

IN THE MATTER OF
INLAID OPTICAL CORPORATION

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

Docket 4178. Complaint, July 11, 1940—Decision, Aug. 21, 1941

Where a corporation engaged in the interstate sale and distribution of lenses and eyeglasses, including reading glasses and sunglasses, importing uncut lenses from Japan, and processing and mounting them in frames, in course of which the label attached to each bearing legend "Made in Japan," was removed, and also manufacturing and purchasing lenses of domestic origin with which it customarily intermingled the processed Japanese lenses in its ready-to-wear glasses—

- (a) Sold and distributed said glasses to chain stores and dealers, without any label, mark or words thereon indicating the Japanese or foreign origin of lenses above referred to, frames of which were made in the United States; and
- (b) Represented, through salesmen and representatives, that its eyeglasses, assembled from lenses intermingled as above set forth and of which about 25 percent contained such imported lenses, were of domestic origin;

With effect of misleading and deceiving a substantial portion of the purchasing public, which has a decided preference for products made in the United States over those made in Japan and many other foreign countries, and members of which have become accustomed to examining articles prior to purchase for indication of foreign origin, in absence of which they assume such products to be domestic, into the erroneous belief that its said eyeglasses were wholly of domestic origin, thereby inducing such public to purchase its said products, and placing in the hands of unscrupulous and uninformed dealers means to mislead and deceive members of said public:

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. Merle P. Lyon for the Commission.

Adler & Flint, of Providence, R. I., 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 Inlaid Optical 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, Inlaid Optical Corporation, is a corporation organized, existing, and doing business under and by virtue

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Complaint

of the laws of the State of Rhode Island, with its principal office and place of business located at 1058 Broad Street, in the city of Providence of said State. Said respondent is now, and for some time past has been, engaged in the business of selling and distributing lenses and eyeglasses, including reading glasses and sunglasses, in commerce among and between the various States of the United States and in the District of Columbia. Respondent has maintained, and maintains, a course of trade in said products in said commerce, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of Rhode Island to purchasers, including retailers, resellers, and users thereof, located in various States of the United States other than the State of Rhode Island, and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as above described, and in connection with the sale and distribution of its said products in said commerce, respondent has caused certain quantities of lenses for said eyeglasses and sunglasses to be imported from the country of Japan. At the time of importation into the United States, said lenses have been; and are, all labeled or marked with the word or words "Japan" or "Made in Japan," indicating that the country of origin is Japan. After said lenses were and are received by respondent, as so marked, it thereafter caused and causes the said labeling or marking to be removed from said lenses, and thereafter offered and offers for sale, and sold and sells, the same mounted in frames, to the aforesaid purchasers, including dealers, resellers, and users thereof, without any label, mark, or words thereon indicating the Japanese or foreign origin of the said lenses.

PAR. 3. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, inclusive of eyeglasses and sunglasses having foreign-made or imported lenses. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and its territorial possessions, and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or

marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin, and not of domestic origin.

At all times material to this complaint there has been, and now is, among said members of the buying and consuming public, including purchasers and users of eyeglasses and sunglasses, in and throughout the United States and its territorial possessions, and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of Japanese or foreign manufacture or origin.

PAR. 4. The practice of respondent, as aforesaid, in offering for sale, selling, and distributing its eyeglasses, including reading glasses and sunglasses, made of lenses having Japanese or foreign origin, without any imprinting, labeling, or marking thereon to indicate to purchasers that the said lenses or glasses are of Japanese or foreign origin, has had, and has, the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the said glasses, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in the reliance upon such erroneous belief.

The aforesaid practice further places in the hands of retailers and resellers of respondent's said products a means wherewith to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the said glasses referred to, and all the parts thereof, are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 July 11, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Inlaid Optical Corporation, 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 issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were

introduced by Merle P. Lyon, attorney for the Commission, and in opposition to the allegations of the complaint by Walter Adler, attorney for the respondent, before Lewis C. Russell, 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 said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, brief in support of the complaint (no brief having been filed by the respondent or oral argument requested), 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, Inlaid Optical Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1058 Broad Street in the city of Providence, in the State of Rhode Island.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of lenses and eyeglasses, including reading glasses and sunglasses, in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes its said products, when sold, to be transported from its place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States 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 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 uncut lenses manufactured and fully ground in Japan. When such lenses are imported into the United States they bear a label or tag attached to each lens bearing the legend "Made in Japan" and usually bear a further label or tag giving the focal strength of said lenses, although sometimes the information as to the focal strength appears upon the package instead of the lens itself.

