

IN THE MATTER OF

UTICA 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 4117. Complaint, Apr. 26, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in manufacture of various articles of cutlery, including knife of certain general design and appearance, and in offer and interstate sale thereof—

Designated and marked as "Scout" knife its aforesaid product, 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," long understood as thus 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 so sponsored or approved, and with effect of causing substantial part of public to purchase its said knife because of such belief:

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.

Kernan & Kernan, of Utica, N. Y., 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 Utica Cutlery Company, 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:

PARAGRAPH 1. Respondent, Utica Cutlery Company, 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 in the city of Utica, in the State of New York.

PAR. 2. Respondent is now, and for more than one 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 "Scout" knife. Respondent causes its said products, when sold, to be transported 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. 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.

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

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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 "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 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 April 26, 1940, issued and on April 29, 1940, served its complaint in this proceeding upon respondent, Utica Cutlery Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of 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, Utica Cutlery Co., 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 in the city of Utica, in the State of New York.

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 "Scout" knife. Respondent causes its said products, when sold, to be transported 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. 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.

Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and

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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 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 "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.

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 the 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.

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Order

It is ordered, That respondent, Utica 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 its knives in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "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.

IN THE MATTER OF
**THE REVIGATOR CORPORATION, AND E. O. LOEBER,
INDIVIDUALLY, AND AS PRESIDENT OF THE REVIGA-
TOR CORPORATION**

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

Docket 4329. Complaint, Oct. 3, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in interstate sale and distribution of its ReVigator Pressure Cap and also of its ReVigator Liquid Home Treatment for Scalp and Hair, and ReVigator Liquid Shampoo and pair of circular combs constituting its ReVigator System of Home Treatment for the Scalp and Hair, and an individual who was its president and controlled and directed its advertising sales policies and general business practices; in advertisements which they disseminated and caused to be disseminated concerning said device and preparations through the mails and by other means in commerce and otherwise and including testimonial or purported testimonial statements or excerpts therefrom and which advertisements were intended and likely to induce purchase of said device and preparations—

Represented directly and by implication that use of said ReVigator Automatic Pressure Cap device provided a cure or remedy for falling hair, fading hair, thinning hair, and dandruff and baldness, and constituted a competent and effective treatment therefor and that its use would cause new hair to grow;

Facts being use of said device, either alone or in combination with such preparations, would not constitute a cure or remedy for aforesaid conditions or ailments, and had no therapeutic value in the treatment of any such conditions or disorders in excess of cleansing the hair and scalp and removing accumulated dandruff scales, and said device, either alone or in combination with said preparations, would have no therapeutic value in treatment of baldness and would not cause new hair to grow;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true and with effect of inducing purchase of said device and preparations by reason thereof:

Held, That said 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. Donovan R. Divet for the Commission.

Mr. Robert H. Jamison, of Cleveland, Ohio, for respondents.

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 The ReVigator