

Complaint

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IN THE MATTER OF

GIBSON-THOMSEN CO., INC., AND S. H. KRESS CO.

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

Docket 3714. Complaint, Feb. 14, 1939—Decision, June 1, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale of tooth brushes; importing tooth brush handles from Japan—

- (a) Obliterated the word "Japan" on the bristle end thereof by boring holes therein and filling them with bristles in the process of manufacture, and, in compliance with instructions from the corporate operator of retail stores to whom it sold said products, imprinted on the handles the word "Kress" or "Kress, U. S. A.," and, until January 1938, printed on the ends of cartons enclosing such brushes the words "Made in U. S. A.";

Thereby placing in the hands of retailers a means of misleading and deceiving the purchasing public into the erroneous belief that its said brushes and all the parts thereof, lacking the original markings required by law, were wholly of domestic origin—substantially preferred thereby over those made from materials or parts imported from Japan, against the goods of which there is a substantial prejudice—with the result that said public purchased such products in the aforesaid erroneous belief and trade was thereby diverted to it from its competitors who do not so misrepresent their tooth brush products; and

Where said corporate operator, engaged in the competitive offer and sale of tooth brushes and other items direct to the purchasing public through its retail stores in the United States and the Territory of Hawaii, with full knowledge of the facts above set forth—

- (b) Sold and continued to sell such tooth brushes in its branch stores with no other marking, printing, or labeling thereon or in connection therewith to inform the purchasing public that said products were of Japanese and not of domestic origin;

With effect of deceiving the purchasing public as aforesaid, and of diverting trade unfairly thereby to it from its Hawaiian competitors who do not misrepresent the country of origin of the whole or part of their said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. John L. Hornor* and *Mr. James A. Purcell*, trial examiners.

Mr. Jay L. Jackson and *Mr. Carrel F. Rhodes*, for the Commission.
Mr. James W. Bevans, of New York City, for respondents.

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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 Gibson-Thomsen Co., Inc., and S. H. Kress & 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:

PARAGRAPH 1. Respondent, Gibson-Thomsen Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 East Thirty-ninth Street, in the city of New York of said State, and with a manufacturing plant located in the city of Newark, in the State of New Jersey. For the past several years said respondent has been, and now is, engaged in the business of making, among other things, tooth brushes, and in offering for sale and selling the same in commerce among and between the various States of the United States and in the District of Columbia, and in causing the same, when sold or ordered, to be shipped and transported from its places of business in the States of New York and New Jersey to purchasers thereof located in States other than the States of New York and New Jersey, and to purchasers located in the District of Columbia.

In the course and conduct of its said business, and at all times herein referred to, said respondent has been, and now is, in competition with other corporations, firms, partnerships, and individuals engaged in offering for sale and selling tooth brushes in commerce among and between the various States of the United States and in the District of Columbia, who do not use the methods and practices used by respondent and herein set forth and complained of.

PAR. 2. Respondent, S. H. Kress & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 114 Fifth Avenue, in the city of New York of said State. For several years past said respondent has been, and now is, engaged in the business of offering for sale and selling, among other things, tooth brushes direct to the purchasing public through its retail stores located in various States of the United States, in the District of Columbia and in the Territory of Hawaii, and in causing said tooth brushes to be made, marked, labeled, and imprinted by the maker thereof, as hereinafter more fully set forth and complained of, and in causing said tooth brushes to be shipped and transported from the States of New York and New Jersey to its retail stores in and throughout the various States of the United States, in the District of Columbia, and in the Territory of Hawaii.

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PAR. 3. In the making of its aforesaid tooth brushes, respondent, Gibson-Thomsen Co., Inc., uses constituent parts and materials of foreign and domestic origin, the foreign parts of which, when imported and received by said respondent, are marked and imprinted in such manner as to indicate the country of origin thereof. Among such foreign-made parts used by said respondent are tooth brush handles which are made in, and imported from, the country of Japan.

In the course and conduct of its aforesaid business, and in the process of making tooth brushes in which said Japanese-made handles are used, it has been, and is, the practice of respondent, Gibson-Thomsen Co., Inc., to conceal, obscure, and obliterate the word "Japan" and mark of origin on said handles, which word and marking appeared on said handles when imported and received by respondent, and thereafter to offer for sale, sell, and distribute the same to purchasers, in commerce as aforesaid, without any marking, printing, labeling, or other indication thereon, or in connection therewith, sufficient to inform members of the buying and consuming public that the handles, or a substantial part, of said brushes are of Japanese or foreign origin, and not of domestic origin.

