

IN THE MATTER OF
PIONEER MERCHANDISE 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 4012. Complaint, Feb. 2, 1940—Decision, Dec. 9, 1941

Where a corporation engaged in interstate sale and distribution, among other products, of cigarette holders composed of cellulose acetate which were similar in appearance to holders composed of amber, nonburning bakelite and other suitable materials—

- (a) Represented and implied to the purchasing public that its said products were made from amber, nonburning bakelite or other suitable material, and were of superior quality and would give satisfactory service, through mounting them on dealers' display cards containing such statements as "Cigarette Holders for a cool and agreeable smoke" and "Extra Fine Cigarette Holders";

Facts being its said cigarette holders would not give the public the service it was led to expect through such representations and similarity of such holders to those made of amber, nonburning bakelite, etc., but were made from material which disintegrated readily when exposed to heat, conveying an unpleasant taste to smoke coming in contact with the holder, so that user thereof would not obtain an agreeable smoke; and

- (b) Represented and implied that it made the cigarette holders and other domestic-made merchandise sold by it, and owned, operated and controlled a factory in which its holders were made, through such statements in circulars bearing its name and word "Manufacturers" as "When Buying from Us You Buy from the Manufacturer," and through representations on letterheads and invoices to the effect that it was a manufacturer;

Notwithstanding fact it neither owned nor controlled any manufacturing plant in which its products were made, and was not a manufacturer, long preferentially dealt with by a substantial proportion of jobbers, dealers and consumers as, in their belief, eliminating the profits of middlemen and enabling them to obtain lower prices and other advantages;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and with result that said public purchased a substantial quantity of its cigarette holders and other merchandise:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. J. Jerome Katz and *Mr. George Goodritz*, of Philadelphia, Pa., for respondent.

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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 Pioneer Merchandise 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, Pioneer Merchandise Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and place of business located at 928 Broadway, in the city of New York, N. Y.

PAR. 2. Respondent is now, and has been during the year last past, engaged in the sale and distribution of cigarette holders and other products. In the course of its business, respondent causes said commodities to be transported from its principal place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said cigarette holders sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has offered for sale and sold as cigarette holders certain products composed of cellulose acetate. These cellulose acetate products are similar in appearance to, and resemble, cigarette holders composed of amber, nonburning bakelite and other materials suitable for, and long used in, the manufacture of cigarette holders. Respondent has caused such cigarette holders, composed of cellulose acetate, to be placed on display cards on some of which appears the following statement: "Cigarette Holders for a cool and agreeable smoke," and upon others the following statement: "Extra Fine Cigarette Holders." These holders, attached to said display cards, containing said statements, are sold to dealers located in the various States of the United States and in the District of Columbia for resale to the purchasing and consuming public, and said cards and holders are displayed by such dealers in offering for sale and selling said holders to the purchasing public.

Through the similarity in appearance of the material from which said holders are made to amber, nonburning bakelite and other mate-

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rials suitable for, and long used in, the manufacture of cigarette holders and the display of said holders on said cards containing said statements, respondent represents and implies, and the purchasing and consuming public is led to believe, that the said cellulose acetate cigarette holders are made from amber, nonburning bakelite or some other material suitable for use in cigarette holders, and that said holders are of superior quality and will give the user thereof pleasant and satisfactory service.

In truth and in fact, the cigarette holders so sold and distributed by the respondent are composed of a material which is unfitted by composition to be used in a cigarette holder and such holders will not give the public the service it is led to expect as a result of the similarity in appearance of said material to amber, nonburning bakelite and other materials suitable for use, and long used, in manufacturing cigarette holders. Said cigarette holders are not "Extra Fine," nor of superior quality, and the users thereof will not obtain a cool or agreeable smoke as represented by the respondent, for, in truth and in fact, the material from which said holders are made distintegrates readily when exposed to heat and conveys to smoke coming in contact therewith an unpleasant and unsatisfactory taste or flavor.

