

Complaint

IN THE MATTER OF

JOSEPH H. KEVORKIAN, JOSEPH D. KEVORKIAN AND
LOUIS STONE, TRADING AS STOMAR MANUFACTURING
COMPANY

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

Docket 4272. Complaint, Aug. 27, 1940—Decision, Aug. 28, 1941

Where a firm engaged in manufacture and in interstate sale and distribution of steel kitchen graters and shredders; in advertisements in periodicals and in circulars and other advertising literature distributed among their distributors and dealers, who redistributed them to the purchasing public, and in statements on display cards and on envelopes enclosing such products—

Represented that their graters and shredders were made of stainless steel, and would successfully resist rust, tarnish, stain and corrosion, through such legends and statements as "Stomar Stainless Safety Grater and Shredder," "Wont Rust Won't Tarnish Won't Corrode";

Facts being their said products were not made of the more expensive stainless steel or alloy, generally associated with term "stainless," which resists effects of food acids, dampness and water and weather conditions generally, to a much greater degree than does ordinary carbon steel, but were made of latter less expensive product plated with tin, and were not stainless in fact, but, as disclosed by Bureau of Standards tests, would not successfully resist rust, tarnish, or corrosion;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said products possessed qualities which they did not in fact possess, and to cause it, because of such belief, to purchase substantial quantities of said products:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Charles S. Cox for the Commission.

Scarborough & Creamer, of Philadelphia, Pa., for Joseph H. Kevorkian and Joseph D. Kevorkian.

Mr. Nathan Markmann, of Philadelphia, Pa., for Louis Stone.

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 Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, individually and as copartners trading as Stomar Manufacturing Co., have violated the provisions of said act, and it appearing to the Commission that a pro-

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ceeding 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. Respondents, Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, are individuals trading as copartners under the firm name, Stomar Manufacturing Co., with their office and principal place of business located at 1027 Ridge Avenue, Philadelphia, Pa.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in manufacturing, selling, and distributing graters and shredders. Respondents cause said graters and shredders when sold by them to be transported from their place of business located in the State of Pennsylvania to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania, and in the District of Columbia.

PAR. 3. Respondents' said graters and shredders are sold to various distributors, department and chain stores and retailers who in turn resell the same to the purchasing public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said graters and shredders in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Stainless steel is an alloy produced from iron, chromium and carbon, and sometimes containing other minor alloying elements. Through long commercial usage, the alloy so produced has become known to manufacturers, to the trade and to the consuming public by the term "Stainless." This term as applied to steel indicates a very specific type of chromium-steel alloy which has the quality of resisting oxidation and corrosion against most media. Stainless steel resists alkaline materials, fruit acids, dampness and water, salt air and salt water and weather conditions, including rain and snow, to a markedly greater degree than is true of carbon steel. Stainless steel, in fact, is either wholly or substantially immune to the action of nearly a hundred corrosive agents. It is a much more expensive product to manufacture than carbon steel, and this is particularly true in relation to articles used in the ordinary kitchen.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of said products, respondents, through advertisements inserted in newspapers and periodicals having a general circulation and also through circulars and other advertising matter, and on various carton and container labels, all of which are distributed in commerce among and between various States of the United States, and through other means, have made misleading statements and representations to the purchasing public concerning certain of their said graters and shredders. Among and

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typical of such misleading statements and representations so disseminated are the following:

Stomar Stainless Safety Grater
Stomar Stainless Safety Grater and Shredder
Won't Rust
Won't Tarnish
Won't Corrode

Respondents by the use of the term "Stainless" thereby have falsely represented and do falsely represent to prospective purchasers that their aforesaid grater is such a product as is known to the trade and to the general public as stainless steel, when in truth and in fact said grater so described and designated by respondent is made from ordinary carbon steel wire with a retinned finish.

Respondents' use of the terms or expressions "Stainless," "Won't Rust," "Won't Tarnish," and "Won't Corrode" in describing, designating, or referring to their said product, creates the impression upon the trade and the general public, and causes the trade and general public to believe, that said grater is so made and is of such quality, as that it successfully resists rust, stain and corrosion.

PAR. 6. In truth and in fact respondents' said grater is not stainless, nor does it possess the qualities and characteristics of being immune to, or of successfully resisting rust, tarnish, and corrosion, but on the contrary said product will and does rust and stain when brought in contact with agencies which do not rust or blemish stainless steel. Respondents' said graters are not stainless in fact.

PAR. 7. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale, and distribution of their said graters and shredders, as aforesaid, have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true, and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial amount of respondents' said products.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice 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 August 27, 1940, issued and thereafter served its complaint in this proceeding upon the respondents,

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Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, individually and as copartners trading as Stomar Manufacturing Co., charging them 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' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Charles S. Cox, attorney for the Commission, and in opposition to the allegations of the complaint by Fred B. Creamer and Nathan Markmann, attorneys for the respondents, before Arthur F. Thomas, a trial examiner of the Commission theretofore duly designated by it, and such 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 the complaint, the answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been 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. From approximately June 1, 1939 to approximately May 16, 1940 the respondents, Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, were engaged in business as copartners under the firm name Stomar Manufacturing Co., with their office and principal place of business located at 1027 Ridge Avenue, Philadelphia, Pa. Respondents were engaged in the manufacture and in the sale and distribution of certain steel kitchen utensils known as graters and shredders.

