

IN THE MATTER OF
THE BRABANT NEEDLE 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 4212. Complaint, Aug. 2, 1940—Decision, Sept. 17, 1941

Where a corporation engaged in importing needles and needle threaders from England, Germany, Holland, and Czechoslovakia, and in interstate sale and distribution thereof—

- (a) Packaged needles—the container pads or flaps of which, at time of importation and pursuant to the laws of the United States, bore the name of the country of origin—in a manner which concealed said name, and in booklets or other containers which usually bore the words “Printed in U. S. A.,” and sold and distributed its needles, thus packaged, without disclosure of fact that they were made in Germany or other foreign country, to dealers for resale, and to manufacturers, dealers, and others for distribution to the public as part of a sales promotion plan to act as sales reminders and create good will for the supplying concern; and
- (b) Made use of such statements, in invoices, letterheads, and other materials, as “Factory Lion Works, George St. Redditch—England U. S. Factory and Sales Rooms 47 Great Jones Street, New York, N. Y.”;

The facts being needles of English manufacture are considered by trade and consuming public as superior in quality to those manufactured in Germany, Holland, or Czechoslovakia; there is a prejudice on the part of a substantial part of said purchasing public against products manufactured in Germany; and said corporation had not for many years, and did not then, own, control, or operate any needle factory in the United States or in England, and was not a manufacturer, for dealing with whom there is a decided preference on the part of a substantial portion of the purchasing public, as affording, in its belief, a saving of the middleman's profit and other advantages;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its needles were of domestic or English origin and that it owned or controlled factories in which such needles were produced, and with result, as consequence of said erroneous belief, that a substantial portion of said public was induced to purchase its products, and there was thereby placed in the hands of dealers a means whereby they were enabled to mislead and deceive members of the purchasing public as to the source of such products and the business status of said company:

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

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

Mr. Carrel F. Rhodes for the Commission.

Mr. William Kessler, 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

1344

Complaint

Trade Commission, having reason to believe that The Brabant Needle Co., Inc., a 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, The Brabant Needle Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at 47 Great Jones Street, New York, N. Y.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of importing, packaging, selling, and distributing needles and needle threaders. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York 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, respondent imports said needles in pads or flaps from Germany and other foreign countries; the name "Germany" indicating the country of the origin of some of such needles is stamped or printed upon the back of each pad or flap. In marketing certain of its products, respondent combines various pads or flaps of needles into booklets, or containers, sometimes in combination with other articles, such as needle threaders. Respondent prepares such booklets or containers by securely pasting the pads or flaps of needles to the inside covers of the booklets or containers in such a manner that the backs thereof are entirely concealed and any printing thereon, indicating the origin of said needles, is completely hidden from view. Such booklets, or containers, are thereupon sold and distributed by respondent in commerce, as aforesaid, without any marking thereon whatsoever, visible to the purchaser, indicating that such needles are of German origin.

PAR. 4. In the further course and conduct of its business, and in furtherance of the sale of its products, the respondent, during the times mentioned herein, has printed, or caused to be printed, upon the booklets, or containers, of its needles, the words: "Printed in U. S. A." and "U. S. A." and has caused to be printed on its letterheads, invoices, and bill heads, circulated, and caused to be circulated, by United States

Complaint

33 F. T. C.

mails, and by other means among purchasers and prospective purchasers, the following statements and representations:

The Brabant Needle Company, Inc.
Factory, Lion Works, George St.,
Redditch, England
U. S. Factory and Sales Rooms
47 Great Jones Street,
New York, N. Y.

The aforesaid statements, used by respondent, serve as representations to members of the purchasing public that its needles are of domestic or English origin and that it owns, operates, or controls factories located in England and in the United States, wherein the needles, which it sells and offers for sale, are made and manufactured.

PAR. 5. In truth and in fact, none of the needles packaged as aforesaid, and sold by respondent, are manufactured in the United States or England, and the respondent has not during any of the times mentioned herein owned, operated, or controlled any factory wherein such needles sold by it were manufactured either in England, the United States, or elsewhere. All of said needles are imported by respondent from foreign countries other than England for purpose of resale.

