

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-

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pearing 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, Haskelite Manufacturing Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 208 West Washington Street, in the city of Chicago, State of Illinois.

Said respondent operates a factory located at Grand Rapids, Mich., wherein are manufactured, among other products, wooden serving and lap trays, together with the products designated by respondent as Hasko De Luxe Buffet Trays.

Respondent, Haskelite Manufacturing Corporation, is now and for a number of years last past has been engaged in the business of the offering for sale and the sale of the aforescribed products to retail merchants, and through and by use of the United States mails and respondent's salesmen, said respondent contacts and has contacted for such purpose, various such merchants located throughout the United States and in the District of Columbia. Respondent in response to and in fulfillment of orders thereby obtained has caused and now causes said products when sold to be transported from its place of business in Chicago, Ill., or Grand Rapids, Mich., to the purchasers thereof located in a State or States other than the State or States wherein such shipments from the respondent originated, or in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in aid of the offering for sale and the sale of Hasko De Luxe Buffet Trays in the conduct and course of its business in trade as aforescribed, has stated in advertising mats, copy, booklets, and other materials furnished retail merchants through and by means of the United States mails, respondent's salesmen and otherwise, and has thereby caused to be stated in newspapers and other advertising media employed by respondent's said merchant customers, that Hasko De Luxe Buffet Trays, among other things with reference to their manufacture, construction and materials, are:

Hardwood with simulated Walnut grained surface.

Made of attractive simulated Walnut grained hardwood.

Selected wood construction * * * available in Walnut or Mexican Copomo grains.

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PAR. 3. Respondent through and by use of the statements hereinabove set forth and by means of other statements similar thereto not specifically set out herein, represents and implies and causes to be represented and implied to retail merchants purchasing respondent's said products for resale, and through and by means of such merchants' advertising media, has caused and causes to be stated, represented and implied, to the purchasing public, that Hasko De Luxe Buffet Trays are manufactured and constructed of hardwood, that said trays are of selected wood construction, and that the surface of said trays is composed of hardwood material finished to simulate Walnut or Mexican Copomo grains.

Respondent's said statements, representations, and implications made and caused to be made as aforesaid with reference to the manufacture, construction, and materials contained in Hasko De Luxe Buffet Trays are grossly exaggerated, false, misleading, deceptive, and untrue.

In truth and in fact, Hasko De Luxe Buffet Trays are not manufactured and constructed of hardwood, are not of selected hardwood construction, and the surface of said trays is not composed of hardwood material finished to simulate walnut or Mexican copomo wood grains. Hasko De Luxe Buffet Trays as manufactured and constructed by the respondent, are composed of a core of poplar softwood material, said core being covered with a surface of paper which has been processed and printed to resemble Walnut or Mexican copomo wood grains in appearance, and said trays do not contain nor are their surfaces composed of hardwood materials of any description whatsoever.

PAR. 4. Respondent's said statements, representations, and implications to retail merchants and to the purchasing public, made and disseminated as aforescribed, have had and now have the capacity to and do mislead and deceive a substantial number of such merchants and the purchasing public into the erroneous and mistaken belief and impression that the statements and representations contained in respondent's advertising mats, copy, booklets and other materials furnished such merchants, and in such merchants' newspaper and other advertising media, are true, and many of such merchants and many members of the purchasing public have been and are thereby influenced and induced both directly and indirectly to purchase from respondent or from such merchants, the respondent's aforesaid products.

Respondent's said acts and practices, as hereinabove detailed, further serve to place in the hands of unscrupulous or uninformed retail merchants a means and instrumentality whereby in the sale of

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respondent's said products such merchants may mislead and deceive the purchasing public in manner and method as hereinbefore described.

PAR. 5. The aforesaid acts and practices of the 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 December 31, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Haskellite Manufacturing 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 respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Eldon P. Schrup, attorney for the Commission, before William C. Reeves, 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 (no testimony or other evidence having been offered by respondent). Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of the complaint and in opposition thereto (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. Respondent, Haskellite Manufacturing Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 208 West Washington Street, in the city of Chicago, Ill. Respondent also operates a manufacturing plant located in Grand Rapids, Mich. Respondent is engaged in the manufacture and in the sale and distribution of serving trays, including certain trays designated as "Hasko De Luxe Buffet Trays" or "Hasko Trays."

