

Complaint

IN THE MATTER OF

HOLLYWOOD RACKET MANUFACTURING 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 3931. Complaint, Oct. 19, 1939—Decision, July 11, 1941

Where a corporation engaged in interstate sale and distribution of tennis, badminton, and squash rackets, in the course of which business it purchased and imported from Japan unfinished tennis rackets which were there made according to its specifications, and which it further processed and completed in accordance with the particular specifications of the order to be filled; in course of aforesaid processing—

(a) Completely removed, obliterated, and covered up the words "Made in Japan" which appeared upon handle of the racket when imported, and imprinted thereon its name, "Hollywood Racket Mfg. Co.," and made use in its advertising material of legends "Hollywood Rackets" and "Hollywood Racket Mfg. Co.," without disclosing that said rackets were made in Japan, either upon the products themselves or in any of its advertising; and

Where said corporation, engaged as aforesaid in the purchase and importing of unfinished tennis rackets, the handles of which required further processing in addition to that given the rackets described above—

(b) Sold said rackets, likewise, with no disclosure in advertising or otherwise that they were originally made in Japan and imported into this country;

With effect of misleading and deceiving a substantial portion of the purchasing public, familiar with domestic manufacturers' long-established custom of marking products of foreign origin, into the erroneous belief that said rackets were products wholly made in the United States, for which it had a decided preference over those made in Japan or many other foreign countries, with result that a substantial portion of said public purchased its said products, and with effect of placing in the hands of unscrupulous and uninformed dealers a means and instrumentality whereby such dealers were enabled to mislead and deceive members of the purchasing public:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. Maurice C. Pearce for the Commission.

Mr. Robert W. Fulwider, of Los Angeles, Calif., 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 Hollywood Racket Manufacturing Co., Inc., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Com-

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mission 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, Hollywood Racket Manufacturing Co., Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of California. It has its principal office and place of business at 7462 Melrose Avenue, city of Hollywood, State of California.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of tennis, badminton, and squash rackets. Respondent causes its said products, when sold, to be transported from its place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent uses constituent parts and materials of both foreign and domestic origin in its aforesaid rackets. Such foreign parts and materials, when imported and received by the respondent, bear marks and imprints indicating the country of their origin. Among such foreign-made parts used by respondent are racket frames which are imported from the country of Japan and which bear the mark "Made in Japan."

PAR. 4. In the course and conduct of its business, it has been and is the practice of respondent to lacquer such imported racket frames and place thereon a leather grip as well as stringing said racket frames. In such processes the mark "Made in Japan" is obliterated or concealed, and such rackets are then sold and distributed by the respondent in commerce aforesaid without any marking thereon to inform members of the purchasing public that the frames of said rackets are of Japanese or foreign origin.

PAR. 5. A further practice of the respondent in connection with the sale and distribution of its said rackets is to stamp or imprint upon such rackets the legend "Hollywood Racket Mfg. Co." Respondent also issues and distributes among prospective customers catalogues, circulars, price lists, and other advertising material which contain legends representing that such rackets are manufactured at the respondent's place of business in Hollywood, Calif., and that such rackets are wholly of domestic origin and manufacture rather than foreign origin and manufacture. Among and typical of such representations is the following: "Hollywood Rackets, Tennis, Badminton, Squash, Hollywood Racket Mfg. Co., Hollywood, California."

In truth and in fact such rackets are not wholly of domestic origin and manufacture, as the frames thereof which constitute the basic part of such rackets are made in Japan.

PAR. 6. For many years last past there has been obtained among manufacturers in the United States an established custom and practice of marking products of foreign origin in such manner as to indicate that such products are in fact of foreign rather than domestic origin. The purchasing public is familiar with and relies upon such custom and practice and when products bear no marking indicating that they are of foreign origin, the purchasing public assumes that such products are of domestic origin.

PAR. 7. There is among the members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Japan or any other foreign country.

PAR. 8. The practices of respondent in obliterating or obscuring from its racket frames the legend "Made in Japan" and in imprinting on its rackets the legend "Hollywood Racket Mfg. Co." and in using in its advertising material the legends "Hollywood Rackets" and "Hollywood Racket Mfg. Co., Hollywood, California," without disclosing that the frames of such rackets are made in Japan, have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's rackets are wholly of domestic origin and manufacture. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public are induced to and do purchase respondent's products.

By the use of the practices herein set forth, the respondent has also placed in the hands of unscrupulous or uninformed dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public.

