

Complaint

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IN THE MATTER OF

LUCIAN V. SEGAL, TRADING AS SEGAL OPTICAL
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4181. Complaint, July 11, 1940—Decision, Nov. 26, 1941*

Where an individual engaged in the manufacture or assembly and interstate sale and distribution to wholesalers and large retailers such as chain stores, of "ready-to-wear" reading and sun glasses, which retailed at from 25 cents to \$1 a pair for the former and from 10 to 50 cents for the latter; purchasing the frames or parts from domestic manufacturers and importing from Japan 75 percent of the lenses and substantially all of the glasses, which, on importation, were completed products requiring only certain cutting and fitting operations by him, and original labels on each of which, bearing legend "Japan" or "Made in Japan" or other words showing country of origin, were removed either in processing or in final handling before packaging—

Offered and sold his said glasses with no marking thereon, as associated by a substantial portion of the purchasing public with imported articles, to indicate that lenses or glasses involved were imported from Japan or any foreign country;

With tendency and capacity to mislead and deceive purchasers and members of the purchasing public into the false belief that said glasses and all their parts were of domestic manufacture and origin, preferred by members of the purchasing public over products of Japanese or other foreign source, and into purchase thereof in reliance upon such belief, and with result of thereby placing in hands of resellers of his said products means by which to mislead and deceive members of the purchasing public into such belief:

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

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

Mr. Merle P. Lyon for the Commission..

Mr. James W. Bevans, 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 Trade Commission having reason to believe that Lucian V. Segal, an individual trading as Segal Optical Co., 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, Lucian V. Segal, is an individual trading under the name and style of Segal Optical Co., with his office and principal place of business located at 56 West Twenty-second Street in the city of New York, State of New York. Said respondent is now, and for some time past has been, engaged in the business of selling and distributing lenses and eyeglasses, including reading glasses and sunglasses, in commerce among and between the various States of the United States and in the District of Columbia. Respondent has maintained, and maintains, a course of trade in said products in said commerce, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from his place of business in the State of New York to purchasers, including retailers, resellers, and users thereof, located in various States of the United States other than the State of New York, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as above described, and in connection with the sale and distribution of his said products in said commerce, respondent has caused certain quantities of lenses for said eyeglasses and sunglasses to be imported from the country of Japan. At the time of importation into the United States, said lenses have been, and are, all labeled or marked with the word or words "Japan" or "Made in Japan," indicating that the country of origin is Japan. After said lenses were and are received by respondent, as so marked, he thereafter caused and causes the said labeling or marking to be removed from said lenses, and thereafter offered and offers for sale, and sold and sells, the same mounted in frames, to the aforesaid purchasers, including dealers, resellers and users thereof, without any label, mark, or words thereon indicating the Japanese or foreign origin of the said lenses.

PAR. 3. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, inclusive of eyeglasses and sunglasses having foreign-made or imported lenses. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of

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trade in commerce throughout the United States and its territorial possessions, and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin, and not of domestic origin.

At all times material to this complaint there has been, and now is, among said members of the buying and consuming public, including purchasers and users of eyeglasses and sunglasses, in and throughout the United States and its territorial possessions, and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of Japanese or foreign manufacture or origin.

PAR. 4. The practice of respondent, as aforesaid, in offering for sale, selling and distributing his eyeglasses, including reading glasses and sunglasses, made of lenses having Japanese or foreign origin, without any imprinting, labeling, or marking thereof to indicate to purchasers that the said lenses or glasses are of Japanese or foreign origin, has had and has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the said glasses, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in the reliance upon such erroneous belief.

The aforesaid practice further places in the hands of retailers and resellers of respondent's said products a means wherewith to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the said glasses referred to, and all the parts thereof, are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 11, 1940, issued and subsequently served its complaint upon respondent Lucian V. Segal, an

individual trading as Segal Optical Co., charging him with violation of the provisions of section 5 of the Federal Trade Commission Act.

After the issuance of said complaint and the filing of respondent's answer, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition thereto 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, report of the trial examiner, briefs in support of the complaint and in opposition thereto, and oral argument by counsel; 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 Lucian V. Segal is an individual trading under the name Segal Optical Co. and having his principal office and place of business at 40 West Twenty-fourth Street, New York, N. Y. He is engaged in the manufacture or assembly of spectacles or reading glasses and sunglasses.

PAR. 2. In the course and conduct of his aforesaid business respondent is now, and for a number of years has been, engaged in the sale and distribution of reading glasses and sunglasses and causes his said products, when sold, to be transported from his place of business in New York to purchasers located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. Respondent does not manufacture the various parts of the spectacles or reading glasses and sunglasses sold by him. He purchases the frames or parts thereof from domestic manufacturers; he imports from Japan approximately 75 percent of the lenses for use in assembling reading glasses, and purchases the remainder from domestic manufacturers, and this ratio of imports has continued since 1938; and he has, since 1938, imported from Japan substantially all the glasses used in the sunglasses produced by him. At the time of importation into this country the lenses and glasses of Japanese man-

ufacture are completed products insofar as their optical or protective qualities are concerned. They require only cutting to fit the size of the frames in which they are to be inserted and beveling the edges to secure them in place when they are so fitted, and these cutting and fitting operations are performed by respondent. The only exceptions are the lenses or glasses intended for use in rimless frames, and these are imported in fully finished condition except for boring holes in said lenses or glasses for the attachment of frames, which operation is performed by respondent.

