

IN THE MATTER OF

MAJESTIC CHINA COMPANY, INC., ART CHINA COMPANY, HERMAN SIEGEL, SIGMUND GLADSTONE AND JOHN LINDSEY, TRADING AS ART CHINA COMPANY, AND JOHN H. FEINNE, TRADING AS WINDSOR CHINA COMPANY

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

Docket 3748. Complaint, Mar. 29, 1939—Decision, July 29, 1941

Where two corporations and four individuals, who controlled and directed their policies and practices, engaged, incident to their offer and sale to retailers of a business or sales stimulator plan, in interstate sale of chinaware to be distributed by retailers as premiums, in substantial competition with others who do not misrepresent their business or disparage their competitors' products; orally and through stationery, contracts, correspondence, and advertising media circulated generally—

- (a) Represented that they owned and operated or directly controlled a pottery plant or factory located at Sebring, Ohio, wherein they manufactured the chinaware they sold, and that one of said two corporations was a wholly owned subsidiary of a concern operating a pottery plant at said point;

When in fact none of them was engaged in manufacturing such chinaware, all of which they purchased from said Sebring concern, in which none of them had any financial or other interest, and of which corporation in question was not a wholly owned subsidiary, said Sebring concern having no interest therein or in the business of said corporations and individuals, other than sale of its products thereto, and its representations to the trade, made at their instance and in cooperation with them that some of individuals concerned were its direct salesmen being false; and, with intent of diverting business from a certain competitor to themselves, and well knowing falsity thereof—

- (b) Represented that such competitor's representative was no longer in business, and that the competitor itself was in the hands of "finance concerns"; and
- (c) Represented that said competitor had been selling inferior chinaware of second grade quality, while representing their own as of a superior grade, as a result whereof a customer canceled negotiations with such competitor, whose product was in fact of first quality;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of causing it because of such mistaken belief, to purchase their sales stimulator plan and chinaware in preference to those of competitors, whereby trade was unfairly diverted from such competitors to them:

Held, That such acts and practices, 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. Edward E. Reardon*, trial examiner.
Mr. John M. Russell for the Commission.

Mr. Harry Bell, of Chicago, Ill., for respondents, with the exception of *John H. Feinne*, who was represented by *Mr. Samuel Feiwell*, of South Bend, Ind.

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 Majestic China Co., Inc., a corporation, Art China Co., a corporation, Herman Siegel, Sigmund Gladstone, John Lindsey, sometimes known as Jack Lindsey and John H. Feinne, hereinafter referred to as respondent, have 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 Majestic China Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business in the Building and Loan Tower Building in the city of South Bend, Ind.

Respondent Art China Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business in the Citizens Bank Building in the city of South Bend, Ind.

Respondent Herman Siegel is an individual and is an officer of the corporate respondents Majestic China Co., Inc., and Art China Co. Sigmund Gladstone is an individual and in the employment of the corporate respondent Majestic China Co., Inc., and is an officer of the corporate respondent Art China Co. John Lindsey, sometimes known as Jack Lindsey, is an individual and in the employment of the corporate respondent Majestic China Co., Inc., and is an officer of the corporate respondent Art China Co. Respondent John H. Feinne is an individual and an officer of the corporate respondent Majestic China Co., Inc.

Respondents Herman Siegel, Sigmund Gladstone, and John Lindsey, sometimes known as Jack Lindsey, also trade in their own right under the trade name Art China Co. Respondent John H. Feinne also trades in his own right under the trade name Windsor China Co.

The above-named individual respondents control and direct the acts, policies, and practices of said corporate respondents, and all of said respondents, in doing the acts and things hereinafter alleged, have acted together and in cooperation with each other. The individual respondents maintain their offices and place of business in the city of South Bend in the State of Indiana.

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PAR. 2. All of said respondents are now, and for more than a year last past have been, engaged in the business of offering for sale and selling to retailers a so-called business or sales stimulator plan, a part of which consists of chinaware to be distributed by said retailers as premiums. Respondents cause said chinaware products, when sold in connection with said so-called sales or business stimulator plan to be transported from the factory where such products are manufactured located at Sebring, Ohio, to the purchasers thereof located at various points in the several States of the United States other than the State of Ohio and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a constant course of trade in said chinaware products so sold and distributed by them 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 their business in said commerce as aforesaid, respondents are in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of chinaware products in commerce between and among the various States of the United States and in the District of Columbia.

There are, among said competitors, many who do not in any way misrepresent the nature of their business or make any false or disparaging statements, concerning the products of their competitors.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said 'so-called sales or business stimulator plan and the chinaware products used in connection therewith, respondents have, verbally and by means of their stationery, contracts, correspondence and through advertising media circulated generally throughout the United States, made many representations as to the nature of their business and said so-called sales or business stimulator plan and the chinaware products used in connection therewith, and concerning the business status and the products of their competitors.