PAR. 4. Respondent, further, has distributed among prospective purchasers located in various States of the United States, and in the District of Columbia, circulars bearing the phrases:

"Pioneer Merchandise Co., Inc., manufacturers and importers,"

and containing such statements as "when buying from us you buy from the manufacturer"; and also has represented on its letterheads and invoices, distributed throughout the United States mails and in commerce as aforesaid, that it is a manufacturer.

Through the use of the word "manufacturers," as above set out, respondent has represented, and does now represent and imply, that it is the manufacturer of the cigarette holders and other domestic-made merchandise it sells.

PAR. 5. In truth and in fact, respondent does not make or manufacture the cigarette holders or the other domestic-made products sold and distributed by it. Respondent does not own or control the manufacturing plant in which the said products are manufactured.

PAR. 6. There has long been a preference on the part of a substantial proportion of jobbers, dealers, and consumers to deal directly with the manufacturer, because of a belief that by the elimination of middlemen's profits, superior products at lower prices, and other advantages, can thereby be obtained.

PAR. 7. The use by the respondent of the representations set out in paragraph 3 hereof has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and that such cigarette holders are manufactured of proper material and are fitted and suitable for the purpose for which they are sold, and into the purchase of said cigarette holders in said erroneous and mistaken belief.

The use by respondent of the representations that it is a manufacturer, as set out in paragraph 4 hereof, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and that it is the manufacturer of the cigarette holders and other domestic-made products offered for sale and sold by it, and into the purchase of said cigarette holders and other domestic-made products in said erroneous and mistaken belief.

PAR. 8. 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 February 2, 1940, issued and subsequently served its complaint upon respondent Pioneer Merchandise 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, a statement of facts agreed to by counsel for the Commission, S. Brogdyne Teu, II. and counsel for respondent, J. Jerome Katz and George Goodritz, was read into the record and certain exhibits introduced by counsel for the Commission before John W. Addison, an examiner of the Commission theretofore duly designated by it, and said statement of facts, a supplemental agreement as to certain facts dated August 28, 1941, 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, the answer thereto, the agreed statement of facts and supplement thereto and other evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commis-

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sion 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. Pioneer Merchandise Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its office and place of business located at 928 Broadway, New York, N. Y.

PAR. 2. The respondent is now, and has been for some time past, engaged in the offering for sale, sale, and distribution of cigarette holders and other products. In the course of its business the respondent causes its commodities, when sold, to be transported from its place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and has been for some time past, a course of trade in cigarette holders and other products sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent has offered for sale, and sold, as cigarette holders certain products composed of cellulose acetate. These cellulose acetate products are similar in appearance to and resemble cigarette holders composed of amber, nonburning bakelite, and other materials suitable for and long used in the manufacture of cigarette holders. Respondent has caused its cigarette holders composed of cellulose acetate to be placed on display cards. On some of such display cards appears the following: "Cigarette Holders for a cool and agreeable smoke," and on other of such cards appears the following: "Extra Fine Cigarette Holders." These holders, attached to the display cards, are sold to dealers located in the various States of the United States and in the District of Columbia who purchase for resale to the purchasing and consuming public, and the display cards and holders are displayed by the dealers in offering for sale and selling to the purchasing public the cigarette holders of the respondent.

Through the similarity in appearance of the material from which the respondent's cigarette holders are made to amber, nonburning bakelite, and other materials suitable for and long used in the manufacture of cigarette holders, and the display of the respondent's holders on display cards containing the representations set out in the immediately preceding paragraph, respondent represents and implies

to the purchasing public and leads members thereof to believe that the cellulose acetate cigarette holders of the respondent are made from amber, nonburning bakelite, or some other material suitable for use in cigarette holders and that respondent's holders are of superior quality and will give the user thereof pleasant and satisfactory service.

The cigarette holders sold and distributed by the respondent are not composed of the finest and best materials used in the manufacture of cigarette holders, and such holders will not give the public the service it is led to expect as a result of respondent's advertising representations as aforesaid and by reason of the similarity in appearance of the material used by the respondent in its holders to amber, nonburning bakelite, and other materials suitable for use and long used in manufacturing cigarette holders. The respondent's cigarette holders are not "Extra Fine" nor of superior quality, and the users of the respondent's cigarette holders will not obtain an agreeable smoke as represented by respondent. The material from which respondent's holders are made disintegrates readily when exposed to heat and conveys to smoke coming in contact with the holders an unpleasant taste or flavor.

