

IN THE MATTER OF
I. SEKINE 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 3624. Complaint, Oct. 7, 1938—Decision, Feb. 24, 1940

Where a corporation engaged in manufacturing or assembling and preparing for trade toothbrushes through boring and inserting in imported handles, imported bristles, and in selling and distributing its said toothbrushes to customers in other States and in District of Columbia, in active and substantial competition with others engaged in sale and distribution of toothbrushes and hand brushes in commerce as aforesaid—

Obliterated words or legends "Japan" or "Made in Japan." set forth on bristle head of such handles in harmony with practice and requirement in protection of consuming public of marking imported articles conspicuously and as legibly, indelibly and permanently as nature thereof will permit so as to indicate to ultimate purchaser name of country of origin, by bristles' insertion in holes bored in handles aforesaid at precise location of such marks of origin, and stamped elsewhere in conspicuous place on handle of finally assembled commodity in bold gold lettering words "This Brush Is Made in U. S. A."; notwithstanding fact toothbrushes in question were not wholly there made but facts were as above set out and representations thus made by it with respect to character, origin and nature of manufacture of its said products were false, misleading and untrue;

With effect of misleading and deceiving purchasers or prospective purchasers of said toothbrushes through use of aforesaid sales methods whereby identification mark was obliterated or concealed in final fabrication of finished article and words aforesaid were placed thereon, into erroneous belief that said products had been made wholly from materials produced in United States, and as products there made were such as were decidedly preferred and purchased by substantial portion of purchasing public as American-made and superior to similar articles made in foreign countries, and with result that trade was thereby diverted to it from others likewise engaged in manufacture, distribution and sale of toothbrushes and who truthfully represent their products, including character and origin thereof; to injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. John R. Phillips, Jr., for the Commission.

Mr. James W. Bevans, of New York City, for respondent.

Complaint

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 I. Sekine 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:

PARAGRAPH 1. I. Sekine Co., Inc., is a corporation created and existing under the laws of the State of New York with its principal offices and place of business located at 232 Madison Avenue in the city of New York, State of New York, and with its factory located at 2400-2442 Stoddard Place in the city of Baltimore, State of Maryland.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing tooth brushes and hand brushes.

Respondent causes said tooth brushes and hand brushes, when sold, to be transported from its place of business in the State of New York and from its factory in the State of Maryland to its customers located in States of the United States other than the State of New York and Maryland and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tooth brushes and handbrushes sold and distributed by it 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 business, respondent is in actual and substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of tooth brushes and hand brushes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said tooth brushes, respondent has caused to be marked or stamped, in plain and legible gold letters, on the handles thereof, the words or legend "This Brush is Made in U. S. A." The handles of said tooth brushes were, and have been, imported from Japan and have had, and still have, the word "Japan" stamped or marked upon them in such a place and manner that the subsequent insertion of bristles into the handles thereof, by the respon-

dent, thus completing the manufacture of the toothbrushes, effectively obscures and obliterates from the vision of purchasers of such tooth brushes the word "Japan." This obscuration and obliteration has been made and is done to a degree by which the word "Japan" is discernible and discoverable only through the use of a magnifying glass or through the removal of the bristles.

PAR. 5. The representations made by respondent with respect to the character, origin, nature, and manufacture of its tooth brushes, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the tooth brushes of respondent are not in whole "Made in U. S. A.," the handles thereof having been made and manufactured in Japan.

A substantial number of purchasers and users of tooth brushes have an active preference for merchandise of this nature manufactured wholly in the United States.

PAR. 6. There are, among respondent's competitors, many who manufacture, distribute, and sell tooth brushes, who do not in any way misrepresent the character, origin, and manufacture of their respective tooth brushes.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent in designating its tooth brushes to be "Made in U. S. A.," as hereinabove set out, were, and are, calculated to, and have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said tooth brushes are "Made in U. S. A." and of and from materials wholly having their origin and manufacture in the United States of America, and into the purchase of a substantial volume of respondent's tooth brushes on account of said belief so induced, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of manufacturing, distributing, and selling tooth brushes who truthfully represent the origin and manufacture of said products. As a consequence thereof, 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 in the District of Columbia.

PAR. 8. The aforesaid acts and practices of 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 and 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 the 7th day of October 1938, issued and thereafter served its complaint in this proceeding upon respondent, I. Sekine Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto testimony and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by James W. Bevans, attorney for the respondent, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto, oral argument not having been requested; 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, I. Sekine Co., Inc., is a corporation created and existing under the laws of the State of New York with its principal offices and place of business located at 232 Madison Avenue, in the city of New York, State of New York, and with its factory located at 2400-2442 Stoddard Place, in the city of Baltimore, State of Maryland.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing tooth brushes and hand brushes. Respondent causes said tooth brushes and hand brushes, when sold, to be transported from its place of business in the State of New York and from its factory in the State of Maryland to its customers located in States of the United States other than the States of New York and Maryland, and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said tooth brushes and hand brushes sold and distributed by it 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 business, respondent is in actual and substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of tooth brushes and hand brushes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's manufacturing plant is located in Baltimore, Md., where its products, including tooth brushes, are assembled and prepared for the trade. The principal component parts or material used in the manufacture of tooth brushes are handles and bristles, and both handles and bristles so used by respondent in the manufacture of its said products are imported. The handles used by respondent are imported from Japan. Said handles when received by respondent as imported are marked or branded "Japan" or "Made in Japan" on the inside of the bristle head. In the process of preparing the commodity for sale respondent thereafter causes holes to be bored in the handle in the precise location where such marks denoting Japanese origin appear, and therein at such place or location are inserted the bristles for the said tooth brushes. The words "Japan" or "Made in Japan" are thus and thereby obscured and obliterated by the insertion in the handle of the brush of the bristles as aforesaid, and this process so employed by respondent in producing the commodity serves to hide or conceal from the ordinary purchaser of the tooth brush the fact that the handle thereof was imported from Japan. When the commodity is finally assembled the words "This brush is made in U. S. A." are stamped in bold gold lettering in a conspicuous place elsewhere on the handle of the brush.