PAR. 9. The aforesaid acts and practices of respondent 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 October 19, A. D. 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Hollywood Racket Manufacturing Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the

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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 William L. Pencke and C. Robert Mathis, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Robert W. Fulwider, attorney for the respondent, before trial examiners 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 said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs, in support of the complaint and in opposition thereto and oral arguments before the Commission; 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, Hollywood Racket Manufacturing Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of California. It has its principal office and place of business at 7462 Melrose Avenue, city of Hollywood, State of California.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of tennis, badminton, and squash rackets. Respondent causes its said products, when sold, to be transported from its place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business the respondent purchases and imports unfinished tennis rackets made in Japan according to the specifications of the respondent. These specifications include the selection, cutting, and bending of the wood, gluing, the preparation of the bend and handles, pallets, and overlays, which are then applied and shaped and the racket drilled. When such rackets are imported into the United States they bear upon the handle thereof the legend "Made in Japan." Such rackets are further processed by the respondent when received by it. This processing consists of the application of wood filler and several coats of lacquer, trimming with windings, and application of trade-marks or brands. The handles of such rackets are covered with leather

and the entire racket tested for balance and drilled or weighted in accordance with the particular specifications of the order to be filled. In the course of this processing the words "Made in Japan" which appeared upon the handle of the racket when imported are completely removed, obliterated, and covered up. These rackets are usually sold unstrung, except in some instances where the dealer or purchaser does not have facilities for stringing such rackets. On the tennis rackets so described appears the name "Hollywood Racket Mfg. Co." The respondent also publishes circulars and other advertising material bearing the notations "Hollywood Rackets" and "Hollywood Racket Mfg. Co." The respondent does not disclose that such tennis rackets are made in Japan, either upon said tennis rackets or in any of its advertising literature.

At or about the time of the filing of the complaint herein or shortly prior thereto, the respondent began the purchase and importation of unfinished tennis rackets, the handles of which require further processing by shaping, gluing on of additional overlays, and weighting. With the addition of this further processing the same procedure is followed as hereinabove described in the finishing and marking of such rackets. These rackets are likewise sold by the respondent without any disclosure in advertising or otherwise that said rackets were originally manufactured in Japan and imported into this country.

PAR. 4. For many years last past, there has obtained among manufacturers in the United States an established custom and practice for marking products of foreign origin in such a manner as to indicate that such products are, in fact, of foreign, rather than domestic, origin. The purchasing public is familiar with, and relies upon, such custom and practice, and when products bear no marking indicating that they are of foreign origin the purchasing public assumes that such products are of domestic origin.

There is among the members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Japan or any other foreign countries.

PAR. 5. The practices of the respondent in obliterating or obscuring from its racket frames the legend "Made in Japan" and in imprinting on its rackets the legend "Hollywood Racket Mfg. Co." and in using in its advertising material the legends "Hollywood Rackets" and "Hollywood Racket Mfg. Co." without disclosing that the frames for such rackets are made in Japan, have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's rackets are wholly of domestic origin and manufacture. As the

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result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public are induced to, and do, purchase respondent's products.

By the use of the practices herein set forth the respondent has also placed in the hands of unscrupulous and uninformed dealers a means and instrumentality whereby such dealers have been, and are, enabled to mislead and deceive members of the purchasing public.

CONCLUSION

The aforesaid acts and practices of the 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, answer of the respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the report of the trial examiners thereon, briefs filed herein and oral argument before the Commission, 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, Hollywood Racket Manufacturing Co., Inc., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of tennis, badminton, and squash rackets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Hollywood Racket Mfg. Co." or any other name of similar import or meaning on labels or in advertising of tennis, badminton, or squash rackets or other similar products, without clearly disclosing the foreign origin of such products.

2. Representing, in any manner whatsoever, that respondent's products are made in the United States when, in fact, such products are manufactured in whole or in part in Japan or any other foreign country.

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.

Complaint

IN THE MATTER OF

BERTRAM A. STRAUSS, TRADING AS COLUMBIA PENCIL
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4083. Complaint, Apr. 4, 1940—Decision, July 11, 1941

Where an individual engaged in competitive interstate sale and distribution of pencils; by circulars, letterheads, and other advertising material—

- (a) Represented, prior to stipulation entered into with Commission to cease and desist such representations, that he made and manufactured his said products and owned and operated or directly and absolutely controlled the plant or factory in which same were manufactured, through such statements as “* * * direct from the factory at a saving of 33⅓%,” etc., when in fact he did not manufacture the pencils he sold; and
- (b) Represented his concern as “Manufacturers of Pencils for all Purposes,” through statements to that effect, facts being that, while he was a manufacturer of the mechanical pencils which he offered and sold, he was not a manufacturer of the other types thus dealt in, purchasing his supplies of crayon pencils from others, and buying lead pencils from manufacturer thereof in completed form except for painting and adding of ferrule and eraser which he proceeded to do;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public, who have a marked preference for dealing directly with manufacturers, by reason of their belief that thereby lower prices and other advantages may be obtained, into the erroneous belief that said representations were true, and into purchase of a substantial quantity of said products, whereby trade was unfairly diverted to said individual from his competitors, among whom there are many who manufacture their products and others who do not manufacture same or represent themselves as manufacturers; to the substantial injury of competition in commerce:

Held, That such acts and practices, as above 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.

Before *Mr. John W. Addison* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Mr. Joseph Strauss, of New York City, 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 Bertram A. Strauss,