PAR. 4. The respondent has distributed among its prospective purchasers located in various States of the United States and in the District of Columbia circulars bearing the phrases:

PIONEER MERCHANDISE CO. INC.

Manufacturers and Importers

BUY DIRECT—SAVE MONEY

Quality Merchandise at Lowest Manufacturer's Prices.

When Buying from Us You Buy from the Manufacturer.

You get the Right Merchandise at the Lowest Obtainable Price.

- AN OPPORTUNITY {
1. To Save Money by Buying from Manufacturer.
 2. To Be Assured of Lowest Manufacturers Prices.
 3. To Receive Quality—Put Up the Way You Like It.

It has also represented on its letterheads and invoices distributed by the United States mails and in commerce that it is a manufacturer.

Through the use of the word "Manufacturer" the respondent has represented, and now represents and implies, that it is the manufacturer of cigarette holders and other domestic-made merchandise which it sells, and that it owns, operates, and controls a factory in which said holders are made.

The respondent does not make or manufacture the cigarette holders or other domestic products sold and distributed by it, and the

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respondent does not own or control the manufacturing plant in which its said products are manufactured.

PAR. 5. There has long been a preference on the part of a substantial proportion of jobbers, dealers, and consumers to deal directly with the manufacturer because of the belief that by the elimination of middlemen's profits superior products at low prices and other advantages can be, and are, obtained.

PAR. 6. The use by the respondent of the representations set out in paragraphs 3 and 4 above has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, that the respondent manufactures the cigarette holders and other merchandise sold and distributed by it and, further, that such cigarette holders are of proper material for the purpose for which they are sold. As a result of such erroneous and mistaken belief the purchasing public has purchased a substantial quantity of the cigarette holders and other merchandise sold and distributed by the respondent.

CONCLUSION

The aforesaid acts and practices are all to the prejudice of the public and of respondent's 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 respondent, an agreed statement of facts and supplement thereto and other evidence taken before an examiner of the Commission theretofore duly designated by it, and brief 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 Pioneer Merchandise Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cigarette

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holders and other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That cigarette holders or similar products made of cellulose acetate, or other material which disintegrates readily when exposed to heat or imparts an unpleasant taste or flavor to smoke coming in contact with it, are a superior product, or satisfactory for the purpose intended, or will give the user pleasant and satisfactory service.

2. That respondent is the manufacturer of cigarette holders or other articles of merchandise which are not in fact manufactured in a plant owned and operated or directly and absolutely controlled by respondent.

It is further ordered, That respondent shall, within 60 days after the 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. D. JACOBS AND P. W. SMITH, TRADING AS ASPIRONAL
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4574. Complaint, Aug. 22, 1941—Decision, Dec. 9, 1941*

Where two individuals engaged in the interstate sale and distribution of their "Aspironal" medical preparation; in advertisements disseminated through the mails, newspapers and periodicals, and other advertising literature—

- (a) Used the word "Aspironal" as brand name of their product and in their trade name, and represented, directly and by implication, that their said product was a cure or remedy for the common cold and would rid one of the symptoms thereof, and that it contained an effective quantity of aspirin;

Facts being it contained no aspirin and had no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the discomforts arising therefrom, but was a cathartic, use of which by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous; and

- (b) Failed, in said advertisements, to reveal facts material in the light of such representations and with respect to consequences which might result from use of preparation under usual or prescribed conditions, as above indicated;

With effect, through use of such brand or trade name, and false and deceptive statements and representations, of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that the product in question contained aspirin, generally considered useful by the consuming public in giving relief from the common cold, and that such statements, etc., were true, and of inducing it to purchase their said preparation because of such erroneous beliefs:

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.

Mr. Jesse D. Kash for the Commission.

Alston, Foster, Moise & Sibley, of Atlanta, Ga., 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 J. D. Jacobs and P. W. Smith, trading as Aspironal Co., hereinafter referred to as respondents, have 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: