

Syllabus

IN THE MATTER OF

AMERICAN MERCHANDISE CO., INC., AND HARRY GREENBERG AND LEO JOSEFSBERG, DOING BUSINESS AS GREENBERG AND JOSEFSBERG AND AS AMERICAN MERCHANDISE COMPANY, G & J MANUFACTURING CO., AND G & J PRODUCTS

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

Docket 2960. Complaint, Dec. 2, 1936¹—Decision, Apr. 19, 1939

Where a corporation and two partners, owners of the stock thereof and in control of its sales activities and policies as respects acts and practices below set forth, engaged, among other things, in importation of merchandise, including glove hands and thumbtacks, into the United States, and in the sale and distribution thereof to purchasers in the various other States and in the District of Columbia for resale to purchasing public, in substantial competition with others engaged in sale and distribution of such products—

- (a) Removed from glove hands, quantities of which they had thus imported from Japan and which, at time of entry, bore, in conformance with applicable laws of the United States, words "Made in Japan" or "Japan," and sold said products, to which they had attached cuffs made in the United States, with no words or marks thereon indicating foreign origin of said product to purchasers, by whom said gloves were resold to members of purchasing public, not informed by brand or mark as to origin thereof, and substantial number of members of which understand and believe that, absent indication of foreign origin on article of merchandise, such article was made or manufactured in the United States; and
- (b) Removed from their packages, upon which were set forth, in conformance with applicable laws of the United States, words "Made in Germany" or "Germany," said thumbtacks, and sold same repacked in new containers with no words or marks thereon indicating said products' foreign origin to purchasers, by whom such products were resold to members of purchasing public, not informed by brand or mark as to said thumbtacks' German origin, and substantial number of members of which understand and believe that, absent indication of foreign origin on article of merchandise, such article was made or manufactured in the United States;

With effect of misleading and deceiving members of purchasing public in various States and in said District into erroneous and mistaken belief that such merchandise was made in the United States, for purchase of which there is a preference on part of substantial number of dealers in said products and articles and members of purchasing public in the various States, and into buying substantial quantities of such merchandise because of such erroneous and mistaken belief, and with result that trade in commerce among the various States and in said District was unfairly diverted to them from competitors aforesaid who truthfully brand, represent and mark their respective products:

¹ Amended.

Complaint

28 F. T. C.

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. John N. Wheelock for the Commission.

Tilson, Dunning, Stanley & McCuen, of Washington, D. C., for respondents.

Krause, Hirsch & Levin, of New York City, for trustee in bankruptcy for American Merchandise Co., Inc.

AMENDED 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 American Merchandise Co., Inc., a corporation, and Harry Greenberg and Leo Josefsberg, copartners, doing business under the firm name Greenberg & Josefsberg, and under the trade names American Merchandise Co., G & J Manufacturing Co., and G & J Products, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this, its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Merchandise Co., is a corporation, incorporated on or about June 18, 1933, under the laws of the State of New York, and having at all times since its incorporation its usual and principal place of business in the city of New York at the same place hereinafter mentioned as the place of business of the other respondents. At all times since the incorporation of the American Merchandise Co., Inc., the respondents Greenberg and Josefsberg are and have been the owners of all the shares of its capital stock and in control of its management and operation.

PAR. 2. Respondents, Harry Greenberg and Leo Josefsberg, are and have been copartners doing business under the firm name, Greenberg & Josefsberg, at all times since on or about January 21, 1930, in the city and State of New York and now having a place of business at 27-33 West Twenty-third Street, in said city. During said times the respondents, as copartners, also are and have been doing business at their said place of business under the trade names, American Merchandise Co., G & J Manufacturing Co., and G & J Products.

PAR. 3. During all of the times above mentioned, the respondents are and have been engaged, among other things, in the importation

of merchandise into the United States, including gloves and thumbtacks, and in the business of the sale of such merchandise, including the gloves and thumbtacks mentioned and referred to in paragraph 6 hereof, to individuals, firms, and corporations, purchasers of the merchandise, dealers therein for resale to the public, located in the various States of the United States other than New York or the State of origin of the shipment.

The respondents have caused and still cause the said merchandise, when so sold by them, to be transported from the State of New York, or from the State of origin of the shipment, to, into, and through other States and the District of Columbia, to the purchasers thereof, located in said other States and the District of Columbia.

PAR. 4. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States, are and have been engaged; some of them in the business of the domestic manufacture and sale of similar merchandise including gloves and thumbtacks; and others in the business of the importation and sale of such merchandise to dealers for resale to the public, purchasers thereof, located in the District of Columbia and the various States of the United States. The sellers, respectively, have caused the merchandise including gloves and thumbtacks, when so sold by them, to be transported from the State of the seller or from the State of origin of the shipment, to, into, and through other States and the District of Columbia to the purchasers located in said other States and the District of Columbia.