When such lenses are so received, they are further processed by the respondent, which processing consists of cleaning and cutting said

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lenses to the desired shape and size, finishing the edges, drilling such holes as may be necessary, and attaching to frame or mounting. In the course of this processing, the labels or tags bearing the legend "Made in Japan" are removed from such lenses, and thereafter said lenses so mounted are sold and distributed to chain stores and other dealers without any label, mark, or words thereon indicating the Japanese or foreign origin of said lenses. The frames to which said lenses are mounted are made in the United States and the completed eyeglasses retail for from 25 cents to \$1, depending on the frame used. Approximately 25 percent of the ready-to-wear glasses sold and distributed by the respondent contain lenses imported from Japan.

In addition to the lenses imported from Japan, the respondent also manufactures and purchases lenses of domestic origin for use in its ready-to-wear glasses. It is customary for the respondent, after processing the uncut lenses imported from Japan, to intermingle such imported lenses with lenses of its own manufacture and those purchased from domestic sources. In the offering for sale, sale, and distribution of its ready-to-wear glasses assembled from such intermingled lenses, the respondent has represented, through salesmen and representatives, that its eyeglasses were of domestic origin.

PAR. 4. 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 and many other foreign countries. Members of the purchasing public have become accustomed to examining articles prior to purchase for markings or tags which indicate that the product is of foreign origin, and when products bear no markings indicating that they are of foreign origin the purchasing public assumes that such products are of domestic origin.

PAR. 5. The practice of respondent in obliterating or obscuring from its lenses the legend "Made in Japan" and in offering for sale, selling, and distributing such lenses mounted on frames without disclosing that the lenses are made in Japan 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 respondent's eyeglasses 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, 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 Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner thereon and brief filed in support of the complaint, 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, Inlaid Optical Corporation, 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 lenses and eyeglasses, including reading glasses and sunglasses, and other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Advertising, offering for sale, or selling lenses or eyeglasses including reading glasses and sunglasses, or other similar products, which are manufactured in whole or in part in Japan or any other foreign country, 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.

IN THE MATTER OF

**REED-HARLIN GROCER COMPANY AND JOHN R. REED
AND ORR M. REED, TRADING AS WEST PLAINS BROK-
ERAGE COMPANY, ET AL.**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4486. Complaint, Apr. 9, 1941—Decision, Aug. 21, 1941

Where some six corporate or partnership concerns, engaged in selling foodstuffs, groceries, and allied products to numerous buyers, including a corporate grocery business operating warehouses in Missouri and Arkansas, which placed orders for a substantial portion of its requirements through a brokerage firm owned by two individuals, one of whom was the president and active manager of said corporate grocery business, owning 86 percent of its outstanding stock, the other being director, secretary, salaried employee, and stockholder therein—

- (a) Transmitted and paid to said two individuals, engaged under a separate trade name in said brokerage business, so-called brokerage fees and commissions in substantial amounts, which were a certain percentage of the quoted sale prices agreed upon between each of said sellers and said individuals:

Held, That said concerns violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended, by so granting and paying fees and commissions as brokerage to said corporate grocer and said two individuals; and Where said corporate grocery concern and said individuals, acting in fact on behalf of said corporate grocery business—

- (b) Accepted from sellers aforesaid so-called brokerage fees and commissions:

Held, That said corporate grocery business and individuals violated the provisions of subsection (c) of section 2 of said statute by receiving and accepting fees and commissions as brokerage upon purchases from sellers.

Mr. John T. Haslett for the Commission.

Mr. A. W. Landis, of West Plains, Mo., for Reed-Harlin Grocer Co., John R. Reed and Orr M. Reed.

Mr. W. D. Wright, Jr., of Denver, Colo., for Ady & Milburn, Inc., William D. Wright and Frank E. Hockensmith.

Rose, Loughborough, Dobyys & House, of Little Rock, Ark., for Arkansas State Rice Mill Co.

Farrar & Martin, of Denver, Colo., for Great Western Sugar Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described since June 19, 1936, have violated and are now violating the provisions of subsection (c)