchased a substantial number of said bicycles and bicycle frames from the respondent and its dealers. As a consequence of the acts and practices of respondent, trade has been unfairly diverted from other individuals, firms, partnerships, and corporations likewise engaged in the sale and shipment in commerce into and among the various States of the United States of bicycles, bicycle frames, and accessories who truthfully represent their products and who do not in any manner use any misrepresentation calculated to deceive the trade or the purchasing public; and, as a result of the acts and practices of respondent, 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 the District of Columbia.

PAR. 5. In the course and conduct of respondent's business it represented the said bicycles or bicycle frames to be of American manufacture, whereas, in truth and in fact the said bicycles were not of American manufacture, the same having been manufactured in Japan and, in many instances, imported by the respondent from Japan and in other instances purchased by it from other importers in the United

Order

28 F. T. C.

States. And on all of said bicycles at the time of the receipt by respondent the source of origin was disclosed either by a name plate or by decalcomania placed upon the head of said bicycle frames in Japan, and when offered for sale by the respondent or its dealers to the general public the said general public had no means of discovering or knowing that the said bicycles or bicycle frames were of Japanese origin and could not be distinguished from bicycles of American origin.

CONCLUSION

The aforesaid acts, practices and representations of the respondent, K & K Supply Co., Inc., a corporation, have been, and are, to the prejudice and injury of the public and 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, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief of counsel for the Commission in support of the complaint (no brief having been filed on behalf of the respondent and no oral arguments having been requested or made), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, K & K Supply Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of bicycles, bicycle frames, parts, and accessories in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly, from:

1. Representing, by the use of misleading, fictitious, or obsolete nameplates or emblems, or in any other manner, that the bicycles sold and distributed by the respondent are wholly of American manufacture, when such products, or the frames thereof, or a substantial portion of the parts thereof, are of foreign manufacture.

2. Causing the brands or marks on imported bicycle frames or other parts, or other similar products, which indicate the foreign origin or manufacture of such merchandise, to be removed, erased,

1195

Order

or concealed so as to mislead or deceive purchasers and prospective purchasers with reference to the foreign origin or manufacture thereof, unless the removal or erasure or concealment of said brands or marks is necessary to the further manufacture or processing of said merchandise.

3. Furnishing to dealers or distributors any brands, emblems, or any other devices which enable such dealers or distributors to cover up, erase or conceal brands or marks indicating foreign origin of bicycles, bicycle frames, or other parts, or other similar products, or which enable such dealers or distributors to represent bicycles, bicycle frames, or other parts, or other similar merchandise of foreign manufacture as being of American manufacture.

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

CHARLES E. KNAPP TRADING AS MODERN AMERICAN CO.; MODERN AMERICAN CORPORATION; BLANCHE WYNNE TRADING AS MODERN AMERICAN CO.; AND A. J. RIVENBARK, JR., CLEO SAMDAHL AND A. B. LANDRUM

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

Docket 3503. Complaint, July 20, 1938—Decision, Mar. 21, 1939

Where five individuals engaged, personally and through various agents, salesmen, solicitors, and employees, in offering, selling and distributing, under name "Modern American Encyclopedia," eight-volume reference set, together with "Quarterly Loose-Leaf Extension Service" for use in connection therewith, to purchasers in the various States and in the District of Columbia, in substantial competition with others engaged in offer, sale, and distribution of reference books, encyclopedias, and extension services of same general character in commerce among the States and in said District, and including many who truthfully represent the nature of their business and do not make to the general public such false and misleading representations as made use of by them in conduct of their said business as below set forth, and do not use deceptive and misleading sales methods as made use of by individuals aforesaid;

In soliciting, as above set forth, and in selling said books and services, under trade name "Modern American Company" or otherwise, and through various agents, solicitors and representatives whom they employed, and who (1) were authorized and directed to solicit and sell such books and services and traveled from place to place throughout the United States in so doing, and whom (2) they furnished with prospectuses, order blanks, contracts, and other literature, and who (3) on making sale, required purchaser's signature to printed order blank or contract which was transmitted to individuals aforesaid, and through whom (4) they collected, at said time, part of agreed purchase price as down payment, with balance payable on delivery or in monthly installments—

- (a) Represented, in course of their business as aforesaid, directly and through such agents, etc., and by means of said order blanks, prospectuses and other literature used and distributed as aforesaid, that said so-called "Modern American Encyclopedia" was a new, modern and up-to-date encyclopedia and reference work, facts being it was an old work and substantially the same as prior sets put out at various times from 1893 to 1933 under various other names and titles, and, while revised in certain respects in 1936, it had not been for many years and was not then modern or up-to-date reference work which in any reasonable degree met needs and requirements of purchasing and using public for reliable work of such character, and the many and rapid scientific, historical and other changes and discoveries which had occurred since 1893 and the making of the original plates, from which said so-called "Modern American Encyclopedia" was printed, rendered it practically valueless for its supposed purpose as