

Syllabus

IN THE MATTER OF
JOSTEN MANUFACTURING COMPANY

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

Docket 3611. Complaint, Sept. 28, 1938—Decision, Mar. 13, 1943

Where a corporation, engaged in the manufacture of school class rings and similar jewelry, and in competitive interstate sale and distribution thereof, by means of circulars and other printed matter, and salesmen who called upon high-school principals, classes, and committees, and local jewelers—

(a) Represented that it was the world's largest producer of fine class rings, announcements, and awards, and incorrectly portrayed the size of its plant in circulars and photographs through a composite picture upon which a portion of the building appeared twice so as to give the appearance of greater length and width than was actually the fact;

When in fact volume of its business was less than that of certain of its competitors;

(b) Represented its "Dura-Tone" rings as "solid gold" and "10K solid gold," directly and through its salesmen, and in circulars;

When in fact said rings, in addition to 10-carat gold, contained from 25 percent to 35 percent of base metal, which was entirely covered by gold and could not be ascertained by examination; and such contradictory explanatory matter in its circulars as "with duro-gold reinforced center core" and "with duro-metal reinforced center core" did not eliminate the deception, intention of which was evidenced by its instructions to salesmen in its Sales Manual, wherein said base metal, composed entirely of bronze, was falsely described as having a "small fine gold content"; and

(c) Represented its so-called "truss ring" or "truss type ring" or "KT" ring, or "patented 10 K truss constructed ring," in advertising and through salesmen as a 10-carat solid gold ring, and in its sales manual described said "10 KT" ring as a "10 K solid gold ring," and in bulletins to its salesmen stated "Don't Explain KT". In general we don't want you to *explain* KT. Just sell it. Only discuss KT construction when forced to do so. Then take the offensive," and set forth that the "T after K" was "a signal to our factory calling for our finest and most expensive method of fabricating the gold;"

The facts being that while said ring was made of 10-carat gold, it had a hollow head and shoulder, the cavities extending down to about the first third or half of the ring, and bore no stamp or other information to indicate that the product was not in fact solid gold;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and to cause its purchase thereof because of such belief; whereby trade was diverted unfairly to it from competitors who do not misrepresent their merchandise or business:

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.

Complaint

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Before *Mr. Miles J. Furnas* and *Mr. John W. Addison*, trial examiners.

Mr. John R. Phillips, Jr., and *Mr. Karl E. Steinhauer* for the Commission.

Mr. Samuel Lord, of Owatonna, Minn., 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 Josten Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Josten Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at Owatonna, Minn. The respondent, in its own name and under the name and style of "Jostens," is now, and has been for more than 1 year last past, engaged in the manufacture of school class rings and other similar jewelry and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent causes said products, when sold, to be transported from its place of business in Owatonna, Minn., to the purchasers thereof located in the various States of the United States, other than the State of Minnesota, and in the District of Columbia, or causes said products, when sold, to be transported from its place of business in Owatonna, Minn., to local jewelers located in various States of the United States, other than the State of Minnesota, and in the District of Columbia, with whom arrangements have been made by representatives of the respondent for delivery of said articles of merchandise to the respective individual purchasers thereof, the collection of the charges thereon, and the attention to other necessary details in connection therewith.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale and distribution of school class rings and other similar jewelry in commerce between and among the various States of the United States and in the District of Columbia. Among said com-

petitors are many who do not in any manner misrepresent the nature and status of their business or the character and quality of the products sold and distributed by them and who do not in any manner make any misrepresentations in connection with the sale and distribution thereof.

PAR. 4. In the course and conduct of its business in said commerce, as aforesaid, the respondent employs salesmen or representatives who call on high-school classes of prospective graduates and exhibit to such classes the types of class rings which respondent sells and distributes. In exhibiting said rings to said classes of prospective purchasers, respondent's said salesmen or representatives are authorized and directed to, and they do, make many false statements and representations to said prospective purchasers concerning the nature and status of the business conducted by the respondent and concerning the character and quality of said class rings and the fineness of the metal from which said rings are made, and respondent advertises said rings through the distribution among prospective purchasers of pamphlet folders, circulars, souvenir blotters, and other printed matter containing many false statements and representations concerning the nature and status of the business conducted by the respondent and concerning the character and quality of said class rings and the fineness of the metal from which said rings are made.

Among the false statements thus made by respondent, are the following:

1. That respondent is the world's largest producer of fine class rings, announcements, and awards.
2. That the rings designated by respondent as "Duratone," which in fact are composed in part of base metal, are solid 10-carat gold.
3. That certain of the rings sold by respondent, which are in fact partly hollow, are solid 10-carat gold.
4. That the rings stamped by respondent as "10-KT" are solid 10-carat gold.

