

Complaint

IN THE MATTER OF

STANDARD TOYKRAFT PRODUCTS, INC.

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

Docket 3876. Complaint, Aug. 25, 1939—Decision, Nov. 15, 1939

Where a corporation engaged in sale and distribution of toys and playthings to retailers and other purchasers for resale to members of purchasing public—

Represented to members of purchasing public situated in various States and in the District of Columbia, that its toy sets were wholly made in the United States, through inserting on containers thereof such legends as "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A.," and through use of other representations of similar import and meaning, notwithstanding fact its said toy sets were not toys or playthings wholly made in the United States, such as purchased to the exclusion of those made in whole or in part in foreign countries by substantial number of members of purchasing public, by reason of their preference for many years for toys and playthings wholly made in the United States over those made in whole or in part in foreign country, but substantial portion of units comprising said sets had been made in Japan and purchased by it from importers and thereafter assembled into sets and sold and distributed as aforesaid;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such toys and playthings thus represented were wholly manufactured in the United States, and of thereby causing said portion of such public, to purchase substantial quantities thereof:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Milton Strasburger, of Washington, D. C., 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 Standard Toykraft Products, 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:

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PARAGRAPH 1. Respondent, Standard Toykraft Products, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal place of business and factory located at 319-327 McKibbin Street, Brooklyn, N. Y. Respondent is now, and has been for several years last past, engaged in the sale and distribution of toys and playthings. Respondent sells and distributes such merchandise to retailers and other purchasers thereof for resale to members of the purchasing public.

In the course and conduct of its business respondent causes said toys and playthings, when sold, to be transported from its place of business in the State of New York, to purchasers thereof at their respective points of location in various States of the United States, other than in the State of New York, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has 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. 2. In the course and conduct of its said business, the respondent causes, and has caused, to be inserted on the containers of certain of its toy sets the following statement and representation: "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A." Through the use of the aforesaid statement and representation and others of similar import or meaning not herein set out, the respondent represents to members of the purchasing public situated in various States of the United States and in the District of Columbia that the aforesaid toy sets are wholly manufactured in the United States.

PAR. 3. In truth and in fact said toy sets are not wholly manufactured in the United States. A substantial portion of the units comprising said toy sets are manufactured in Japan and are purchased by the respondent from importers. Subsequent to the purchase by the respondent of said units, made in Japan, the respondent assembles the units into toy sets and sells and distributes such sets as aforesaid.

PAR. 4. A substantial number of members of the purchasing public have had for many years, and now have, a preference for toys and playthings which are wholly manufactured in the United States over toys and playthings which are manufactured in whole or in part in a foreign country. As a result of this preference a substantial number of the purchasing public have purchased substantial quantities of toys and playthings wholly manufactured in the United States and have refrained from purchasing toys and playthings manufactured in whole or in part in foreign countries.

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Findings

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said toys represented as aforesaid by respondent, were wholly manufactured in the United States and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said toys.

PAR. 6. The aforesaid acts and practices of 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 Commission on August 25, 1939, issued and served its complaint in this proceeding upon the respondent, Standard Toykraft Products, Inc., charging it with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of the said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Standard Toykraft Products, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal place of business and factory located at 319-327 McKibbin Street, Brooklyn, N. Y. Respondent is now, and has been for several years last past, engaged in the sale and distribution of toys and playthings. Respondent sells and distributes such merchandise to retailers and other purchasers thereof for resale to members of the purchasing public. In

Findings

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the course and conduct of its business respondent causes said toys and playthings, when sold, to be transported from its place of business in the State of New York, to purchasers thereof at their respective points of location in various States of the United States, other than in the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has 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. 2. In the course and conduct of its said business, the respondent causes, and has caused, to be inserted on the containers of certain of its toy sets the following statement and representation: "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A." Through the use of the aforesaid statement and representation and others of similar import or meaning not herein set out, the respondent represents to members of the purchasing public situated in various States of the United States and in the District of Columbia that the aforesaid toy sets are wholly manufactured in the United States.

PAR. 3. In truth and in fact said toy sets are not wholly manufactured in the United States. A substantial portion of the units comprising said toy sets are manufactured in Japan and are purchased by the respondent from importers. Subsequent to the purchase by the respondent of said units, made in Japan, the respondent assembles the units into toy sets and sells and distributes such sets as aforesaid.

PAR. 4. A substantial number of members of the purchasing public have had for many years, and now have, a preference for toys and playthings which are wholly manufactured in the United States over toys and playthings which are manufactured in whole or in part in a foreign country. As a result of this preference a substantial number of the purchasing public have purchased substantial quantities of toys and playthings wholly manufactured in the United States and have refrained from purchasing toys and playthings manufactured in whole or in part in foreign countries.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said toys represented as aforesaid by respondent, were wholly manufactured in the United States and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said toys.

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Order

CONCLUSION

The aforesaid acts and practices of 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 the respondent, Standard Toykraft Products, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, and sale and distribution of toys and playthings in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing that any toys, any substantial or material part or portion of which are manufactured in Japan or any other foreign country, are manufactured in the United States.

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
WALDES KOH-I-NOOR, INC., AND THE GREY ADVERTISING AGENCY, INC.

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

Docket 3269. Complaint, Nov. 20, 1937—Decision, Nov. 16, 1939

Where a corporation engaged in manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners, and, on occasions and as means of promoting sale and distribution of its said products, in causing ladies' handbags, in which were included certain of its fastening devices, to be made and offered and sold in commerce among the various States; and a corporate advertising agency which had been long engaged as such in sale of advertising, advertising copy, mats, cuts, and sales stimulation and merchandising plans and similar material, and which functioned for said manufacturing company as its representative with respect to acts and practices below set forth, and in publication of advertisements in question, and in promoting sale and distribution of products made by or at instance of said manufacturing corporation, and including ladies' handbags in which were incorporated said manufacturer's "Kover-Zip" slide fastener or zipper; and, as thus engaged, in causing said zippers and handbags and mats, cuts, and advertising materials relating and referring thereto, to be offered, sold, and transported to prospective purchasers and purchasers in various other States and in the District of Columbia, in substantial competition with others offering, selling, and distributing in commerce ladies' handbags and other like or similar products of kind above described;

In pursuing and carrying out certain advertising and sales programs promotional of sale and distribution in various States of ladies' handbags or purses equipped with zippers and "Kover-Zips" of said manufacturer, which promotional sales plans had been laid out and executed by said advertising agency for said manufacturer and were financed by latter, and under which they (1) purchased from various couturiers in France number of ladies' handbags, designed and made by said couturiers, costing various prices ranging from \$11.38 to \$22.75, and representing, in case of each, one particular design only, (2) imported 32 of such bags, costs of which, after importation and payment of customs duties and other charges, were thereby increased and ranged from \$15.86 to \$31.21 per bag, (3) distributed among certain handbag manufacturers in the United States, for copying as to design and style and for production in commerce in quantity, to sell at prices ranging from \$2.95 to \$3.50, said handbags, and (4) caused 24 of said imported French-made bags to be illustrated in page advertisements in issues of fashion magazine of wide circulation in and throughout the several States and in said District, and to be there represented at retail prices ranging from \$35 to \$88 and \$95, for the purpose of creating price basis and promotional background for subsequent advertisement and sale of their American-made style copies of said bags, and for advertisement and sale thereof by retailers to members of buying public and not for