

IN THE MATTER OF

FEE & STEMWEDEL, INC.

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

Docket 3202. Complaint, Aug. 11, 1937—Decision, May 2, 1939

Where a corporation engaged in manufacturing, assembling, and selling and distributing thermometers, hygrometers, barometers, and other weather-indicating instruments, and combinations thereof, including certain barometer models and combination model of thermometer, hygrometer, and barometer, which models it assembled through adding to barometer movements, imported from foreign country and marked "Made in Germany," dial and indicator and placing in case such movements and thereby concealing aforesaid words—

Set forth on the dial of cases enclosing, as aforesaid, said barometers, words "Made in U. S. A. by," followed by corporate name and address, and caused to be riveted on combination instrument words "Airguide Trio, Made in U. S. A. by," followed, as aforesaid, by its corporate name and address, and sold, thus assembled and marked, said instruments to jobbers and dealers, by whom they were in turn resold to public;

With capacity and tendency to deceive purchasers thereof into false and erroneous belief that barometers in question were made in the United States and by it, and with effect of misleading and deceiving members of purchasing public into such erroneous and mistaken belief and into buying its said barometers and "Airguide Trio" by reason thereof, and of thereby diverting unfairly trade in commerce to it from its competitors who truthfully advertise and represent place of manufacture and manufacturer of their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Wham & O'Brien, of Chicago, Ill., for respondent.

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 Fee & Stemwedel, Inc., a corporation, 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, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fee & Stemwedel, Inc., is a corporation having its principal office and place of business located at 4949 Pulaski Road, in the city of Chicago, in the State of Illinois. Respondent, for more than 2 years last past has been and still is engaged in assembling weather-indicating instruments known as thermometers, hygrometers, and barometers, and in the sale and distribution thereof in commerce between the State of Illinois and the several States of the United States and in the District of Columbia. When said weather-indicating instruments are sold, respondent transports same, or causes the same to be transported, from its place of business in the State of Illinois to the purchasers thereof, located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than 2 years last past, and still is, a constant current of trade and commerce in said weather-indicating instruments so assembled, sold, and distributed by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than 2 years last past has been, in substantial competition with other corporations, and with firms, partnerships and individuals engaged in the manufacture, sale and distribution of, or in the assembling and distributing of like and similar weather-indicating instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent assembles various models of said weather-indicating instruments, some being a combination of thermometer, hygrometer, and barometer, others being merely barometers. Respondent adds to the complete barometer mechanism a dial and indicator, and places the same in a case, usually made of bakelite. Upon said cases, in which have been placed said barometers provided with the dial, either as a completed instrument or in combination with thermometer and hygrometer, respondent has caused and now causes to be affixed a name plate bearing the words "Made in U. S. A. by Fee & Stemwedel, Inc. Chi." When so assembled, respondent sells and has sold said weather-indicating instruments, upon which appear the phrase "Made in U. S. A.," in commerce, as herein described, to jobbers and directly to persons by whom said instruments are to be used.

PAR. 3. There are among the public many who purchase and use thermometers, hygrometers, barometers, and other weather-indicating

instruments manufactured by manufacturers in the United States of America, in preference to similar weather-indicating instruments manufactured in or imported from foreign lands, believing that weather-indicating instruments manufactured in the United States of America by such manufacturers are superior in quality to those manufactured in and imported from any other country.

PAR. 4. The use by the respondent of the statements and representations set forth in paragraph 2 hereof have the capacity and tendency to deceive purchasers and prospective purchasers of respondent's said weather-indicating instruments into the false and erroneous belief that the barometers and other instruments are made in the United States of America and are manufactured by respondent. In truth and in fact, the barometers and other instruments have not been, and are not now made in the United States of America by respondent or any other American manufacturer, but were made, and are now made in and imported from a country other than the United States of America. Respondent is not the manufacturer of said barometers and other instruments herein referred to.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many manufacturers, assemblers, sellers, and distributors of weather-indicating instruments who truthfully advertise and represent the manufacture and country of origin of their thermometers, hygrometers, and barometers, and who do not advertise and represent that said articles are, or have been, manufactured in the United States of America by them when such is not the case.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous belief described in paragraph 4, and into the purchase of respondent's said weather-indicating instruments in and on account of such belief. Thereby trade is unfairly diverted to respondent from those competitors in commerce described and referred to in paragraph 5. As a consequence thereof, substantial injury has been, and is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. Said acts and practices of respondent 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 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 Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of August 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Fee & Stemwedel, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and the respondent filed its answer thereto. Thereafter, to wit, on February 23, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, and Joseph C. Fehr, attorneys for the Commission, before Arthur F. Thomas and John W. Addison, examiners of this Commission duly appointed for that purpose, and in opposition to the allegations of said complaint by Frank T. O'Brien, attorney for the respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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. The respondent, Fee & Stemwedel, Inc., is a corporation, organized in 1930 and existing under and by virtue of the laws of the State of Illinois. Respondent's office and principal place of business is located in Chicago, Ill. Said respondent is now, and at all times since its organization has been, engaged in the business of manufacturing and of assembling and in the sale and distribution of thermometers, hygrometers, barometers, and other weather-indicating instruments and combinations thereof. Respondent now causes, and at all times since its organization has caused, its said weather-indicating products and devices when sold, to be transported from its principal place of business in Chicago, State of Illinois, to purchasers thereof, some located in the State of Illinois, and others located in the various States of the United States, in the District of Columbia and to some foreign countries. There has been for many years last past, and still is, a constant current of trade and commerce in said weather-indicating instruments so manufactured, sold, and distributed by respondent between and among the various States of the United