Among and typical of the representations so made and used by the respondents are, in substance, the following:

1. That the respondents will distribute a designated number of circulars and coupons through house-to-house canvassers in the vicinity or locality of the retail dealer to whom they sell said so-called sales or business stimulator plan and the chinaware products used in connection therewith.

2. That respondents or some of them own and operate or directly control a pottery or factory located at Sebring, Ohio, wherein the

chinaware products offered for sale and sold by them are manufactured.

3. That respondent Majestic China Co., Inc., is a wholly owned and operated subsidiary of Royal China, Inc., a corporation operating a china pottery or factory at Sebring, Ohio, and that respondent Majestic China Co., Inc., maintains a branch warehouse in the City of South Bend, Ind.

4. That certain of respondents' competitors engaged in the sale and distribution of a similar sales or business stimulator plan, including chinaware products to be used in connection therewith as premiums, are no longer engaged in the sale and distribution of such plan but are engaged in an entirely different line of business.

5. That the chinaware products distributed by certain of respondents' said competitors, who are likewise engaged in the sale and distribution of a sales or business stimulator plan using chinaware products in connection therewith as premiums, are "seconds" and inferior in quality, and that the pottery or factory wherein such chinaware products are manufactured is not reliable.

PAR. 5. The representations so made and used by the respondents in connection with the offering for sale and sale of their said so-called sales or business stimulator plan and the chinaware products used in connection therewith are false, misleading, and deceptive and unfairly defame and disparage the products and businesses of certain of their competitors. In truth and in fact, in many instances where sales of said plan have been secured through the representation that circulars and coupons will be distributed in the vicinity or locality of the retailer purchasing same, respondents have failed and refused to distribute such circulars or coupons. None of said respondents has ever owned and operated, or directly or indirectly controlled, a pottery or factory located at Sebring, Ohio, or at any other point where the chinaware products offered for sale and sold by them are manufactured. Respondent Majestic China Co., Inc., has never been a subsidiary of, nor has it ever had any connection with, Royal China, Inc., of Sebring, Ohio, except as a purchaser of products from Royal China, Inc. The respondent Majestic China Co., Inc., has never owned, operated, or maintained a warehouse or branch warehouse in South Bend, Ind., or at any other point. In truth and in fact, the competitors referred to by the respondents as being no longer engaged in the sale and distribution of said so-called sales or business stimulator plan, and the chinaware products used in connection therewith as premiums, are still engaged in such business and are in active and direct competition with the respondents in offering for sale and selling said plan and said chinaware products. The products of

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those competitors of the respondents, which are described and referred to by them as being "seconds" and inferior in quality, are not of the grade, class, or quality of chinaware products which are commonly referred to and described as "seconds" and are not inferior in quality to the products offered for sale and sold by the respondents but are of the same grade, class, and quality. The pottery or factory wherein the chinaware products which are sold by competitors in connection with the sales plan in competition with respondents, and which are described and referred to by the respondents as "seconds" or as inferior in quality to the products sold by the respondents, are made in a reliable pottery or factory which is so recognized by the industry.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations in connection with the offering for sale, sale and distribution of their said plan and said products in said commerce as aforesaid, has had and now has a tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, deceptive, and misleading representations are true, and that respondents will distribute a designated number of circulars and coupons in the vicinity or locality of the retail dealer purchasing such plan; that respondents manufacture the chinaware products offered for sale and sold by them; that respondent Majestic China Co., Inc., is a subsidiary of Royal China, Inc., and operates a branch warehouse at South Bend, Ind.; that certain of respondents' competitors are no longer engaged in business, and that the chinaware products offered for sale and sold by said competitors are "seconds" or inferior in quality and that the manufacturer thereof is not reliable and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said plan and chinaware products.

As a result, trade has been diverted unfairly to respondents from their competitors in said commerce as described in paragraph 3 hereof who do not in any way misrepresent the nature of their business or make any false or disparaging statements concerning the products or businesses of their competitors, to the injury of said competitors and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' 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 29th day of March, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and 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 answers by all respondents, testimony and other evidence in support of the allegations of the complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Harry Bell and Samuel Feiwell, attorneys for respondents, before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, 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, the answers thereto, the testimony and other evidence, the report of the trial examiner, and brief in support of the complaint; 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 Majestic China Co., Inc., is a corporation organized under the laws of the State of Indiana with its office and principal place of business in the city of South Bend, Ind.

Respondent Art China Co. is a corporation organized under the laws of the State of Indiana with its office and principal place of business in the city of South Bend, Ind.

Respondents Herman Siegel, John Lindsey, sometimes known as Jack Lindsey, and John H. Feinne are officers of the Majestic China Co., Inc., and respondent John H. Feinne was also engaged in trade under the trade name Windsor China Co. from some time in A. D., 1937 up to January, A. D. 1938.