PAR. 5. During all the times above mentioned and referred to, the respondents are and have been in substantial competition in interstate commerce in the sale of the merchandise above referred to, including gloves and thumbtacks, with the other individuals, firms, and corporations, referred to as sellers in paragraph 4 hereof.

PAR. 6. During all the times above mentioned, the respondents caused quantities of gloves and thumbtacks to be imported from Japan and Germany, respectively, and at the time of the entry of the same into the United States the gloves were, all of them, marked "Made in Japan" or "Japan," and the packages or containers of the thumbtacks were, all of them, marked "Made in Germany" or "Germany," indicating that the country of origin of the gloves was Japan and that Germany was the country of origin of the thumbtacks.

After the gloves and thumbtacks were entered in the United States, the respondents caused the words or marks indicating their foreign origin to be removed therefrom and thereafter sold the gloves and thumbtacks, as set forth in paragraph 3 hereof, to the dealers referred

to in said paragraph 3, without any words or marks thereon indicating foreign origin, and caused them to be offered for sale and resold by the dealers to members of the public in that condition, without informing the dealers or the public to whom they were resold that the gloves and thumbtacks were the products of foreign countries.

PAR. 7. Prior to and during all the times above mentioned, a substantial number of dealers in merchandise, and of the public, in the United States had a preference, in purchasing articles of merchandise, for articles of merchandise of United States origin and it has been required by law that articles of merchandise of foreign origin imported into the United States shall be marked, stamped, branded, or labeled in legible English, in a conspicuous place, in such manner as to indicate the country of origin.

The offering for sale and the sale by the respondents of gloves and thumbtacks made in foreign countries without any words or marks thereon indicating their foreign origin, constituted a representation by the respondents that the gloves and thumbtacks, above referred to, offered for sale, and sold by respondents, were made in the United States. The said representations by the respondents were untrue and they had the capacity and tendency to mislead and to deceive dealers and members of the public, purchasers of gloves and thumbtacks, and dealers and members of the public were misled and deceived thereby into the belief that they were true, and in reliance upon such belief into purchasing the respondents' said gloves and thumbtacks in preference to those made in the United States and sold by was thereby diverted to respondents from their competitors.

PAR. 8. The above acts and things done and caused to be done by the respondents were and are, each and all, to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the meaning and intent 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 the Federal Trade Commission Act, the Federal Trade Commission on the 2d day of December 1936, issued and served its amended complaint in this proceeding upon said respondents, American Merchandise Co., Inc., and Harry Greenberg and Leo Josefsberg, copartners doing business under the firm name of Greenberg and Josefsberg and under the trade names of American Merchandise Co., G & J Manufacturing Co., and G & J

1465

Findings

Products, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 23d day of December 1936, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, 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. Respondent American Merchandise Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York and having its office and principal place of business at 27-33 West Twenty-third Street, in the city of New York, State of New York. The said corporation was incorporated on or about the 18th day of June 1933. At all times since the incorporation thereof, the respondents, Harry Greenberg and Leo Josefsberg have been the owners of all the shares of capital stock of said corporation and have controlled the sales activities and policies of said corporation with respect to the acts and practices herein set forth.

PAR. 2. Respondents Harry Greenberg and Leo Josefsberg are, and have been, copartners since on or about January 21, 1930, doing business under the firm name Greenberg and Josefsberg and under the trade names American Merchandise Company, G & J Manufacturing Co., and G & J Products, and having their office and principal place of business at 27-33 West Twenty-third Street, in the city of New York, State of New York.

PAR. 3. During all the times mentioned herein, the respondents have been engaged, among other things, in the importation of mer-

Findings

28 F. T. C.

chandise, including glove hands and thumbtacks, into the United States, and in the sale and distribution of such merchandise to the purchasers thereof for resale to the purchasing public. The respondents have caused such merchandise, when sold by them, to be transported from their aforesaid place of business in the State of New York, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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. 4. During all the times mentioned herein, the respondents have been 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, partnerships and corporations engaged in the business of the sale and distribution of gloves and thumbtacks.

PAR. 5. The respondents have caused quantities of glove hands to be imported from Japan into the United States and have caused quantities of thumbtacks to be imported from Germany into the United States. At the time of the entry of the same into the United States, the glove hands were marked "Made in Japan" or "Japan," and the packages containing the thumbtacks were marked "Made in Germany" or "Germany," which indicated that Japan was the country of origin of the glove hands and that Germany was the country of origin of the thumbtacks. During all the times above mentioned, it was required by the applicable laws of the United States that, at the time of the importation thereof, the said glove hands and the packages containing the said thumbtacks be so marked as to indicate the country of origin thereof.