PAR. 4. Respondents jointly caused and cause tooth brushes to be made in the manner aforesaid, and further caused and cause the same to be marked and imprinted with the word "Kress" and with the word and letters Kress U. S. A." appearing on the handles of said brushes. Pursuant to the purchase of such brushes by respondent, S. H. Kress & Co., and to its order, respondents further caused and cause said brushes to be shipped and transported in commerce as aforesaid and to be offered for sale and sold to members of the buying and consuming public with the word "Japan" and mark of origin concealed, obscured and obliterated from the handles of said brushes, and with the word "Kress" and the words and letters "Kress U. S. A." appearing thereon, and without any other marking, printing, or labeling thereon or in connection therewith sufficient to inform members of the buying and consuming public that the said handles or a substantial part of said brushes were and are of Japanese or foreign origin and not of domestic origin.

PAR. 5. By virtue of the practice, heretofore and now established of imprinting or otherwise 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 or marking, and is influenced thereby, to distinguish and discriminate between products of foreign and domestic origin. When products composed in whole or

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substantial part of imported articles are offered for sale and sold in the channels of trade and 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 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 members of the buying and consuming public, including purchasers and users of tooth brushes 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 domestic in manufacture and 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. 6. The practices of respondents, as aforesaid, in causing the word "Japan" and mark of origin to be concealed, obscured, and obliterated from the Japanese handles used in the making of the said tooth brushes, and in causing the word and letters "Kress U. S. A.", and the word "Kress," to appear on said handles, have had and have, and each of said practices 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 tooth brushes, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief, in consequence of which injury has been and is done to competition in commerce among and between the various States of the United States and in its territorial possessions, and in the District of Columbia, and in consequence of which trade in tooth brushes is unfairly diverted to respondents from their competitors who do not misrepresent the country of manufacture or origin of the whole or a substantial part of their said tooth brush products.

PAR. 7. The practices of respondent, Gibson-Thomsen Co., Inc., as alleged and set forth in paragraph 3 above, place in the hands of jobbers and retail sellers, who deal in the said products of respondent, a means wherewith to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the tooth brushes 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. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts or 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 14, A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Gibson-Thomsen Co., Inc., and S. H. Kress & Co., corporations, charging them, with unfair methods of competition and 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' answers, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and such testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission on the complaint, answers, testimony, and other evidence, the original and supplemental trial examiners' reports, exceptions to the supplemental report, and brief in support of 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, Gibson-Thomsen Co., Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business located in the city and State of New York, and having manufacturing plant located in the city of Newark, State of New Jersey.

Respondent, S. H. Kress & Co., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located in the city and State of New York, and with branch stores located in various States of the United States and in the Territory of Hawaii.

PAR. 2. Respondent, Gibson-Thomsen Co., Inc., is now and for several years last past has been engaged in the business of making tooth brushes which it offers for sale and sells to purchasers located in various States of the United States, and when sold, causes the same to be shipped and transported from its places of business in the States of New York and New Jersey to purchasers thereof located in various other States of the United States. Said respondent, during all of the time herein mentioned, has been, and now is, in competition with other corporations and with firms, partnerships, and individuals engaged in offering for sale and selling tooth brushes in commerce between and among various States of the United States.

PAR. 3. Respondent S. H. Kress & Co., is now, and has been for several years last past, engaged in the business of offering for sale and selling tooth brushes and other items, direct to the purchasing public, through its retail stores located in various States of the United States and in the Territory of Hawaii. Said respondent has been and now is in competition with other corporations and with firms, partnerships, and individuals engaged in selling tooth brushes in the Territory of Hawaii.

PAR. 4. Respondent, Gibson-Thomsen Co., Inc., in connection with its manufacture and sale of tooth brushes, imports from Japan tooth brush handles which are made in said country and which, when received by said respondent, have stamped on the end where the bristles are to be inserted, the word "Japan"; but the respondent obliterates the word "Japan" by boring holes in the portion of the handle where the word appears and filling same with knots of bristles put in by automatic machines and held in place by a wire staple; and said respondent, in compliance with instructions of respondent, S. H. Kress & Co., has imprinted on the handles of said tooth brushes the word "Kress," or "Kress U. S. A.," and until January 1938, printed on the ends of the cartons in which the tooth brushes were packed and sold, the words, "Made in U. S. A."

PAR. 5. Respondent, S. H. Kress & Co., during the times herein mentioned, with full knowledge of the matters set forth in paragraph 4 hereof, has sold, and continues to sell, tooth brushes manufactured and sold to it by respondent, Gibson-Thomsen Co., Inc., in its branch stores located in various States of the United States and in the Territory of Hawaii, without any other marking, printing, or labeling thereon, or in connection therewith, sufficient to inform the consuming public that the handles of said tooth brushes were and are of Japanese origin and not of domestic origin.