Respondent Sigmund Gladstone is in the employ of respondent Majestic China Co., Inc., and is also an officer of the respondent Art China Co.

Respondent John Lindsey is an officer of respondent Art China Co. and also trades in his own right under the trade name Windsor China Co.

The individual respondents hereinbefore named control and direct the acts, policies, and practices of the corporate respondents and all of said individual respondents in doing the acts and things herein-after set forth have acted together and in cooperation with each other.

PAR. 2. All of the respondents are now and were during the last past 3 years engaged in the business of offering for sale and selling to retailers, a so-called business or sales stimulator plan, a part of which consists of chinaware to be distributed by said retailers as premiums. Respondents cause and have caused said chinaware, when sold in connection with said so-called sales or business stimulator plan, to be transported from the factory where such products are manufactured, located at Sebring, Ohio, to the purchasers thereof located at various points in the several States of the United States other than the State of Ohio.

Respondents maintain and at all times mentioned herein have maintained a constant course of trade in said chinaware so sold and distributed by them in commerce between and among the various States of the United States.

PAR. 3. Respondents, in the course and conduct of their said business, are and have been in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of chinaware in commerce between and among the various States of the United States.

There are many of respondents' competitors who do not in any way misrepresent the nature of their business or make any false or disparaging statements concerning the products of their competitors.

PAR. 4. Respondents, for the purpose of inducing the purchase of their so-called sales or business stimulator plan and the chinaware used in connection therewith, have orally and by means of their stationery, contracts, correspondence, and through advertising media circulated generally throughout the United States made many false and misleading statements and representations as to the nature of their business, and concerning the business status and the products of their competitors. Among and typical of such statements and representations are the following:

1. That they or some of them own and operate or directly control a pottery plant or factory located at Sebring, Ohio, wherein the chinaware offered for sale and sold by them is manufactured.

2. That respondent Majestic China Co., Inc., is a wholly owned subsidiary of Royal China, Inc., a corporation operating a pottery plant at Sebring, Ohio.

3. They have made disparaging statements concerning the products of certain of their competitors and represented that such competitors were no longer engaged in business.

PAR. 5. None of the respondents is engaged in manufacturing chinaware sold by any of them and at no time has any of the respondents owned, operated, or controlled a factory or plant engaged in manufacturing chinaware. Respondents purchase all of the chinaware sold by them from Royal China, Inc., which company manufactures said chinaware at its plant located at Sebring, Ohio.

PAR. 6. None of the respondents own any stock in Royal China, Inc., or have any financial or other interest in said company. Respondent Majestic China Co., Inc., is not a wholly owned subsidiary of Royal China, Inc. Royal China, Inc., owns no stock of the respondent Majestic China Co., Inc., or of the respondent Art China Co. nor has it any financial or other interest in either of respondent corporations or in the business of any of the respondents other than selling its products to said respondents. Royal China, Inc., at the instance of respondents John H. Feinne, Herman Siegel, John Lindsey, and Sigmund Gladstone and in cooperation with said respondents, in soliciting the sale of chinaware to respondent's trade, represented to such trade that said respondents or some of them were its direct salesmen, when in fact neither of said respondents were ever salesmen for said company.

PAR. 7. Independent Merchants Guild, one of respondents' competitors, which is represented by Joseph C. Sommers, is engaged in selling a so-called business or sales stimulator plan and chinaware to be used in connection therewith to customers located in various States of the United States. Thé C. A. Pearson Co., located in St. Paul, Minn., for about 4 years used the so-called business or sales stimulator plan of the said Independent Merchants Guild and purchased from said Independent Merchants Guild the chinaware used in connection therewith. In May or June, A. D. 1937, respondent Sigmund Gladstone, acting on behalf of all of the respondents, called upon E. F. Cedarholm, president and general manager of the C. A. Pearson Co., and endeavored to sell said company respondents' so-called business or sales stimulator plan and chinaware to be used in connection therewith and, upon being told that the Pearson Co. was using the business or sales stimulator plan and chinaware of the Independent Merchants Guild, stated that Sommers was no longer in business and that the Independent Merchants Guild was in the hands of "finance concerns" and that Sommers and the Independent Merchants Guild had been selling inferior chinaware that was of second grade quality. At the time said statements were made and ever since

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that time the Independent Merchants Guild and Joseph C. Sommers were actively engaged in their regular business as herein set forth, which fact was known to the respondent Sigmund Gladstone at the time he made the statements hereinabove referred to. The said statements were made by him for the purpose of diverting business from the Independent Merchants Guild to respondent Majestic China Co. Respondent Sigmund Gladstone's statement concerning the quality of the chinaware sold by the Independent Merchants Guild was untrue and said respondent well knew at the time he made said statement that same was untrue.

