

IN THE MATTER OF
ADOLPH KASTOR & BROS., INC.

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

Docket 3466. Complaint, June 21, 1938—Decision, Oct. 3, 1940

Where a partnership and its corporate successor, representing substantially same ownership and operation, long engaged in manufacture of various articles of cutlery and in sale thereof, including knives below described, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of pocket knives and outdoor knives in commerce as aforesaid, and including many, over long period of years involved, who have not been and are not entitled to mark, advertise, or otherwise represent their knives as approved or sponsored by the Boy Scouts of America and do not thus mark, etc., their said products, and others engaged in similar sale and distribution of such articles who have been and are entitled thus to mark, etc., their said knives as having been thus approved, and have truthfully marked, advertised, and represented them as such—

Marked, on handle of said knives sold by it as aforesaid, words "Scout Knife," and on sheath knives "Sportsman's Knife," and prepared and packed for sale said products in paper box on which appeared words "Scouting Set," together with picture of boys in the familiar Boy Scout uniform, tent, outdoor fire, and designs similar to the trefoil or fleur-de-lis emblem of said organization or movement, and marked and advertised for many years knives made and sold by it, which simulated knives adopted and approved by Boy Scout executives, with and through use of words "Boy Scout," "Boy Scouts of America," "Scouts," "Scouting," "Standard Scout," with or without, as case might be, emblems, or simulation thereof, of aforesaid organization, and pictures of boys in Scout uniforms and scenes of outdoor activity suggesting Boy Scouts and their activities, and thereby represented, directly and through implication, to members of purchasing public, that its said products were standard equipment authorized and approved by Boy Scouts of America;

Notwithstanding fact applications by it to organization in question for right to manufacture approved knife thereof and identified as such, considered on their merits, had been rejected, its said products were inferior to those of other manufacturers given approval over the course of the years as possessing the requisite qualities with respect to suitability, safety, and others deemed important and essential, after receipt of suggestions and submission of models and holding of conferences, and notwithstanding repeated protests by organization in question over its practice, as above indicated, in selling its said knives under such words and emblems and at lower prices than the genuine, more useful and superior, duly approved organization products, and notwithstanding repeated promises, not observed, to cease and desist such practices;

With result that, through such marketing and advertising, it enabled and caused retailers to represent and sell its said product as a part of the equipment

approved and sponsored by organization in question, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that its said knives were thus approved and sponsored by said famous and esteemed organization, and of inducing a substantial number thereof, because of such belief, to purchase its said product in preference to those of its said competitors, and of thereby diverting trade in commerce unfairly to it from them; to their injury and that of the public:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Weil, Gotshal & Manges, of New York City, for respondent.

Hughes, Richards, Hubbard & Ewing, of New York City, for Boy Scouts of America (*amicus curiae*).

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 Adolph Kastor & Bros., 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. Respondent, Adolph Kastor & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 245 Fifth Avenue, in the city of New York, in the State of New York. Respondent is now, and for some time past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery. Among other things, respondent sells a pocket knife designated as a "Scout Knife," and a sheath knife designated as a "Sportsman's Knife," which said articles are manufactured for it by another concern.

When said knives are sold, respondent ships and transports same from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia. There has been for some time past, and still is, a course of trade in said knives so distributed and sold by respondent in commerce between and among the various States of the United States, and in the District of Columbia.

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PAR. 2. Respondent is now, and for some time past has been, engaged in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of like and similar products, or products designed for similar usage, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. Among the manufacturers and sellers of like and similar articles of merchandise referred to in paragraph 2 hereof, are manufacturers and sellers who are and have been making and selling pocket knives, sheath knives, and other products offered for sale and sold to the members of the organization known as "Boy Scouts of America" under the authority and sanction of said organization. Said organization was incorporated in 1910 as a nonprofit corporation, and it has ever since maintained uniformity and high standards of performance in various outdoor crafts requiring centralized supervision of equipment, and has sponsored, authorized, and approved the manufacture and sale of a large number of articles used by its members. Among other articles sponsored by the Boy Scouts of America, and used by its members, is the standard Boy Scout pocket knife, which is regarded as essential in the activities of the members of said organization. The Boy Scouts of America adopted, and for many years have used a distinctive trefoil fleur-de-lis design as their official emblem. Certain manufacturers, sellers and distributors have been authorized to use said organization's distinctive fleur-de-lis emblem in describing and marketing their articles of merchandise, including said pocket knife, and such articles have long been distinguished by reason of the use of such emblem as being products officially approved and sanctioned by the organization.

The business of the sale of such articles of merchandise constitutes and has constituted a very substantial part of the entire business in the sale of pocket knives, sheath knives, and other articles of merchandise authorized and sponsored by the Boy Scouts of America, throughout the various States of the United States and in the District of Columbia.

PAR. 4. In soliciting the sale of and in selling its products, and for the purpose of creating a demand upon the part of the purchasing public for said products, the respondent now causes, and for some time past has caused, its pocket knife and sheath knife to be placed in paper boxes on which appear and have appeared the words "Scouting Set," with pictorial representations of scouts in uniform, tents, and fire, and two decorations simulating the official Boy Scout trefoil badge commonly called fleur-de-lis. Respondent sold and now sells said "Scouting Set," containing a pocket knife, on the handle of which

is stamped the words "Scout Knife," and a sheath knife, on the blade of which is stamped the words "Sportman's Knife," in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Through the use of the foregoing statements and others similar thereto, but not set out herein in detail, respondent represents, directly and through implication, to members of the purchasing public solicited to purchase their said products that certain of said knives described as "Scout Knife" and "Sportman's Knife," and the so-called "Scout Set" are official standard equipment authorized and sponsored by the Boy Scouts of America.

Respondent's so-called "Scouting Set" cartons and the pocket knife and sheath knife contained therein, by reason of the pictorial representations, together with the pseudo fleur-de-lis emblem and the words "Scout Knife" stamped on the handle of the pocket knife, are designed to deceive and mislead purchasers and prospective purchasers into the purchase of said products in the mistaken belief, thus induced, that said products are approved, endorsed, and sponsored by the Boy Scouts of America.

PAR. 6. In truth and in fact, the representations and implications made by respondent as hereinabove set forth in paragraphs 4 and 5, are false, misleading, and deceptive. Neither the so-called "Scout Knife," "Sportman's Knife," nor the "Scouting Set" as a whole is official equipment of the organization universally known and recognized throughout the United States as "Boy Scouts of America." The respondent is not, and has not been, authorized or sanctioned by said Boy Scouts of America, to represent, designate, or otherwise refer to its said products, either specifically or by implication, as official equipment approved by said organization.

PAR. 7. There are, among the competitors of respondent referred to in paragraphs 2 and 3 hereof, manufacturers, sellers, and distributors of pocket knives and sheath knives who truthfully advertise and represent them as standard articles of merchandise properly authorized and sanctioned by the Boy Scouts of America for use by its members. There are also among the competitors of respondent many manufacturers, sellers, and distributors of pocket knives and sheath knives who are not sanctioned or authorized by the Boy Scouts of America, and who do not advertise said products in such a manner as to deceive and mislead purchasers and prospective purchasers into the mistaken belief that said articles are manufactured and sold as standard equipment authorized, sponsored and approved by the Boy Scouts of America, for use by its members.

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PAR. 8. Each and all of the misleading and deceptive statements and representations made by the respondent herein by means of advertisements, emblems, picture designs, branding, and in other ways, in connection with the offering for sale and selling of its products known as "Scout Knife" and "Scouting Sets," were and are calculated to, and had, and now have a capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the representations thus made by the respondent, as aforesaid, a number of the purchasing public purchase a substantial volume of said products with the result that trade has been diverted unfairly from those competitors referred to in paragraph 7 hereof who truthfully advertise their products. As a result thereof, injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the 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 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 June 21, 1938, issued and served its complaint in this proceeding upon the respondent Adolph Kastor & Bros., 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 Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Sylvan Gotshal, attorney for the respondent, before John L. Hornor, a trial 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, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; 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, Adolph Kastor & Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city and State of New York. Respondent is successor to Adolph Kastor & Bros., a partnership organized prior to 1890. Substantially the same individuals have owned and operated the partnership and corporation since the inception of the business and the partnership and corporation are treated as one in this findings as to the facts. The term "respondent," when hereinafter used, shall include the predecessor of respondent corporation unless otherwise stated.

PAR. 2. Respondent is now, and for some time in the past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery, among other items the knives hereinafter described, which, when sold, are and have been shipped from its said place of business to the purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia. For some time past respondent has carried on, and at present continues to carry on, a course of trade in such knives in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and for some time past has been, engaged in substantial competition with corporations, firms, partnerships, and individuals engaged in the sale and distribution of pocket knives and outdoor knives in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. Among the knives recently sold by respondent in commerce as aforesaid, were pocket knives marked on the handle "Scout Knife" and sheath knives marked "Sportsman's Knife." These knives were prepared for sale by packing in a paper box on which appeared the words "Scouting Set," together with pictures of boys in the familiar Boy Scout uniform, a tent, an outdoor fire, and two designs similar to the trefoil or fleur-de-lis emblem of the Boy Scouts of America.