PAR. 4. At the time of entry into this country the lenses and glasses imported by respondent have a label glued or otherwise attached to each lens or glass, which label bears the legend "Japan" or "Made in Japan," or other words showing the country of origin. In the process of cutting, edging, boring, and fitting into frames the lenses and glasses are subjected to handling, wetting, wiping, and cleaning with the result that the labels bearing the name of the country of origin becomes detached or are removed, and in the final handling before packaging any such labels which have not been detached or removed in the process heretofore described are then removed. Thus, when the reading glasses or sunglasses are delivered to purchasers, they bear no marking indicating that the lenses or glasses were imported from Japan or any other foreign country. Respondent's products, customarily referred to in the trade as "ready-to-wear" glasses, are sold to wholesalers and large retailers such as chain stores. The reading glasses are ordinarily sold at retail to members of the purchasing public at from 25 cents to \$1 per pair, and the sunglasses are usually retailed to the public at from 10 to 50 cents per pair.

Respondent testified that he does not make any representations to purchasers with respect to the domestic or foreign origin of his products, but if asked about such origin advises the purchaser or prospective purchaser that some of his lenses and glasses are imported from Japan. Until a few months before the issuance of the complaint in this proceeding respondent sold his sunglasses mounted upon cards bearing the legend "Scientifically made by American workmen." Respondent also testified that although he is able to, and does, purchase Japanese lenses and glasses at a lower price than he can purchase similar products of American manufacture, he would prefer to use American products but is unable to do so because he cannot purchase sufficient quantities thereof from domestic manufacturers.

PAR. 5. A substantial portion of the purchasing public has become familiar with the fact that imported articles customarily bear a

mark indicating the country of origin and is accustomed, when purchasing, to look for such marks of foreign origin. When no such marking appears upon an article offered for sale, members of the purchasing public assume that it is produced in whole or in major part by domestic manufacturers. There exists among members of the purchasing public, including purchasers of reading glasses and sunglasses, a substantial preference for products of domestic manufacture or origin as compared with those of Japanese or other foreign origin.

The practice of respondent in offering for sale, selling, and distributing reading glasses and sunglasses having lenses or glasses of Japanese origin, without any labeling or marking thereon to indicate to purchasers that said lenses or glasses are of Japanese origin, has the tendency and capacity to mislead and deceive purchasers and members of the purchasing public into the false and erroneous belief that the said reading glasses and sunglasses and all the parts thereof are of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Respondent thus places in the hands of retailers and resellers of his products a means by which to mislead and deceive members of the purchasing public into the said false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, briefs 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 respondent Lucian V. Segal, an individual trading as Segal Optical Co., or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale,

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sale, and distribution of reading glasses and sunglasses, or other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling, separately or as a part of completed reading or sunglasses, lenses, or glasses which are imported from any foreign country without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.

2. Representing in any manner that lenses or glasses of foreign manufacture, whether or not they are mounted in frames, are of domestic manufacture.

It is further ordered, That respondent shall, within 60 days after the service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF

CHARLES SHRADER, TRADING AS QUEEN CHEMICAL
COMPANY

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

Docket 4570. Complaint, Aug. 15, 1941—Decision, Nov. 26, 1941

Where an individual engaged in interstate sale and distribution of his "Shrader's Queen Brand Capsules" and "Queen Brand Capsules"; by advertisements sent through the mails, in newspapers, circulars and other advertising literature—

- (a) Represented, directly and by implication, that his said preparation was a safe, harmless, and effective treatment for delayed, suppressed, irregular, painful, and scanty menstruation, or other derangements of the menstrual function, facts being use of the preparation in question as prescribed in said advertisements as a treatment for delayed menstruation might result in gastrointestinal disturbances and excessive uterine hemorrhages; and use thereof by pregnant women might result in abortion or miscarriage and possible infection, remaining local to pelvic organs, or becoming systemic, as in septicemia or blood poisoning; and
- (b) Failed to reveal facts material in the light of such representations, or with respect to aforesaid consequences which might result from use of preparation in question under usual or prescribed conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the false belief that his said preparation possessed certain therapeutic properties and values, and was harmless when such was not the fact, and with further effect of thereby inducing purchasing public to buy substantial quantities thereof:

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.

Mr. J. V. Buffington for the Commission.

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 Charles Shrader, individually and trading under the name Queen Chemical Co., 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, Charles Shrader, is an individual trading under the name Queen Chemical Co., with his principal place of