PAR. 6. For many years last past, there has been maintained among domestic manufacturers and importers an established custom and practice of 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 a substantial portion of the purchasing public, a decided preference for products which are manufactured in the United States or England over products manufactured in Germany or other foreign countries.

PAR. 7. There also is, and has been during all of the time mentioned herein, a preference on the part of a substantial portion of the purchasing public for purchasing products directly from the manufacturer. There is and has been during all of such time a belief that a saving of the middleman's profit could be obtained and that other advantages would accrue by purchasing directly from the manufacturer, and that dealing directly with a manufacturer is preferable and more advantageous than dealing with purchasers for resale.

PAR. 8. The practice of the respondent in packaging its products in such a manner that the origin of said products is entirely concealed from the view of the purchaser, and of printing on said booklets and containers the words, "Printed in U. S. A." and "U. S. A.," without

1344

Findings

disclosing to the prospective purchasers the fact that certain of its products offered for sale are made in Germany, and the representations that it owns or controls factories in England and the United States, has a tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that a portion of its products are of domestic or English origin and that it owns or controls the factories manufacturing all of its said products. As the result of said erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public is induced to and does purchase respondent's products.

Through the practices herein set forth, the respondent places in the hands of dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public as to the source or origin of such products and as to the business status of respondent.

PAR. 9. 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 August 2, 1940, issued and subsequently served its complaint in this proceeding upon respondent, The Brabant Needle 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 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 an attorney for the Commission and in opposition to the allegations of the complaint by an attorney for the respondent before an 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 the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent 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. Respondent, The Brabant Needle Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York and having its office and principal place of business at 47 Great Jones Street, New York, N. Y. The respondent is now and for more than 1 year last past has been engaged in the business of importing, packaging, selling, and distributing needles and needle threaders.

PAR. 2. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. At all times mentioned in the complaint 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 respondent imports needles and needle threaders from England, Germany, Holland, and Czechoslovakia. At the time of importation into this country the said needles are arranged in pads or flaps and, pursuant to the laws of the United States, the name of the country of origin is printed or stamped upon the pads or flaps in which the needles are packaged. In some instances the name of the country of origin appears upon the face of the pad or flap and in other instances upon the back thereof. In selling and distributing the needles so imported, respondent frequently combines a number of the pads or flaps of needles, sometimes with other articles such as needle threaders, into one package by securely pasting said pads or flaps into a booklet or other container in which form they are sold and distributed. In those instances where the name of the country of origin of the imported needles appears upon the back of the pad or flap in which they are packaged, the name of such country of origin is effectively concealed when such pad or flap is pasted into a booklet or container, and is not visible to any purchaser or prospective purchaser.

PAR. 4. Needles of English manufacture are considered by the trade and the consuming public to be superior in quality to those manufactured in Germany, Holland, or Czechoslovakia, and there is a prejudice on the part of a substantial part of the purchasing public against products manufactured in Germany. In addition to frequently packaging needles imported from Germany or other foreign country in booklets or other containers in a manner which conceals the name of the country of origin, as aforesaid, the respondent packages such needles in booklets or other containers which usually bear

Findings

the words "Printed in U. S. A." Respondent sells and distributes the needles packaged in the manner stated to dealers, for resale to the public, and also to manufacturers, dealers, and others who distribute them to members of the public without charge as a part of a sales promotion plan by such manufacturer, dealer, or other purchaser. When so distributed they are intended to act as sales reminders and to create good will for the concern which supplied them as a gift.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent has used invoices, letterheads, and other material bearing statements such as:

Factory Lion Works, George St.,
Redditch—England
U. S. Factory & Sales Rooms
47 Great Jones Street
New York, N. Y.

The respondent has not for many years, and does not now own, control, or operate any factory in the United States or England in which it manufactures needles. Many years ago the respondent owned an English concern known as "Brabant Needle Co., Ltd.," and is now the exclusive distributor for the products of that company in the United States and Canada. For a number of years last past, however, respondent has not manufactured any of the needles offered for sale and sold by it. There is a decided preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of the products purchased because of a belief that by purchasing directly from the manufacturer a saving of the middleman's profit is accomplished and that other advantages accrue through such method of purchase.

