

Complaint

IN THE MATTER OF

W. R. CASE & SONS CUTLERY COMPANY

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

Docket 4119. Complaint, Apr. 26, 1940—Decision, Nov. 19, 1940

Where a corporation engaged in manufacture, offer and sale of various articles of cutlery to purchasers in various other States and in the District of Columbia—

Labeled, marked, and designated as "CASE SCOUT" one of its aforesaid products, notwithstanding fact knife in question was not one of those long made or distributed under supervision of the Boy Scouts of America, nor approved, indorsed or sponsored by that organization, and uniformly referred to as "Scout Knife" and marked in some form or manner with words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America, and as such, uniformly referred to by use of such words as "Boy Scout," "Scout" and "Scouting," and thus long understood as identifying and referring to such equipment and activities of organization in question;

With capacity and tendency to mislead and deceive purchasing public into belief that its said knife had been approved, indorsed or sponsored by said organization and was a part of the standard equipment thereof, for the purchase of which, as products sponsored or approved by such organization, there is a marked preference on the part of substantial portion of purchasing public, over products which are not thus sponsored or approved, and with tendency and capacity to cause said public, as result of such belief, to purchase substantial quantities of its said product:

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. Joseph C. Fehr, for the Commission.

Nash & Mutzabaugh, of Bradford, Pa., 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 W. R. Case & Sons Cutlery Co., a corporation, hereinafter referred to as respondent, has violated the provisions of 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, W. R. Case & Sons Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in the city of Bradford, in the State of Pennsylvania.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery, among other things, a pocket knife designated and marked as a "CASE SCOUT" knife. Respondent causes its said products, when sold to be transported from its place of business in the State of Pennsylvania to the purchasers thereof located in States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In 1910 an organization known as the Boy Scouts of America was incorporated under the laws governing the District of Columbia, and later was reincorporated by special Act of Congress. Its purpose was, in general, to organize the boys of the United States and teach them discipline, patriotism, courage, habits of observation, self-control, and ability to care for themselves in all exigencies of life.

In furtherance of this purpose and both to attract the boys of the Nation to the movement and to insure safe, adequate, and adaptable equipment, the organization adopted, and has since maintained, the policy of devising and planning a great many articles of equipment and supervising their manufacture and distribution through licensing and otherwise authorizing those with whom it would enter into arrangements for such manufacture and distribution.

From the beginning the equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to, by use of the words "Boy Scouts," "Scout," and "Scouting," so that these words have long ago acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America.

Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and of material and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife," has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America.

PAR. 4. The knife manufactured and sold by respondent, as alleged and described in paragraph 2 hereof, has been and is of such general design and appearance as, when marked or labeled by the use of the words "CASE SCOUT" or "Boy Scout" or any other marks or insignia characteristic of, or identifying it with, the Boy Scouts of America, would have, has had and has, the capacity and tendency to induce the purchasing public to believe that respondent's said knife has been and is approved, endorsed or sponsored by the Boy Scouts of America and is a part of the standard equipment of that organization; and to cause, and has caused, a substantial part of the public to purchase respondent's said knife because of such belief.

PAR. 5. In truth and in fact, respondent's said knife has not been and is not manufactured or distributed under the supervision of the Boy Scouts of America, has not been and is not approved, endorsed or sponsored by that organization, nor is it a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by the Boy Scouts of America over products which are not so sponsored or approved.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and inquiry 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 the 26th day of April 1940, issued and subsequently served its complaint in this proceeding upon respondent, W. R. Case & Sons Cutlery Co., 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 May 18, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed for the respondent by its counsel, F. M. Nash, and by W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as to the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the

presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, such stipulation having been approved, accepted, and filed, 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. Respondent, W. R. Case & Sons Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in the city of Bradford, in the State of Pennsylvania.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery, including, among other things, a pocket knife designated and marked as a "CASE SCOUT" knife. Respondent causes its said products, when sold, to be transported from its place of business in the State of Pennsylvania to the purchasers thereof located in States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In 1910 an organization known as the Boy Scouts of America was incorporated under the laws governing the District of Columbia, and later was reincorporated by special act of Congress. Its purpose was in general, to organize the boys of the United States and teach them discipline, patriotism, courage, habits of observation, self-control, and ability to care for themselves in all exigencies of life.