PAR. 6. By virtue of the law requiring foreign products to be marked with the names of the country of their origin, a substantial

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portion of the purchasing public rely upon such markings, and are influenced thereby to distinguish and discriminate between products of foreign and of domestic origin, and products are accepted by the purchasing public to be of domestic manufacture unless the same are imprinted or marked in a manner which informs purchasers that such products are of foreign origin. There is a substantial and subsisting preference on the part of the purchasing public throughout the United States and its territorial possessions for products which are wholly domestic in manufacture and origin, as distinguished from products made from materials or parts imported from Japan, and there is a substantial prejudice on the part of the purchasing public against goods made in Japan.

PAR. 7. Respondent, Gibson-Thomsen Co., Inc., by its acts and practices herein set forth, places in the hands of retail dealers the means wherewith to mislead and deceive the purchasing public into the false and erroneous belief that said respondent's tooth brushes and all the parts thereof are wholly of domestic origin, thereby inducing the consuming public to purchase respondent's product under such erroneous belief; and as a result thereof, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent the country of manufacture or origin, of the whole or a substantial part of their tooth brush products.

PAR. 8. Respondent, S. H. Kress & Co., by its acts and practices herein set forth, has misled and deceived the purchasing public into the false and erroneous belief that the tooth brushes purchased by it from respondent, Gibson-Thomsen Co., Inc., and all the parts thereof, are wholly of domestic origin, and the purchasing public, because of such erroneous belief, has purchased said respondent's tooth brushes; as a result, trade in tooth brushes has been unfairly diverted to respondent from its competitors located in the Territory of Hawaii who do not misrepresent the country of manufacture or origin of the whole, or a substantial part of their tooth brush products.

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 methods of competition in commerce, and 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 answers of respondents, the testimony and other evidence in support of the allegations of the complaint introduced by the attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the original and supplemental trial examiners' reports, exceptions to the supplemental report, and brief in support of 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 the respondents, Gibson-Thomsen Co., Inc., and S. H. Kress & Co., corporations, their officers, directors, agents, representatives, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of tooth brushes in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Representing, directly or by implication through the use of the word "Kress," or "Kress U. S. A.," or any other word or words of similar import or meaning stamped or imprinted on the handles of the brushes, that tooth brushes having imported handles are of domestic manufacture.

2. Using the words "Made in U. S. A.," or any other words of similar import or meaning, on cartons containing tooth brushes having imported handles.

3. Representing through the medium of labeling, stamping, or imprinting, upon the handles of brushes or on the cartons containing same, that the tooth brushes are made wholly in the United States, when in fact, the handles are imported.

4. Representing through the medium of labeling, stamping, or imprinting upon the handles of tooth brushes, or on the carton containing same, that such brushes are made in the United States, when in fact, the handles of such brushes have been imported and the name of the country of origin has been effectively obliterated or obscured.

5. Selling or distributing tooth brushes, the handles of which are imported, unless such fact is conspicuously stamped or imprinted on the tooth brush or its container.

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.

IN THE MATTER OF

S. REIFFE & SONS, INC., TRADING AS FAIRMOUNT MERCHANDISE COMPANY AND CROWN MAIL ORDER COMPANY

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

Docket 4665. Complaint, Jan. 7, 1942—Decision, June 1, 1942

Where a corporation, engaged in buying old, worn, and previously used articles of clothing, including dresses, overcoats, men's suits, hats and shoes, and in interstate resale thereof by mail order; by means of statements in catalogues, letters, pamphlets, advertisements in newspapers and periodicals, and other printed and written material—

- (a) Represented, through such statements as "Silk dresses—10¢," that products advertised by it were made of silk, and that one or any other reasonable number thereof might be purchased for 10 cents; the facts being that many of such dresses were made in whole or in part from rayon, and could not be purchased at 10 cents except in lots of 25;
- (b) Represented that its products were obtained from companies or individuals in bankruptcy, and were in such condition and of such style and size as to be wearable by the purchaser; notwithstanding fact that most of its products were old and worn, only a small portion thereof had been obtained as aforesaid, and many of them were so out of style, of such improper sizes and in such condition as to be unsuitable for wear when received by purchaser;
- (c) Represented that in case of dissatisfaction refunds would be made without delay and without expense or inconvenience to dissatisfied customers, and that goods ordered would be delivered within a reasonable time without inconvenience or expense to purchaser; notwithstanding fact that customers were obliged to bear the expense of returning goods before receiving refunds, and, frequently, delivery was delayed for 2 months or longer, and in many instances customers were obliged to communicate repeatedly with said corporation and apply to Better Business Bureaus and other agencies for assistance in order to secure refunds or delivery; and
- (d) Further represented its products as silk through failure to disclose their content of rayon which, when made to simulate silk, is practically indistinguishable therefrom by the purchasing public, which accepted such products as silk in whole or part;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing it to purchase a substantial volume of the products in question: *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. Donovan Divet for the Commission.

Kopf & Rosenbluth, of New York City, for respondent.