Respondents sold their graters and shredders to various distributors, and to department stores, chain stores and other retailers who in turn resold such products to the purchasing public. Respondents caused their said products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

On or about May 16, 1940, respondents Joseph H. Kevorkian and Louis Stone severed their connection with the business, and since

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that date the business has been operated, and is now operated, by respondent Joseph D. Kevorkian who is the sole owner thereof. The said Joseph D. Kevorkian has continued the use of the trade name, Stomar Manufacturing Co.

PAR. 2. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, the respondents (originally all of the respondents and subsequently respondent Joseph D. Kevorkian) have advertised their products in periodicals having a general circulation throughout the United States. Respondents have also made use of circulars and other pieces of advertising literature which have been distributed by respondents among their distributors and dealers and by such distributors and dealers to members of the purchasing public. Respondents have also caused legends and statements to be placed on display cards on which respondents' products are displayed for sale to the public, and on envelopes enclosing such products. Among and typical of the various legends and statements appearing in such advertisements and advertising material were the following:

Stomar Stainless Safety Grater
Stomar Stainless Safety Grater and Shredder
Won't Rust
Won't Tarnish
Won't Corrode

Through the use of these legends and of others similar thereto, the respondents have represented that their graters and shredders are made of stainless steel, and that such graters and shredders will successfully resist rust, tarnish, stain, and corrosion.

PAR. 3. The Commission finds that stainless steel is an alloy produced from iron, chromium and carbon, and sometimes other minor alloying elements. Through long commercial usage the alloy so produced has become known generally to manufacturers, to the trade and to the consuming public by the term "stainless."

This term, as applied to steel and particularly to household utensils, indicates a specific type of chromium-steel alloy which has the quality of resisting oxidation and corrosion. Stainless steel resists the effects of fruit acids, dampness and water, and weather conditions generally to a much greater degree than is true of ordinary carbon steel. Stainless steel is more expensive to produce than carbon steel and this is particularly true of the articles used as ordinary kitchen utensils.

PAR. 4. While the respondents have not used in their advertising material the specific word "steel" after the word "stainless," the testimony in the record shows, and the Commission finds, that the word

"stainless" as used by respondents on their graters and shredders is understood by a substantial portion of the purchasing public as indicating and representing that such graters and shredders are made of stainless steel. And the effect of the use of the word "stainless" in this manner is accentuated by reason of the fact that in much of respondents' advertising material the word is followed by the legends "Won't Rust," "Won't Tarnish," and "Won't Corrode."

PAR. 5. Respondents' graters and shredders are not made of stainless steel but are made of ordinary carbon steel and are plated with tin. Nor are respondents' graters and shredders stainless in fact. Tests conducted by the United States Bureau of Standards disclose, and the Commission finds, that respondents' products will not successfully resist rust, tarnish, or corrosion. The Commission therefore finds that the representations of respondents are misleading and deceptive.

PAR. 6. The Commission further finds that the use by respondents of such representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' products possess qualities which they do not in fact possess, and the tendency and capacity to cause such portion of the public, as a result of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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 respondents, testimony and other evidence taken before Arthur F. Thomas, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); 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.

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Order

It is ordered, That the respondents, Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, individually and trading as Stomar Manufacturing Co., or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of their kitchen utensils known as graters and shredders, do forthwith cease and desist from:

1. Using the word "stainless" to designate or describe respondents' products, or otherwise representing that said products are made from stainless steel or that they are stainless in fact.

2. Representing that respondents' products will not rust, tarnish or corrode.

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.

IN THE MATTER OF
HASKELITE MANUFACTURING CORPORATION

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

Docket 4442. Complaint, Dec. 31, 1940—Decision, Aug. 29, 1941

- Where a corporation engaged in the manufacture and interstate sale and distribution to department stores, gift shops, and other retail establishments, of serving trays made of a single ply of poplar, basswood, or other similar veneer covered top and bottom, with specially processed paper, so colored and finished as to simulate walnut or copomo grain with nothing to indicate that any other material than wood had been used in their manufacture; In advertising mats which it supplied to dealers for their use in advertising such trays in local newspapers, the expense of which it bore in whole or in part depending upon the quantity purchased, and in advertising booklets, leaflets, and circulars—
- Falsely represented that said trays were made entirely of wood and finished with walnut or copomo wood, through such legends and statements as "Simulated walnut grain finish that looks exactly like fine wood inlay," "Hardwood with simulated walnut grain surface," "Made of selected wood veneer with simulated walnut grain finish," "Selected wood construction," "Available in walnut or copomo grains," and "Wood inlay on walnut grained surface * * * also in plain simulated walnut," and
- Failed to disclose affirmatively that the surfaces of its said trays were made of paper, through use of word "Simulated" in such statements as "Simulated walnut grain surface," etc., which were insufficient to disclose to a substantial portion of the purchasing public the actual nature of said products;
- With result of thereby placing in the hands of unscrupulous or uninformed retailers means to mislead or deceive members of the purchasing public, and with tendency and capacity to mislead and deceive a substantial portion of such public into the erroneous belief that its said trays were made entirely of wood, and to cause it to purchase substantial quantities of its products as a result of such mistaken belief:
- Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Eldon P. Schrup for the Commission.

Fyffe & Clarke, of Chicago, Ill., 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 Haskelite Manufacturing Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it ap-