

Complaint

IN THE MATTER OF

KASTAR SPECIALTY MANUFACTURING 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 3746. Complaint, Mar. 24, 1939—Decision, May 15, 1939

Where a corporation engaged in the sale and distribution at retail of automobile accessories, including gages, brake-rod supporters, gear-shift balls, and a variety of other articles, in commerce among the various States and in the District of Columbia—

Represented that it was the manufacturer of such products and owned and operated, or controlled, the plant or factory in which they were made, through use of word "Manufacturing" in its corporate name and words "Mfd. by" in statement "Mfd. by Kastar Specialty Manufacturing Company, Inc., New York, U. S. A.," on display cards, labels, individual cartons, letterheads, invoices, and other printed matter distributed throughout the United States and otherwise, facts being it did not own, operate, or control a plant or factory for the manufacture of such accessories and other similar products sold and distributed by it, but filled orders for such articles with products which were made in a plant which it neither owned, operated, nor controlled;

With tendency and capacity, through use of words "Manufacturing" and "Mfd. by," as above set forth, to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that it was the manufacturer of such products, etc., as above set forth, and to purchase its articles, on account of such mistaken and erroneous beliefs, from it as manufacturer, for dealing direct with which there has long been preference on part of substantial portion of purchasing and consuming public and dealers, as affording more reliance with reference to carrying out of contracts and lower prices, elimination of middlemen's profits, superior products, and other advantages:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Lackenbach & Hirschman, 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 Kastar Specialty Manufacturing Co., 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:

Complaint

28 F. T. C.

PARAGRAPH 1. Respondent, Kastar Specialty Manufacturing 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 offices and principal place of business at 510-18 Sixth Avenue, New York, N. Y. Respondent is now and for some time last past has been engaged in the business of selling and distributing at retail automobile accessories, including gages, brake-rod supporters, universal clamp on pedal pads, gear-shift balls, leak proof vulcanizing patches, headlight lens removers, reflector jewels, license-plate bolts, ash receivers, cigarette pack holders, and other automobile specialties, in commerce between and among various States of the United States and the District of Columbia.

Respondent causes and has caused said articles when sold to be shipped from its aforesaid place of business in New York, State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent in soliciting the sale of and in selling its products as above described, has caused display cards, labels, individual cartons, letterheads, invoices, and other printed matter to be distributed through the United States mail, and by other means, to customers and prospective customers located in States other than the State of New York, and in the District of Columbia. Certain of said printed matter includes the following statement:

Mfd. by Kastar Specialty Manufacturing Company, Inc.,
New York, U. S. A.

The use of the word "Manufacturing" in respondent's corporate name and the words "Mfd. by" preceding respondent's corporate name serves as a representation that respondent is the manufacturer of such products and that respondent owns and operates or controls the plant or factory wherein such products are made or manufactured.

PAR. 3. In truth and in fact respondent does not own and operate or control a plant or factory for the manufacture of the automobile accessories and other and similar products which it sells and distributes as hereinabove alleged, but respondent has filled and now fills orders for such articles of merchandise with products which are made or manufactured in a plant or factory which it neither owns, operates, nor controls.

PAR. 4. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers to deal direct with a manufacturer, in the belief that more reliance can be placed on a manufacturer with reference to carrying out

1633

Findings

contracts, and that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained.

PAR. 5. The use by the respondent of the word "Manufacturing" within its corporate name and the words "Mfd. by" preceding respondent's corporate name, as hereinabove alleged, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant or factory wherein such products are made and to purchase respondent's articles on account of such mistaken and erroneous beliefs.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 March 24, 1939, issued and thereafter served its complaint in this proceeding upon respondent Kastar Specialty Manufacturing Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 14, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter the proceeding regularly came on before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Kastar Specialty Manufacturing 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 offices and principal place of business at 510-18 Sixth Avenue, New York, N. Y. Respondent is now and for some time last past has been engaged in the business of selling and distributing at retail automobile accessories, including gages, brake-rod supporters, universal clamp on pedal pads, gear-shift balls, leak-proof vulcanizing patches, headlight lens removers, reflector jewels, license-plate bolts, ash

Findings

28 F. T. C.

receivers, cigarette pack holders, and other automobile specialties, in commerce between and among various States of the United States and the District of Columbia.

