

Complaint

IN THE MATTER OF

BILT-RITE BOX CORPORATION, AND JACOB GLEKEL
AND JACOB PRESS, INDIVIDUALLY AND AS OFFICERS
THEREOFCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4177. Complaint, July 10, 1940—Decision, Oct. 15, 1941*

Where a corporation, engaged in the interstate sale and distribution of corrugated paper garment boxes and shipping containers, and its president and treasurer who formulated, directed, and controlled its policies, acts and practices; in letterheads, invoices and other printed matter distributed to customers and prospective customers—

Represented that it owned, operated or controlled the plant or factory wherein its said products were manufactured, through such statements, in connection with its corporate name, as "Manufacturers of Corrugated Boxes and Shipping Containers" and "Manufacturers of Cloak, Suit, Dress, and Fur Shipping Containers";

Facts being it purchased all of its said products from manufacturers, who delivered to it "knock-down" boxes, i. e., products in which all the scoring, creasing, trimming and slotting had been done by the manufacturer, and it merely set up the parts of the boxes and stitched or stapled them together, and was not, as represented, a manufacturer, from whom a portion of the purchasing public prefers to buy direct as, in its belief, enabling it to avoid the middleman's profit and obtain a more uniform line of merchandise;

With effect of misleading and deceiving purchasers into believing that it actually owned and operated or controlled the plant or factory wherein, and machinery whereby, its products were made, and to purchase substantial amounts of its said products on account of such erroneous beliefs:

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

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

Mr. B. G. Wilson for the Commission.

Mr. Louis H. Solomon, of New York City, 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 Bilt-Rite Box Corporation, a corporation, Jacob Glekel and Jacob Press, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding

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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, Bilt-Rite Box Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 242 West Forty-first Street, New York, N. Y.; Jacob Glekel and Jacob Press are, respectively, president and treasurer of said corporate respondent and have their business offices at the same address of said Bilt-Rite Box Corporation.

Respondents, Jacob Glekel and Jacob Press, as officers of said corporation, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing paper boxes, more especially designated as corrugated garment boxes and shipping containers, in commerce between and among various States of the United States and the District of Columbia.

Respondents cause and have caused said products, when sold, to be shipped from their aforesaid place of business, in the city of New York, State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, respondents, in soliciting the sale of, and in selling, their products as above described, have caused letterheads, invoices, and other printed matter to be distributed through the United States mails and by other means to customers and prospective customers located in States other than the State of New York and in the District of Columbia. Among and typical of said statements and representations are the following:

BILT-RITE BOX CORPORATION
Manufacturers of
Corrugated Garment Boxes
and Shipping Containers
BILT-RITE BOX CORPORATION
Manufacturers of
Cloak, Suit, Dress and
Fur Shipping Containers

The use of the word "manufacturers" on respondents' letterheads, invoices and other printed matter serves as a representation that respondents own, operate, or control the plant or factory wherein, or machinery whereby, the products they sell are made or manufactured.

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PAR. 3. In truth and in fact, respondents do not own, operate, or control, and have not owned, operated, or controlled a plant, factory or machinery for the manufacture of the products which they sell and distribute as hereinabove alleged, but respondents have filled and now fill orders for such articles of merchandise with products which are made or manufactured in a plant or factory or by machinery which they neither own, operate, nor control.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States, for buying said products and like or similar products directly from the manufacturer or factory producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said products that by purchasing directly from the manufacturer a saving of the middleman's profit may be obtained; that a more uniform line of merchandise may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or plant operator.

PAR. 5. The use by respondents of the word "manufacturers" contained in its advertising matter as hereinabove alleged has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondents actually own and operate or control the plants or factories wherein, or the machinery whereby, said products are made or manufactured, and to purchase substantial amounts of respondents' products on account of such mistaken and erroneous belief.

PAR. 6. The aforesaid acts and practices of 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 the 10th day of July, A. D., 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of the complaint were introduced by the attorneys for the Commission and the attorney for respondent before Lewis C. Russell, a duly

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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 upon the complaint, the answer thereto, the testimony and other evidence, the report of the trial examiner and exceptions thereto, and briefs in support of, and in opposition to 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, Bilt-Rite Box Corporation, is a corporation existing under the laws of the State of New York. Respondent Glekel is president of respondent corporation and respondent Jacob Press is its treasurer. The principal place of business of the respondents is located at 242 West Forty-first Street, in the city and State of New York.

PAR. 2. The corporate respondent, since the date of its incorporation, has been engaged in the business of selling and distributing paper boxes which are designated by the trade as corrugated garment boxes, and shipping containers, and ships or causes its products to be shipped, when sold, from its principal place of business to purchasers thereof located in various States of the United States. Respondents, Jacob Glekel and Jacob Press formulate, direct, and control the policies, acts, and practices of the corporate respondent, and act together in cooperation with each other in doing the things and acts hereinafter set forth.

PAR. 3. The corporate respondent, in the course and conduct of its business as set forth in paragraph 2 hereof, in soliciting the sale of and selling its products, has caused letterheads, invoices, and other printed matter to be distributed to customers and prospective customers located in States other than the State of New York. Among and typical of the statements and representations contained in said literature are the following:

BILT-RITE BOX CORPORATION
Manufacturers of Corrugated
Boxes and Shipping Containers

BILT-RITE BOX CORPORATION
Manufacturers of
Cloak, Suit, Dress and Fur
Shipping Containers

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The corporate respondent, by use of the word "manufacturers," as above stated, represents that it owns, operates, or controls the plant or factory wherein, and the machinery whereby, the products themselves are made or manufactured.

PAR. 4. None of the respondents owns, or has ever owned, operated, or controlled a plant, factory, or machinery for manufacturing the products sold by the corporate respondent. The corporate respondent purchases all of the boxes sold by it from manufacturers who deliver to the respondent what are known as "knock-down" boxes. By this is meant that all the scoring, creasing, trimming, and slotting is done by the manufacturer, and the respondent merely sets up the parts of the boxes and stitches or staples them together.

PAR. 5. The railroads demand that all paper shipping boxes bear a certificate stamp stating the name of the manufacturer of the boxes. The Agar Manufacturing Company, from whom the corporate respondent purchased its knock-down boxes, at the request of respondent stamped its boxes with a certificate showing that the boxes were manufactured by the corporate respondent; but because of the action of the Federal Trade Commission in similar cases, it ceased this practice in April 1939.

PAR. 6. A portion of the purchasing public prefers to buy directly from manufacturers, because of the belief that by so doing they may avoid the middleman's profit and will obtain a more uniform line of merchandise.

PAR. 7. The use by the corporate respondent of the word "manufacturer," as hereinbefore set forth, has a tendency and capacity to mislead and deceive, and has misled and deceived purchasers and prospective purchasers of shipping boxes or containers, causing them to erroneously believe that the corporate respondent actually owns and operates or controls the plant or factory wherein, and the machinery whereby, its products are made or manufactured, and to purchase substantial amounts of said respondent's products on account of such mistaken and erroneous beliefs.

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 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 the re-

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spondents, the testimony and other evidence taken before Lewis C. Russell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, and briefs filed in support of and in opposition to, 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 respondent Bilt-Rite Box Corporation, a corporation, its officers, directors, agents, representatives, and employees, and the respondents, Jacob Glekel and Jacob Press, individually and as officers of the Bilt-Rite Box Corporation, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of paper boxes or other shipping containers, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing in any manner that respondents, or any one or more of them, own and operate or control a plant or factory wherein paper boxes or other shipping containers are manufactured.

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.

Syllabus

IN THE MATTER OF

FOOD SERVICE EQUIPMENT INDUSTRY, INC., ET AL.

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

Docket 4433. Complaint, Dec. 26, 1940—Decision, Oct. 15, 1941

Where most of the leading dealers throughout the United States in food service equipment for hotels, restaurants, clubs, institutions, etc., members of an association consisting of about 100 such dealers and including certain manufacturers of kitchen, restaurant, and cafeteria equipment especially designed for each particular installation, but with members' primary business consisting in purchase and resale of said equipment, which they bought from selected manufacturers designated by said association as "Honor Roll Members," as below set forth, and also from members of a china association; and who would have been in competition with one another, but for acts and practices below set forth, as would have been said "Honor Roll" and China Association manufacturers in sales to dealers, and also with member dealers in sales to ultimate users;

Acting through and by means of said dealers' association, its officers and directors—

- (a) Entered into and carried out agreements and understandings with said Honor Roll member manufacturers and said China Association, and pursued a concerted course of action and undertaking among themselves and with others, to adopt, carry out, enforce, and maintain, throughout the United States, certain restrictive and unfair policies and trade practices, including (1) classification of jobbers and dealers in food service equipment as being, or not being, "legitimate jobbers" or "recognized dealers," as defined by said association as those who carry a stock, maintain display rooms, etc., (2) acceptance of applications for membership in said association only from firms who, in its judgment, conformed to aforesaid classification, securing new members principally upon invitation of association members, as finally passed upon by the association directors, (3) the urging of all manufacturers to sell exclusively to and through aforesaid "legitimate" or "recognized" jobbers or dealers, and of protesting to manufacturers who sold to any others, (4) the selecting of certain cooperating manufacturers as recipients of the association's "Honor Roll Certificates," and the urging upon the association members that, in their purchases, they give preference to such "Honor Roll Members," (5) the protesting to manufacturers who sold food service equipment directly to public service companies, chain stores, and other large purchasers, unless such sales were made on a competitive equality with the prices which said purchasers could receive from "legitimate jobbers" or "recognized dealers" and (6) the entering into and carrying out of specific agreements and understandings with Honor Roll and China Association members with intent and effect of carrying out said policies and practices; and

Where said association members, to make effective and require compliance with said policies and practices, and, in effect, a general policy and practice of reducing competition throughout the United States in the sale and offer