PAR. 6. The acts and practices of respondent in packaging needles imported from Germany and other foreign countries in such a manner that the name of the country of origin of such needles is frequently concealed from the view of the purchaser, and the placing upon the booklets and other containers in which said needles are packaged the words "Printed in U. S. A." without disclosing to purchaser or prospective purchasers the fact that certain of said needles are made in Germany or other foreign countries, and the acts and practices of respondent in representing that it owns, operates, or controls factories in the United States and in England, have a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's needles are of domestic or English origin and that it owns or controls factories in which such needles are produced. As a result of said erroneous

Order

33 F. T. C.

and mistaken belief engendered as herein set forth, a substantial portion of the purchasing public is induced to and does purchase respondent's products. Through the aforesaid acts and practices the respondent places in the hands of dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public as to the source of origin of such products and the business status of respondent.

CONCLUSION

The aforesaid acts and practices of the 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.

ORDER TO CEASE AND DESIST

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 in support of the allegations of said complaint and in opposition thereto, before an examiner of the Commission theretofore duly designated by it, brief filed in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), 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 respondent, The Brabant Needle Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and distribution of needles, needle threaders, or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or implying that respondent owns, controls, or operates a factory in which the needles which it offers for sale, sells, and distributes are made, or representing or implying in any manner that needles or other products not manufactured by respondent are manufactured by it.

2. Concealing, erasing, or removing from imported needles, needle threaders, or other products the legend "Germany," "Made in Germany," or other marking showing the country of origin of such products: *Provided, however*, That this shall not prevent such concealment, erasure or removal of the markings showing the country of origin of such products as is reasonably necessary in the packaging,

1344

Order

assembling, or other handling of such products if the respondent affirmatively and clearly discloses on or in immediate connection with such products their German or other foreign origin.

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

J. V. CORDES AND MRS. J. H. CORDES, DOING BUSINESS
AS MARTHA BEASLEY ASSOCIATESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3841. Complaint, June 30, 1939—Decision, Sept. 18, 1941*

Where two individuals engaged in interstate sale and distribution of certain medicinal preparations intended for use in the treatment of delayed menstruation, one being designated as "Martha Beasley's Compound Formula No. 2" and the other as "Martha Beasley's Compound Formula No. 3"; by means of advertisements disseminated through the mails and in periodicals, directly or by implication—

- (a) Represented that their preparations constituted competent and effective treatments for delayed menstruation, were recommended by physicians generally, and were safe for use, through such statements as "Get a modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has rapidly relieved many unusual, long overdue or past due, suppressed, late appearing abnormally delayed periods in 2 to 4 days without pain or inconvenience," and "A preferred favorite time-tested prescription of many doctors";

The facts being active ingredients in products in question were apiol, oil of savin, aloin, and ergotin, first three of which had long been recognized by pharmacologists and physicians generally as gastrointestinal irritants, aloin in particular being regarded as a drastic cathartic; under directions prescribed or suggested, daily dosage of last-named drug would be four times dose of the United States Pharmacopoeia, which dosage, particularly when added to the apiol and savin ingredients, is likely to produce gastrointestinal disturbances resulting in nausea and vomiting, with pelvic congestion, including congestion of the uterus, and possibly resulting and leading to excessive hemorrhage therefrom; while in the case of pregnancy, use of their said preparations had a tendency to cause also contraction of uterus, sometimes producing abortion and causing uterine infection, which might also extend to other pelvic and abdominal structures and result in septicemia or blood poisoning; and while drugs which constituted active ingredients of their said preparations possess emmenagogue properties, they are not competent or effective treatments for delayed menstruation, nor recommended by physicians generally, being used only after careful diagnosis and under supervision of the physician in those exceptional cases in which some of said drugs may be used; and

- (b) Failed to reveal in said advertisements that use of their said products, under prescribed or usual conditions, might result in serious injury to the health of the user, and to apprise prospective purchasers that said preparations should not be used in event of pregnancy, by use in their advertisements of the word "abnormally" in connection with words "delayed periods," said preparations being offered for sale and sold indiscriminately to the lay public, and prospective purchaser being usually incapable of determining whether her condition is due to normal or abnormal causes, and did not dis-