PAR. 5. In truth and in fact the representations made by respondent with respect to the character, origin, and nature of manufacture of its tooth brushes are and were false, misleading, and untrue. The said tooth brushes of respondent are not wholly "Made in U. S. A.," the handles thereof, an important component part of said brushes, having been made in Japan and appear so stamped until said mark of identity is obliterated and concealed by respondent, and said original marking indicating foreign origin is superseded by the new and wholly deceptive legend reading "Made in U. S. A."

PAR. 6. A substantial portion of the purchasing public has, and has indicated, a decided preference for products, including tooth brushes, which are manufactured in the United States. There is, in fact, a substantial portion of the purchasing public which desires to purchase exclusively American made merchandise because of their belief in its superior quality over similar articles manufactured in foreign countries and thereafter imported into the United States.

PAR. 7. There obtains in the United States as a protection to the consuming public, the practice and requirement of marking imported articles in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit so as to indicate to the ultimate purchaser thereof the name of the country of the origin of the article. The use by respondent of sales methods whereby tooth brushes made from imported handles from which the identification mark of the country of origin has been obliterated or concealed in the final fabrication of the finished article, and the placing thereon of the words "Made in U. S. A." has, and has had, the capacity to mislead and deceive, and does mislead and deceive purchasers or prospective purchasers of said tooth brushes into the erroneous belief that said tooth brushes have been manufactured wholly from materials produced in the United States. As a consequence of the aforesaid acts and practices of respondent trade has been diverted to respondent from other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, distributing, and selling tooth brushes, who truthfully represent their products, including the character and origin thereof. As a result of the acts and practices of respondent as aforesaid, injury 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 as herein found are all to the prejudice and injury 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 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 in support of the allegations of said complaint, and in opposition thereto taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and briefs filed herein, oral argument not having been requested, 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, I. Sekine Co., Inc., a corporation, its officers, agents, employees, and representatives, directly or through any corporate device, in connection with the offering for sale,

sale and distribution of tooth brushes in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "This brush is made in U. S. A." or any words of similar import or meaning on tooth brushes made from imported handles, or on the containers in which they are packaged, or in any other manner in connection with such brushes.

2. Representing, directly or by implication, through the use of the words "This brush is made in U. S. A.", or any other words of similar import or meaning, or by the unnecessary obliteration or concealment of the word or words indicating the foreign origin of the handles of such brushes in processing said handles, or in any other manner, that tooth brushes made from imported handles are of domestic 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.

Syllabus

IN THE MATTER OF

ECONOMY MEN'S HAT COMPANY, INC., AND ROSALIND
NISSENBAUM, LENA NISSENBAUM, AND NAT GILMAN,
INDIVIDUALLY AND AS OFFICERS OF ECONOMY MEN'S
HAT 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 3837. Complaint, June 28, 1939—Decision, Feb. 24, 1940*

Where a corporation and three individuals who were general officers thereof and as such managed, controlled, and dominated its affairs and activities, and fourth individual who acted as general manager thereof, engaged in manufacture of hats from felt and other materials obtained from old, worn, and previously used hats or products and in so treating and processing through cleaning, steaming, ironing, and shaping and fitting with new trimmings, sweat bands and size labels, old, worn, and used felt hat bodies purchased by them that they had the appearance of new hats made from felts which had never been worn—

Sold said hats with appearance aforesaid and with no label, marking or designation stamped thereon to indicate to purchasing public that they were in fact made from old, worn, and used bodies cleaned and renovated as above set forth, to jobber, wholesaler, and retailer dealers by whom as direct or indirect purchasers from it said hats were resold to purchasing public without disclosing facts aforesaid, and failed through use of words "Made Over Hat" immediately preceding such terms as "DeLuxe Quality" or other similar terms and names embossed on sweat bands of hats in question to disclose to purchasers that articles concerned were in fact made from old, worn, and previously used hat bodies as distinguished from products made from shop worn hat bodies never worn or used, as made in many instances by manufacturers through similar process employed with new but shop worn hats reclaimed by them from merchants' shelves;

With effect of misleading and deceiving substantial number of wholesale dealers, jobbers, retailers, and members of purchasing public into erroneous and mistaken beliefs that said products were made from either new and unused materials or from new but shop worn hat bodies which had never been worn or used and into purchase of substantial numbers of said hats because of such mistaken beliefs:

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

Mr. Robert Mathis, Jr. for the Commission.

Mr. Max Bergman, of New York City, for respondents.