PAR. 5. The Boy Scout movement started in England about the year 1906 as "Scouting For Boys." About 1909 the movement was brought to this country, first developing as a large number of groups, more or less independent of one another, but in February 1910, all were merged into the "Boy Scouts of America," on that date incor-

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porated in the District of Columbia, with an expressed purpose to teach boys discipline, patriotism, courage, habits of observation, self-control, and ability to care for themselves in all exigencies of life. Later, June 15, 1916, the "Boy Scouts of America" was incorporated by Act of Congress, under which the new corporation succeeded to the right to use all emblems, badges, descriptive or designating marks, words or phrases then or theretofore used by the Boy Scouts of America, with the proviso that nothing in the act should interfere or conflict with established or vested rights. The purpose of the organization was expressed in the act as being to promote the ability of boys to do things for themselves and others, to train them in scoutcraft and to teach them patriotism, courage, self-reliance, and kindred virtues. From the beginning of the movement, even before the incorporation of the Boy Scouts of America, the words "Scout" and "Scouting" had acquired a secondary meaning as applying to the Boy Scout movement.

Immediately upon the advent of the movement in the United States it received wide and favorable publicity in the form of newspaper and magazine articles, public addresses and distribution of both English and American published handbooks and other books and pamphlets. Membership in the Boy Scouts of America grew rapidly. The first year of its incorporation, 1910, the membership increased from 5,000 to 300,000, and up to the present its membership has totaled some 8,900,000 since its organization in 1910. Its present membership is more than 1,200,000. Surveys have shown that three out of every four boys in the United States desire to belong to the organization.

PAR. 6. An important part of the Boy Scout program was to consist and has consisted of outdoor activities; hence one of the first concerns of the Boy Scout executives was to insure to the boys suitable and safe equipment and supplies for such activities. Early in 1910 consideration was given to a suitable and safe pocket knife, suggestions were invited and received from outdoorsmen and manufacturers, suggested models submitted by manufacturers, conferences held, specifications for a satisfactory knife evolved, and bids from manufacturers were invited for manufacture of the knife in quantity, with license to mark and identify the knife as the standard knife. Early in 1911 a contract was awarded. Since that time the Boy Scouts of America has maintained supervision by contracting from time to time with manufacturers for the production of the approved knife, with license to the contractees to mark the knife so as to identify it as the approved knife and it has been continuously so marked, and has been referred to universally as a "Scout" knife. It has been available for

purchase throughout the nation through various outlets. Respondent has from time to time made application to the Boy Scouts of America for the right to manufacture the approved knife and identify it as such, which applications have been considered on their merits and rejected.

PAR. 7. Respondent participated in the aforementioned conferences in 1910, submitted three models of knife and submitted a bid for the manufacture of the adopted knife, but its bid was not accepted.

Immediately after its bid was rejected in 1910, respondent began to manufacture and put on the market and to distribute widely, a knife similar in appearance to the adopted knife, with the words "Boy Scout" etched into the blade. Prior to that time there was and had been no pocket knife on the market marked with the word "Scout." Since 1910 and up to the present, respondent from time to time, over the protest of the Boy Scout executives, has manufactured and sold pocket knives, simulating the adopted knife, and has marked and advertised them in various ways, by the use of the words "Boy Scout," "Boy Scouts of America," "Scout," "Scouting," "Standard Scout," with and without emblems, or simulation of emblems, of the Boy Scouts of America, and with and without pictures of boys in scout uniform and scenes of outdoor activity suggesting the Boy Scouts of America and their activities. As early as May 1912, the Boy Scouts of America lodged such a protest with respondent and at various times respondent has agreed to cease such practices but has failed to live up to its promises. The knives so marked and advertised by respondent have been and are inferior in quality and usefulness to the adopted boy scout knife, and are offered for sale and sold at lower prices. Such marking and advertising has enabled and has caused retail dealers to represent and sell them as a part of the equipment approved and sponsored by the Boy Scouts of America.

PAR. 8. Through the use of the aforesaid practices, words, statements, and representations, respondent represents and has represented, directly and through implication, to members of the purchasing public that its knives marked as "Scout" knives, and advertised by use of the words "Scout," "Scouting," "Standard Scout," and the use of scenes and emblems, or simulation of emblems, identified in the public mind with the Boy Scouts of America and their activities, all as in paragraph 7 hereof described, that its knives are standard equipment authorized and approved by the Boy Scouts of America.