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PAR. 2. Respondent causes its trays, when sold, to be transported from its places of business in the States of Illinois and Michigan 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 its trays in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells its trays to department stores, gift shops, and other retail establishments, and the trays are resold by such retail establishments to the purchasing public. In the course and conduct of its business, and for the purpose of inducing the purchase of its trays by the purchasing public, the respondent supplies to dealers purchasing its trays advertising mats which are used by such dealers in advertising respondent's trays in local newspapers, most of which have general circulation among various States of the United States. The expense of these advertisements is borne in whole or in part by respondent, depending upon the quantities of the trays purchased by the respective dealers. In addition to such newspaper advertisements, respondent also uses booklets, leaflets and circulars to advertise its products among prospective purchasers. Among and typical of the legends and statements appearing in such newspaper advertisements and other advertising material are the following:

- 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
- Wood inlay on walnut grained surface * * * also in plain simulated walnut
- Made of wood finished in walnut
- Made of attractive simulated walnut grain hardwood
- Made of fine selected wood in simulated walnut grain

Through the use of these legends and statements and of others similar thereto, the respondent represents that its trays are made entirely of wood and are finished or covered with walnut or copomo wood.

PAR. 4. Respondent's trays are made of a single ply of wood veneer, usually poplar, basswood, or other similar material, which forms what is known as the core of the trays, and the outer surfaces of the trays, both top and bottom, are covered with specially processed paper. This paper is colored and finished in such manner that it closely simulates walnut or copomo grain, as the case may be. The paper appears to be a part of the wood itself, and there is nothing

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on or about the trays to indicate that they are covered with paper or that any material other than wood has been used in their manufacture.

In some of its advertising the respondent has used in connection with the description of its trays the word "simulated," as "simulated walnut grain surface," and respondent insists that the use of this word is sufficient to apprise prospective purchasers of the fact that the surfaces of the trays are not wood but are of some other material. The Commission is of the opinion, however, from the evidence, and finds, that to a substantial portion of the purchasing public the use of such term is insufficient to disclose the actual nature of the trays.

PAR. 5. The Commission further finds that the use by respondent of the representations herein set forth, and the failure of respondent to disclose affirmatively that the surfaces of its trays are made of paper, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby such dealers may be enabled to mislead and deceive members of the purchasing public.

PAR. 6. The Commission further finds that the acts and practices of the respondent, including the failure of respondent to disclose the true nature of its trays, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's trays are made entirely of wood, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent 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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (no testimony or other evidence having been offered by respondent), report of the trial examiner upon the evidence, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission having made its findings as

¹ Published as modified by order of October 25, 1941.

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to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Haskelite Manufacturing Corporation, a corporation, and 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 serving trays in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that trays made in part of paper are made entirely of wood.

2. Using the words "wood," "hardwood," "walnut," or "copomo," or any other word descriptive of wood, to designate or describe trays having paper surfaces, unless there appear in immediate connection or conjunction with such words other words clearly indicating that the surfaces of such trays are made of paper.

3. Selling or distributing trays having surfaces of paper which simulates wood, without clearly disclosing by means of legends imprinted upon such trays or upon the individual cartons in which said trays are packed and sold at retail to the ultimate consumer, that such surfaces are made of paper.

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.

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IN THE MATTER OF

SCHULER CHOCOLATES, INC., ALSO DOING BUSINESS
AS SCHULER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4385. Complaint, Nov. 23, 1940—Decision, Sept. 5, 1941*

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including certain assortments so packed and assembled as to involve a game of chance, gift enterprise, or lottery scheme, in resale thereof to the consuming public, and distributing push cards and punchboards for use in such sale and distribution, typical assortments consisting of—

(1) A number of bars of candy of uniform size and shape and a number of boxes of candy, together with a push card for use in sale and distribution of said bars under a plan, as explained thereon, by which customer received, for 5 cents paid, a box of chocolates, two 5-cent bars or three 5-cent bars, depending on the number he secured by chance, the last punch in first section entitled purchaser also to a box of chocolates, and the last punch on the board secured purchaser the large box of chocolates, all others receiving one of said bars; and

(2) A number of boxes of candy, together with a three-section punchboard for use in their sale under a plan by which the chance selection of certain specified numbers entitled purchaser to receive one of said boxes, value of which was in excess of the 5 cents paid, the person punching the last number in each of the three sections also received a box, and others received nothing for their money other than the privilege of making a punch—

Sold such assortments to wholesalers, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government, and in competition with many who do not use method involving chance or any other method contrary to public policy;

Use of which methods, because of said games of chance, had a tendency and capacity unfairly to divert trade in commerce to it from competitors who did not use the same or equivalent methods:

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 acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Lamberton & Lamberton, of Winona, Minn., 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 Schuler