Respondent causes and has caused said articles when sold to be shipped from its aforesaid place of business in New York, State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent in soliciting the sale of and in selling its products as above described, has caused display cards, labels, individual cartons, letterheads, invoices and other printed matter to be distributed through the United States mail, and by other means, to customers and prospective customers located in States other than the State of New York, and in the District of Columbia. Certain of said printed matter includes the following statement:

Mfd. by Kastar Specialty Manufacturing Company, Inc., New York, U. S. A.

The use of the word "Manufacturing" in respondent's corporate name and the words "Mfd. by" preceding respondent's corporate name serves as a representation that respondent is the manufacturer of such products and that respondent owns and operates or controls the plant or factory wherein such products are made or manufactured.

PAR. 3. In truth and in fact respondent does not own and operate or control a plant or factory for the manufacture of the automobile accessories and other and similar products which it sells and distributes as hereinabove alleged, but respondent has filled and now fills orders for such articles of merchandise with products which are made or manufactured in a plant or factory which it neither owns, operates, nor controls.

PAR. 4. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers to deal direct with a manufacturer, in the belief that more reliance can be placed on a manufacturer with reference to carrying out contracts, and that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 5. The use by the respondent of the word "Manufacturing" within its corporate name and the words "Mfd. by" preceding respondent's corporate name, as hereinabove alleged, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant or factory wherein such products are made and to purchase respondent's articles on account of such mistaken and erroneous beliefs.

1633

Order

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondent Kastar Specialty Manufacturing 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 automobile accessories and similar products in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, through the use of the word "manufacturing" or any other word of similar import or meaning in its corporate name, or through any other means or device, or in any manner, that the products sold and distributed by respondent are made or manufactured by it, unless and until such respondent actually owns and operates or directly and absolutely controls a manufacturing 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.

IN THE MATTER OF

J. C. ROBERTSON, INDIVIDUALLY, AND TRADING AS
NOVELTY DISTRIBUTING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3178. Complaint, July 21, 1937—Decision, May 20, 1939*

Where an individual engaged in sale and distribution of clocks in commerce between the various States; in soliciting sale of and in selling and distributing his said product—

Furnished his customers and prospective customers with push card involving sale and delivery to purchasing public of his said merchandise by means of a lottery scheme or gift enterprise through use of method or plan in accordance with which amount paid by purchaser for chance was dependent upon number secured from card by chance, and receipt or failure to receive clock was dependent upon success or failure in selecting from list of girl's names on card, name corresponding to that concealed under card's master seal, and persons not thus selecting received nothing other than privilege of making selection for money paid, and operator of card was compensated by receipt of clock; and

Supplied thereby and placed in hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plan under which said clocks were distributed to purchasing public wholly by lot or chance and amount which customer paid for chance was similarly determined, and involving game of chance or sale of a chance to procure a clock at a price much less than normal retail price thereof; contrary to the public policy as long recognized in the common law and criminal statutes and to an established policy of the United States Government, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With result that purchasing public was thus induced and persuaded into buying punches from said cards in hope of securing prize winning name and thus obtain clock for price of 29¢ or less, and many persons were attracted by his said method and by element of chance involved in sale thereof as above described, and were thereby induced to buy and sell his said merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and result that, through use of such method and because of said game of chance, trade and custom were diverted to him from competitors aforesaid who do not use such methods:

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

Before *Mr. William C. Reeves* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Henry C. Lank, *Mr. P. C. Kolinski*, and *Mr. D. C. Daniel* for the Commission.