After the respondents caused the glove hands to be imported into the United States, respondents caused the words or marks indicating their foreign origin to be removed therefrom and caused to be placed on the glove hands, cuffs made in the United States. After respondents caused the thumbtacks to be imported into the United States, the respondents caused the said tacks to be removed from the packages containing such tacks, on which was indicated the country of their origin, and caused such thumbtacks to be repacked in new packages or containers. The respondents, thereafter, sold the gloves and thumbtacks to the purchasers referred to in paragraph 3 hereof, without any words or marks on the glove hands of such gloves or on the

1465

Order

packages, containing such thumbtacks, indicating their foreign origin. The purchasers of such gloves and thumbtacks from the respondents caused such merchandise to be resold to members of the purchasing public, who were not informed by brand or mark on such merchandise, that the glove hands were made in Japan and that the thumbtacks were made in Germany.

PAR. 6. During all the times mentioned herein, a substantial number of dealers in gloves and thumbtacks and members of the purchasing public, situated in the various States of the United States, have had, and now have, a preference in purchasing gloves and thumbtacks for gloves and thumbtacks made in the United States.

PAR. 7. During all the times mentioned herein, it has been the understanding and belief of a substantial number of members of the purchasing public that unless there is indicated on an article of merchandise a foreign country as the place of origin of such merchandise, that such article of merchandise was made or manufactured in the United States.

PAR. 8. The aforesaid acts and practices of the respondents in removing said marks or brands from the glove hands and in reboxing said thumbtacks and in offering for sale and selling such merchandise without any brands or marks thereon, or the containers thereof, indicating the foreign origin of such merchandise, have the capacity and tendency to, and do, mislead and deceive members of the purchasing public situated in various States of the United States and in the District of Columbia into the erroneous and mistaken belief that such merchandise was made in the United States and into purchasing substantial quantities of such merchandise because of said erroneous and mistaken belief. As a result, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondents from their said competitors who truthfully brand, represent and mark their respective products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 amended complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between

Order

28 F. T. C.

respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents American Merchandise Co., Inc., a corporation, its officers, representatives, agents, and employees, and Harry Greenberg and Leo Josefsberg, individually and as copartners doing business under the firm name Greenberg and Josefsberg, and under the trade names of American Merchandise Company, G & J Manufacturing Co., and G & J Products, or under any other firm or trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of imported thumbtacks, glove hands, and other similar imported products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. Causing the brands or marks on imported glove hands, or other similar products, which indicate the foreign origin or manufacture of such merchandise, to be removed, erased, or concealed so as to mislead or deceive purchasers and prospective purchasers with reference to the foreign origin or manufacture thereof.

2. Causing such imported thumbtacks, or other similar products, to be removed from the containers on which are brands or marks indicating the foreign origin or manufacture of such merchandise and to be placed in containers bearing no such brands or marks so as to mislead or deceive purchasers and prospective purchasers with reference to the foreign origin or manufacture thereof.

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

Syllabus

IN THE MATTER OF

J. PALAZZOLO

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

Docket 3062. Complaint, Feb. 16, 1937—Decision, Apr. 19, 1939

Where an individual engaged in offer and sale of various toilet preparations, including one known as "Otello Water" and "L'Acqua Otello," for head, scalp, and hair; in advertising his said product in circulars and folders and in the papers and other publications circulated throughout the United States, and by various broadcasts—

- (a) Represented said "L'Acqua Otello" or "Otello Water" as not a dye, but "a preparation which gives your hair a natural color and vitality," and "a miraculous water which regenerates the hair bulb and brings back vitality," and which "rejuvenates the roots of the hairs, thus bringing back the natural color of the hair and vitality," and "restores gray hair to its natural color or vitality," facts being said product was a dye, contained in equal quantities ingredients which are constituent parts of similar hair dyes known and advertised as such, was not in any sense a miraculous water, and did not have what could be termed in any sense water as a component part, and would not rejuvenate the roots or bulbs of the hair or give hair a natural color and vitality, or restore natural color to gray hair; and
- (b) Represented that said preparation ended and destroyed dandruff and stopped it and baldness and falling hair, and restored to its natural color or vitality gray hair, facts being it was not an effective cure for falling hair and dandruff and would not end latter and baldness and stop falling hair and destroy dandruff, nor give hair a natural color and vitality, or produce any new hair, and representations made by him with respect to nature and effect of his product were false and misleading;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced by his said advertising and representations as above set forth, that substantial number of purchasing public bought substantial quantities of his said product and trade was unfairly diverted to him from others engaged in like and similar business and in sale of preparations for head and hair, and who truthfully advertise their products:

Held, That such acts and practices were all 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. George G. Lake, of New York City, for respondent.