In furtherance of this purpose and both to attract the boys of the Nation to the movement and to insure safe, adequate, and adaptable equipment, the organization adopted, and has since maintained, the policy of devising and planning a great many articles of equipment and supervising their manufacture and distribution through licensing and otherwise authorizing those with whom it would enter into arrangements for such manufacture and distribution.

From the beginning the equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to, by use of the words "Boy Scout," "Scout," and "Scouting," so that these words have long ago acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America.

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Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and of material and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife," has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America.

PAR. 4. The knife manufactured and sold by respondent, described in paragraph 2 hereof, and marked or labeled by the use of the words "CASE SCOUT," has not been so designated since on or about January 1, 1940. Although heretofore not aware of it, respondent now admits, and the Commission finds, that the labeling, marking, and designating of said knife by the use of the words "CASE SCOUT" has had the capacity and tendency to mislead and deceive the purchasing public into the belief that such knife has been and is approved, endorsed, or sponsored by the Boy Scouts of America and is a part of the standard equipment of that organization. The Commission further finds that such practice on the part of respondent has the tendency and capacity to cause the purchasing public to purchase substantial quantities of respondent's product as a result of such belief.

PAR. 5. In truth and in fact, respondent's said knife has not been and is not manufactured or distributed under the supervision of the Boy Scouts of America, has not been and is not approved, endorsed or sponsored by that organization, nor is it a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by the Boy Scouts of America over products which are not so sponsored or approved.

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, the answer of the respondent, and a stipulation as to the facts entered into by the respondent herein and W. T. Kelley, chief counsel for the Commission,

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which provides, among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, W. R. Case & Sons Cutlery Co., a corporation, 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 knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "CASE SCOUT" or "SCOUT" or any other word or words of similar import or meaning, to designate, describe, or refer to respondent's knives, or otherwise representing that said knives are sponsored, endorsed, or approved by the organization known as the Boy Scouts of America, or that said knives form a part of the equipment of the members of said organization.

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

I. RALPH WEINSTOCK, TRADING AS THYROLE
PRODUCTS COMPANY

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

Docket 4160. Complaint, June 13, 1940—Decision, Nov. 19, 1940

Where an individual engaged in sale and distribution of certain medicinal preparation by it designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, to purchasers in other States and in the District of Columbia; in advertisements of said preparation which he disseminated and caused to be disseminated through the mails and through advertisements in newspapers and by circulars, leaflets, pamphlets, and other advertising literature, and through various means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

- (a) Represented that his said medicinal preparation, designated and known as aforesaid, constituted a cure or remedy for obesity and a safe, competent, and effective treatment therefor, through such statements, among others, as "DON'T BE FAT. Get rid of excess weight without strict diet or strenuous exercise. If you are overweight due to glandular deficiency, but normally healthy otherwise, you may be reasonably sure of satisfactory results by taking O. B. C. Capsules," and "Slenderize this modern easy way without strict diet or exercise. Thousands of grateful users everywhere since 1923," and "Lose fat like magic. Youth restored. Health preserved. O. B. C. is the sure—safe—pleasant—easy—modern method of slenderizing without exercise";

Facts being preparation in question was not a cure or remedy for obesity, and did not constitute a competent or effective treatment therefor, nor a safe one, by virtue of inclusion of powdered strychnine alkaloid, powdered extract belladonna, aloin, thyroid, and other drugs in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and use of such product might produce headaches, muscular and articular pains, nausea, and various other conditions and result, among other things, in permanent injury to tissues and organic functions, and irreparable injury to heart muscle; and

- (b) Failed to reveal in his said advertisements that use of said preparation, or O. B. C. Capsules, under conditions prescribed in said advertisements or under such conditions as are customary or usual might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive and misleading statements, representations, and advertisements were true, and of inducing portion of such public, because of such erroneous and mistaken belief, to purchase his said preparation: