

IN THE MATTER OF
OHIO ART COMPANY

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

Docket 4183. Complaint, July 12, 1940—Decision, Oct. 28, 1941

Where a corporation engaged in interstate sale and distribution of toy musical tops, and, in said connection, in importing musical reeds made in Germany, stamped with the word "Germany" as indicating their foreign origin, which, in enclosing said reeds in its tops, was hidden from view—

Stamped or imprinted upon its said tops, containing such imported reeds, legend "Made in U. S. A.," and placed upon the carton or container enclosing the top notation "Made by The Ohio Art Co., Bryan, Ohio," with no disclosure of any kind upon its said product informing members of the purchasing public that the musical reeds contained therein were of German origin;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that its said products were wholly of domestic origin and manufacture, decidedly preferred over products made in Germany and many other foreign countries, with result that a substantial portion of the public was induced to and did purchase its said tops, and with effect of placing in the hands of unscrupulous and uninformed dealers means whereby they were enabled to mislead and deceive members of the purchasing 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. R. A. McQuat and *Mr. Maurice C. Pearce* for the Commission.

Gebhard & Hogue, of Bryan, Ohio, 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 Ohio Art Co., 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, Ohio Art Co., is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at Bryan, Ohio.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of toy musical tops. Respondent causes its said products, when sold, to be transported from

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its place of business in the State of Ohio 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. Respondent uses constituent parts of materials of both foreign and domestic origin in its aforesaid toy musical tops. Such foreign parts and materials when imported and received by the respondent bear marks and imprints indicating the country of their origin. Among such foreign-made parts used by respondent are the musical reeds within the top which are imported from the country of Germany, and stamped thereon is the word "Germany."

PAR. 4. In the course and conduct of its business, it has been, and is, the practice of respondent in assembling the toy musical tops to conceal or hide from view of the prospective purchasers of the assembled tops the word "Germany," and such toy musical tops are then sold and distributed by the respondent in commerce as aforesaid without any marking thereon to inform members of the purchasing public that the musical reeds of said tops are of German or foreign origin.

PAR. 5. A further practice of respondent in connection with the sale and distribution of its toy musical tops is the stamping or imprinting upon such toy musical tops the legend "Made in U. S. A." The carton in which the top is contained bears the words "Made by The Ohio Art Co., Bryan, Ohio," representing that such tops are manufactured at the respondent's place of business in Bryan, Ohio, and that such tops are wholly of domestic origin and manufacture rather than foreign origin and manufacture. In truth and in fact, such tops are not wholly of domestic origin and manufacture, as the musical reeds therein which constitute the musical part of the tops are made in Germany.

PAR. 6. For many years last past there has been maintained among manufacturers in the United States an established custom and practice of marking products of foreign origin in such 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.

PAR. 7. 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 Germany or any other foreign country.

PAR. 8. The practice of the respondent of obliterating or obscuring the word "Germany" appearing on the reeds used in the manufacture of its tops, and of imprinting on its tops the legend "Made in U. S. A.," and of using on the cartons in which said tops are packaged and offered for sale the words "Made by The Ohio Art Co., Bryan, Ohio," without disclosing to prospective purchasers that the musical reeds used in such tops are made in Germany, has a 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 toy musical tops 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 is induced to, and does, purchase respondent's product.

Through the practices herein set forth, the respondent places in the hands of unscrupulous or uninformed 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 said tops and the parts thereof.

PAR. 9. The aforesaid acts and practices of 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 July 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, The Ohio Art Co., a corporation (designated in the complaint as Ohio Art Co.), 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 R. A. McOrat, attorney for the Commission, and in opposition to the allegations of the complaint by Messrs. Gebhard and Hogue, attorneys 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 and exceptions filed thereto, briefs in support of the complaint and in opposition thereto and oral argument before the Commission, 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. The respondent, The Ohio Art Co., is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at Bryan, Ohio.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of toy musical tops. Respondent causes its said products, when sold, to be transported from its place of business in the State of Ohio 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, the respondent purchased and imported musical reeds manufactured in the country of Germany, which reeds were used in the manufacture of respondent's musical tops. These reeds consisted of a small metal plate or disk containing a number of slots or openings over which brass strips were riveted. When such reeds were imported into the United States they bore the word "Germany" stamped thereon to indicate the foreign origin of said reeds. The use of such reeds in a musical top operates to make a wind instrument, and in the manufacture of such tops it is necessary to so construct them that a current of air passes through the reeds to give the desired musical effect. In manufacturing such tops and enclosing the reeds therein, the word "Germany" stamped on such reeds and indicating their foreign origin, is concealed or hidden from view.

PAR. 4. It was the practice of the respondent, in connection with the sale and distribution of its musical tops containing reeds imported from Germany, to stamp or imprint thereon the legend "Made in U. S. A.," and also to place upon the carton or container in which the musical top is marketed, the notation "Made by The Ohio Art Co., Bryan, Ohio." No marking of any kind appears upon said products informing members of the purchasing public that the musical reeds contained in said tops are of German or foreign origin.

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PAR. 5. In addition to the reeds imported from Germany, the respondent also purchases reeds made in the United States, and as of December 5, 1940, the respondent had on hand 7,049 gross of reeds made in Germany and 785 gross of reeds manufactured in the United States.

PAR. 6. There is among members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Germany and many other foreign countries. When the unqualified legend "Made in U. S. A." or words of similar import or meaning are stamped upon or attached to an article of merchandise, it is understood by members of the purchasing public to indicate that such article of merchandise is wholly of domestic origin and manufacture. In like manner the unqualified use of the words "Made by" or words of similar import and meaning in conjunction with trade names of geographic significance in the United States or with geographic locations within the United States, is understood by members of the purchasing public to indicate that such articles of merchandise are wholly of domestic origin and manufacture.

PAR. 7. The practice of the respondent in obscuring the legend "Germany" appearing on the reeds used in the manufacture of its musical tops and in offering for sale, selling, and distributing such musical tops bearing the notations "Made in U. S. A." and "Made by The Ohio Art Co., Bryan, Ohio," without disclosing that the reeds contained therein were made in Germany, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's tops 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 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 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.

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Order

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 exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto, and oral arguments of counsel, 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, The Ohio Art Co., 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 musical tops and other similar products in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Made in U. S. A." or any other term of similar import or meaning, on labels, containers, or in advertising of musical tops or other similar products which contain reeds manufactured in Germany, or any other foreign country, without clearly disclosing the foreign origin of such reeds.

2. Using the unqualified words "Made by" or any other word or words of similar import or meaning in conjunction with trade names having a geographical significance in the United States or in conjunction with geographic locations within the United States, on labels, containers, or in any other manner, so as to imply that respondent's musical tops or other similar products which contain reeds manufactured in Germany or any other foreign country, are wholly of domestic origin and manufacture without clearly disclosing the foreign origin of such reeds.

3. Representing in any manner whatsoever that respondent's musical tops or other similar products are made in the United States when in fact such products are manufactured, in whole or in part, in Germany, 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
JOHN MARICAK, DOING BUSINESS AS CONTINENTAL
SILVER COMPANY OF AMERICA

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

Docket 4369. Complaint, Oct. 31, 1940—Decision, Oct. 28, 1941

Where an individual engaged in interstate sale and distribution to retailers of a so-called sales stimulator plan which involved premium cards, advertising material, and silverware and was similar to other such plans made use of by him at other times during the last several years;

In offering his said plan, which (1) involved the purchase of so-called premium cards at \$4.50 a thousand by the dealer for issuance to his customers upon their purchases in specified amounts and his undertaking to redeem such cards in Wm. A. Rogers silverware, he supplying to dealer-purchasers various advertising posters for use in putting plan into effect and, in some instances, sets of silverware for display purposes, and which (2) was presented to dealers by his representatives or agents who, traveling extensively through the United States, were supplied by him with contract forms and with samples of the advertising posters and display sets—

- (a) Represented, through his representatives and agents, that he was connected with, or was a representative of, Wm. A. Rogers, Ltd., Oneida, Ltd., Successor, manufacturers of the silverware used in the operation of his said plan, and that such plan was an advertising campaign conducted by or on behalf of said manufacturers;

Facts being he was not in any manner connected with said concern, but purchased Wm. A. Rogers silverware in the open market, usually from independent jobbers, and his said plan was a commercial enterprise conducted for his own profit;

- (b) Represented that he would provide retailers purchasing his plan with display sets of silverware which would become their property, making specific and prominent reference in the contract to such display set along with such representation;

Facts being that in some cases he failed to supply such dealers with any sets for aforesaid purposes;

- (c) Represented, as aforesaid, and through advertising matter used by his agents in presenting the plan, that the dealer's customers, upon forwarding to him a certain designated number of premium cards, would receive silverware without cost; and

- (d) Represented that after a designated percentage of such premium cards had been forwarded to him by dealer's customers for redemption, he would refund to the dealer entire amount paid by him, and that the operation of the plan would therefore be without cost to the dealer;

The facts being that premium cards forwarded to him for redemption in silverware were not thus redeemed without cost, but holders of such cards were required to remit certain amounts of money therewith in order to obtain silverware; his plan did not contemplate a refund to the dealer of the entire amount paid for the premium cards, his contracts being couched in ambiguous language, particularly so as to clauses respecting redemption of such cards and cash refunds to dealers, and it being impossible, as a practical