States and in the District of Columbia. Respondent is now, and at all times since the date of its organization has been, in substantial competition with other corporations, persons, firms, and partnerships, likewise engaged in the manufacture and sale of thermometers, hygrometers, barometers, and combinations thereof and other weather-indicating devices, similar to those of respondent, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as herein described, the respondent, among the 14 weather-indicating instruments produced by it, has assembled 4 models of barometers, and 1 model of a combination of thermometer, hygrometer, and barometer. Respondent adds to the complete barometer mechanism a dial and indicator and places the same in a case, usually made of bakelite. In case of 3 of the barometer models, respondent has caused to be marked on the dial of the case in which have been placed said barometers the words: "Made in U. S. A. by Fee & Stemwedel, Inc., Chicago." On the combination instrument, respondent has caused a name plate to be riveted upon the instrument which reads: "Airguide Trio, Made in U. S. A. by Fee & Stemwedel, Inc., Chicago." When so assembled, respondent has sold said barometers and weather-indicating instruments, upon which appear the phrase, "Made in U. S. A." in commerce, as herein defined, to jobbers and dealers who in turn resell them to the public.

PAR. 3. There are among the public many who purchase and use weather-indicating instruments manufactured by manufacturers in the United States of America in preference to similar weather-indicating instruments manufactured in or imported from foreign countries, and there is a substantial part of the purchasing public of this country which has a preference for merchandise manufactured in this country especially when compared to goods manufactured in and imported from certain other countries into this country.

PAR. 4. The barometer movements used in respondent's instruments, as herein described, are imported from a foreign country and are marked "Made in Germany"; however, when assembled and encased in respondent's finished unit, this phrase is no longer visible. These marks made upon the instruments by respondent, to wit: "Made in U. S. A." have a capacity and tendency to deceive purchasers of respondent's weather-indicating instruments, as herein described, into the false and erroneous belief that the barometers are made in the United States of America, and are manufactured by the respondent, whereas the fact is that the barometers are not made

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in the United States of America and the respondent is not the manufacturer of said barometer movements.

PAR. 5. The aforesaid acts and practices of the respondent have the capacity and tendency to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such instruments were made by the respondent in the United States, and into the purchase of respondent's barometers and "Airguide Trio" because of such erroneous and mistaken belief. As a result thereof, 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 respondent from its said competitors who truthfully advertise and represent the place of manufacture and the manufacturer of their respective products. In consequence thereof, substantial injury is now being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Fee & Stemwedel, Inc., as herein found, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent,

¹ Said order was modified, as follows, by Commission order dated July 6, 1939:

It is ordered, That the respondent, Fee & Stemwedel, 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 barometers having movements or mechanisms of foreign origin, or manufacture whether sold as single instruments or as part of combination instruments, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by use of the term "Made in U. S. A.," or any other term indicative of American manufacture, that such barometers are wholly of American manufacture.

2. Causing the brands or marks on imported barometer movements or other parts, or on other similar products, which indicate the foreign origin or manufacture thereof to be removed, erased or concealed so as to mislead or deceive ultimate 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 products.

3. Representing, by the use of the term "Made by," or any other term of similar import or meaning, or in any other manner, that it is the manufacturer of said barometers, or is other than the assembler thereof, until and unless it actually manufactures such barometers and the movements or mechanisms thereof.

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.

testimony and other evidence taken before Arthur F. Thomas and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Joseph C. Fehr, counsel for the Commission, and by Frank T. O'Brien, counsel for the respondent, 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, Fee & Stemwedel, 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 barometers, combination thermometers, hygrometers, and barometers, and other weather indicating instruments in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by the use of the term "Made in U. S. A." or any other terms of similar import or meaning or in any other manner, that the said barometers, combination thermometers, hygrometers, and barometers or other weather indicating instruments are wholly of American manufacture, when such products, or the movements thereof, or a substantial portion of the parts thereof, are of foreign manufacture.

2. Causing the brands or marks on imported barometer movements or other parts, or on other similar products, which indicate the foreign origin or manufacture thereof to be removed, erased or concealed so as to mislead or deceive ultimate 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 products.

3. Representing that respondent manufactures barometers unless and until it owns and operates or directly and absolutely controls the plant or factory wherein said products are manufactured by it.

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.

Complaint

IN THE MATTER OF

NEW YORK PATTERN COMPANY, INC., FASHION
INSTITUTE, INC., AND JOHN HOWIE WRIGHTCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3119. Complaint, Apr. 28, 1937—Decision, May 3, 1939*

Where a corporation and an individual, who dominated and controlled the activities thereof, engaged in manufacture and sale of dress patterns under registered trade-mark "Hollywood"—

- (a) Distributed to trade throughout United States, counter display catalogs of its said "Hollywood" patterns, front cover page of which simulated, with respect both to color, varying from month to month, and design depicted thereon, consisting of five-pointed silver star superimposed on basic coloring, similar catalogs of Hollywood Pattern Company, through which, as its wholly owned subsidiary, publisher of style magazine "Vogue" had for a number of years sold, under its registered trade-mark "Hollywood," its cheaper patterns, samples of which had been distributed to chain and department stores throughout the United States and which, by end of February 1933, were on sale in practically every State of the United States; and
- (b) Informed retail dealers in paper dress patterns throughout the United States, through its agents, that patterns shown in its catalogs were the only "Hollywood" patterns on the market, and in some instances made representation that said corporation had purchased the business of said Hollywood Pattern Co. to said retail dealers, by whom aforesaid representations were communicated to the purchasing public;

With result that members of consuming public purchased "Hollywood" patterns of said representing corporation as and for the patterns of said Hollywood Pattern Co., and trade was thus diverted from latter to it:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Samuel Randel, of New York City, for respondents.

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 New York Pattern Co., Inc., Fashion Institute, Inc., corporations, and John Howie Wright, an individual, have been, and are, using unfair methods of competition in commerce, as "commerce" is defined in