The Independent Merchants Guild purchases all of the chinaware used and sold by it from the manufacturer thereof, the Stetson China Co. Before any chinaware is shipped to the Independent Merchants Guild, it is examined by the superintendent of the Stetson China Co. and all of the chinaware so shipped is what is known as first grade or first class. The C. A. Pearson Co., during the 4 years it purchased chinaware from Independent Merchants Guild, never had any complaints from any of its customers concerning said chinaware and no flaws were ever found in any of same, which was always first grade. The general manager of the largest china company in the world examined the chinaware of the Independent Merchants Guild and found it to be of the first quality.

The Downer Grocery Co. conducts its wholesale grocery business in Parkersburg, W. Va. Respondent John H. Feinne, acting on behalf of all of the respondents, called upon this company for the purpose of selling it respondent Majestic China Co.'s so-called business or sales stimulator plan and chinaware to be used in connection therewith and stated that the Independent Merchants Guild's chinaware was of an inferior grade while that of his company was of a superior grade. As a result of these statements the Downer Grocery Co. canceled its contemplated negotiations with the Independent Merchants Guild.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, deceptive, and misleading representations are true and that respondents manufacture the chinaware offered for sale and sold by them, that respondent Majestic China Co., Inc., is a subsidiary of Royal China, Inc., that certain of respondents' competitors are no longer engaged in business and that the chinaware products offered for sale and sold by said competitors are "seconds" or inferior in quality and causes a substantial portion

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of the purchasing public because of such erroneous and mistaken belief to purchase respondents' business or sales stimulator plan and chinaware used in connection therewith in preference to making such purchases from their competitors, and as a result thereof trade has been unfairly diverted from such competitors to the respondents.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony, and other evidence taken before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, in support of the allegations of the complaint and in opposition thereto, the report of the trial examiner thereon and brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Majestic China Co., Inc., and Art China Co., their officers, directors, representatives, agents, and employees, and respondents Herman Siegel, Sigmund Gladstone, and John Lindsey, sometimes known as Jack Lindsey, individually and as officers and employees of the Majestic China Co., Inc., and trading as Art China Co., or trading under any other trade name, and respondent John H. Feinne, individually and as an officer of Majestic China Co., Inc., and trading as Windsor China Co., or trading under any other trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their business or sales stimulator plan and chinaware in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that respondents, or any one or more of them, own and operate or control a pottery or factory wherein chinaware products are manufactured unless and until such respond-

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ent or respondents own and operate or directly and absolutely control the pottery or factory wherein such products are manufactured.

2. Representing that respondent Majestic China Co., Inc., is a wholly owned subsidiary or a subsidiary of Royal China, Inc., or has any connection therewith other than that of a purchaser and distributor of the products of Royal China, Inc.

3. Representing that competitors of respondents, or of any one or more of respondents, have discontinued certain business activities when such competitors are engaged in such business activities.

4. Representing that products of such competitors are "seconds" or are inferior to first quality merchandise, when such products are of first quality.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

LOUIS ESTRIN, CHARLES ESTRIN, SIDNEY ESTRIN,
ESTHER ESTRIN AND BELLE ESTRIN, TRADING AS
HUDSON FUR DYEING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3951. Complaint, Nov. 15, 1939—Decision, July 29, 1941*

Where five partners engaged, in New Jersey, as successors to similarly named corporate business, in dyeing, for fur dealers, garment manufacturers, and others in New York City, rabbit furs or peltries under process which was intended to and did result in a product simulating genuine seal, and Hudson seal, or, as generally understood in the trade, seal-dyed muskrat—

Stamped each peltry dyed by them with the words "Hudseal Dyed Coney," unless otherwise directed, and supplied with each 50 peltry lot—the number usually required for a coat—to be attached to garments made therefrom, cloth labels bearing the inscription "HUDSEAL Seal-Dyed Coney Trade Mark Reg. * * * Super Quality," and cardboard tags similarly inscribed, for the better grade, and tags bearing the words "SATINSEAL Registered Seal Dyed Coney Hudseal Process" with similar lots of poorer quality;

With result that a substantial proportion of the purchasing public were caused to believe that such contraction of words "Hudson Seal" was intended to mean Hudson seal or muskrat fur dyed to resemble seal, and with tendency to cause members of the purchasing public, confused thereby, to call upon the sales person for an explanation of the terms used, thus placing in the hands of others an instrumentality whereby they might mislead and deceive members of the purchasing public into the erroneous belief that garments thus labeled were made from peltries of seal or muskrat or other animals more desirable than rabbit peltries, and that they were of greater value and better quality than rabbit furs;

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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Koehler, Augenblick & Freedman, of Newark, N. J., 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 Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals, trading as Hudson Fur Dyeing Co. have violated the