PAR. 9. The representations and implications aforesaid made by respondent are false, misleading, and deceptive. The knives so marked and advertised by respondent are not and have never been authorized

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by the Boy Scouts of America as standard equipment nor has respondent been licensed by the Boy Scouts of America to represent, designate, or otherwise refer to its knives as such approved equipment.

PAR. 10. During all the time since 1910, many persons, firms, and corporations in the United States have been engaged in the selling of pocket knives and outdoor knives in commerce between and among the various States of the United States and in the District of Columbia, many of whom have not been and are not entitled to mark, advertise, or otherwise represent their knives as approved or sponsored by the Boy Scouts of America, and such persons, firms, and corporations do not and have not so marked, advertised, or otherwise represented their knives; and others of such persons, firms, and corporations, engaged in the sale and distribution of pocket knives and outdoor knives in commerce between and among the several States of the United States and the District of Columbia, have been and are entitled to mark, advertise, and represent their pocket knives and outdoor knives as having been approved by the Boy Scouts of America and have truthfully marked, advertised, and represented them as such. With all of these persons, firms, and corporations the respondent has been and is in substantial competition in the sale of the knives referred to in paragraphs 4 and 7 hereof in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 11. The false, misleading, and deceptive practices as hereinabove set forth have had and now have the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's said knives are authorized, sponsored, or approved by the Boy Scouts of America and do induce a substantial number of the purchasing public, because of said erroneous belief, to purchase respondent's said knives in preference to those of its said competitors, mentioned in paragraphs 3 and 10 hereof, and thereby trade in commerce between and among the several States of the United States and in the District of Columbia has been unfairly diverted to the respondent from its competitors in said commerce, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondent, Adolph Kastor & Bros., Inc., as herein found 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 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 the respondent, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, briefs and oral argument by Joseph C. Fehr, counsel for the Commission, and by Sylvan Gotshal, 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, Adolph Kastor & Bros., Inc., its representatives, agents, and employees, directly or indirectly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of knives in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Marking or labeling said knives, or the containers or coverings in which they are enclosed, or display cards to which they are attached or on which they are displayed, with the words "Scout" or "Boy Scout" or "Scouting," or with any emblem or symbol adopted and used by the Boy Scouts of America to designate or symbolize that organization or the activities of its members; or

2. Marking, designating or describing knives as "Scout" or "Boy Scout" or "Scouting" knives; or

3. Using pictorial representations of outdoor life in which there appear boys in the uniform of the Boy Scouts of America or in uniforms simulating such uniform; or

4. Using, in any manner, any mark, symbol or emblem adopted and used by the Boy Scouts of America to represent or identify that organization or the activities of its members.

It is further ordered, That the respondent, Adolph Kastor & Bros., Inc., 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
THE HOUSE OF CRANE

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

Docket 4080. Complaint, Apr. 3, 1940—Decision, Oct. 4, 1940

Where a corporation engaged in sale and distribution of cigars, tobacco products, candy, and other articles of merchandise, including certain assortments which consisted of (1) number of pieces or boxes of candy, additional articles of merchandise and punchboard for distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser selecting from board by chance designated number was entitled to receive one of pieces of candy being thus disposed of, and person selecting another designated number was entitled to receive one of additional articles of merchandise, person selecting last number in each of 11 sections into which board was divided was likewise entitled to one of said boxes, and person selecting last number was entitled to such a box and to one of said other articles, and under which, further, person who did not qualify by obtaining one of numbers designated, received nothing for his money, and under which amount, if any, paid for chance varied from 1 to 4 cents depending upon particular numbers punched, and of (2) other assortments, together with push cards and punchboards, involving similar sales plans or methods to that above described, from which they varied in detail only—

Sold to dealers assortments as above set forth, by retailer-purchasers of which they were exposed and sold to purchasing public in accordance with such sales plans or methods involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof and of a retail value exceeding that of costs incurred, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its products in accordance with such sales plans or methods, contrary to an established public policy of the United States Government and in violation of the criminal laws, 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 many persons were attracted by said sales plans or methods employed in connection with sale and distribution of its merchandise, and by element of chance involved therein and were thereby induced to buy and sell its said products in preference to like or similar merchandise of competitors who do not use same or equivalent methods, and with effect, through use of such plans or methods and because of said game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent methods or plans; to the substantial 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 and unfair and deceptive acts and practices therein.