In truth and in fact respondent is not the world's largest producer of fine class rings, announcements, and awards. The rings designated by respondent as "Duratone" are not solid 10-carat gold but are composed in part of base metal. The rings, which are in part hollow, are not solid 10-carat gold. Rings stamped by respondent as "10-KT" are not 10-carat solid gold rings but are in fact rings made in part of metals other than gold.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent in thus designating and describing the class ring and school jewelry referred to, as hereinbefore set forth, have had, and now have, a tendency and capacity to mislead

Findings

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and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of this erroneous belief induced by the false, misleading, and deceptive advertisements and representations of respondent, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to respondent from competitors who truthfully advertise their respective products. As a result thereof substantial injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondent, as hereinabove set out, are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition and 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 September 28, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Josten Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce and 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, and in opposition to, the allegations of said complaint were introduced before trial examiners 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); 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, Josten Manufacturing Co., is a corporation, organized, existing, and doing business under, and by virtue of,

the laws of the State of Minnesota, having its principal office and place of business at Owatonna, Minn. The respondent, in its own name and under the name and style of "Josten's," is now, and for several years last past has been, engaged in the manufacture of school class rings and other similar jewelry and in the sale and distribution thereof in commerce between and among the various States of the United States. Respondent causes said products, when sold, to be transported from its place of business in the State of Minnesota to purchasers thereof 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. 2. In the course and conduct of its business, respondent is now, and has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of school class rings and other similar jewelry in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business in connection with the offering for sale and sale of its class rings to high-school classes of prospective graduates, the respondent issues and distributes various advertising material consisting particularly of circulars and other printed matter. In addition thereto, respondent employs salesmen or representatives, who call upon principals of various high schools and upon local jewelers who may be interested in acting as distributing agents for rings purchased by any high-school class. Such salesmen also from time to time appear before high-school classes and the committees appointed for the purpose of arranging for the purchase of class rings. In its various circulars and by and through its salesmen and representatives, the respondent has made false and deceptive representations concerning the nature and status of the business conducted by the respondent and concerning the character, quality, and construction of the class rings sold and distributed by it.

Among and typical of such false and deceptive statements and representations made by the respondent are the following:

1. That the respondent is the world's largest producer of fine class rings, announcements, and awards.

2. That the rings designated by respondent as "Dura-Tone," which in fact are composed in part of base metal, are solid 10-carat gold.

3. That certain of the rings sold by respondent which are in fact partly hollow, are solid 10-carat gold.

PAR. 4. Based upon the testimony of competitors of the respondent and upon the testimony of the respondent, the Commission finds that the respondent is not the world's largest producer of fine class rings,

announcements, and awards, but that, in fact, the volume of respondent's business is less than that of certain of its competitors who are engaged in the sale and distribution of class rings, announcements, and awards. In connection with its representation as to size, the respondent has issued circulars and photographs of its plant at Owatonna, Minn., which incorrectly portrayed the size of respondent's plant. To accomplish this, the respondent caused a composite picture to be made, upon which a portion of the building appears twice, to give the appearance of greater length and width than is actually the fact.

PAR. 5. Respondent's Dura-Tone ring is a ring composed in part of 10-carat gold and in part of base metal. The base-metal content of such rings constitutes from 25 to 35 percent of the metal content. These rings are so constructed that the base metal is entirely covered by gold, and the base-metal content cannot be ascertained by examination of said rings. The respondent and its salesmen, acting under respondent's direction, have designated and described said ring as "solid gold" and "10 K solid gold." Since respondent's Dura-Tone rings are bimetal rings and are not solid-gold rings, the representation that respondent's rings are "solid gold" is false and deceptive and cannot be qualified by such terms as "with duro-gold reinforced center core" and "with duro-metal reinforced center core," but instead, such terms serve only to contradict the representation that respondent's rings are solid gold and do not have the effect of wholly eliminating the deception. The same is true of other descriptive or explanatory matter appearing in smaller type in the text of respondent's circulars. That respondent's intention is to convey to prospective purchasers the impression that said rings are composed either entirely of gold or have a gold content greater than is the fact, is further evidenced by its instructions to salesmen which appear in its Sales Manual, wherein duro-metal is described as having "a small fine gold content" when in fact it is composed entirely of bronze, and also by the use of the term "duro-gold" to describe the base-metal content.

PAR. 6. Another ring sold and distributed by the respondent is the so-called "truss ring" or "truss type ring," which is sometimes designated or described as respondent's "KT" ring. In designating and describing this truss-type ring, the respondent, in its various advertising and through its salesmen and representatives, refers to said ring as "Josten's patented 10 K truss constructed ring" and represents further that said ring is a 10-carat solid-gold ring. In respondent's Sales Manual issued to salesmen, the so-called "10 KT" ring is described as a "10 K solid gold ring." In bulletins published

by respondent for distribution to its salesmen the following are typical remarks and instructions made by respondent to its salesmen:

DON'T EXPLAIN KT

In general, we don't want you to *explain* KT. Just sell it.

Only discuss KT construction when forced to do so. Then take the offensive.

The T which we put after the K is a signal to our factory calling for our finest and most expensive method of fabricating the gold.

What does T after K mean?

It is a signal to our factory to furnish the finest and most expensive construction.

Respondent's KT or truss-type ring is made of 10-carat gold, with no addition of any base metal. This ring has a hollow head and shoulder, the cavities extending down to about the first third or half of the ring. By means of such cavities a saving in the amount of gold is accomplished, and the existence of such cavities in the ring are not discernible to a purchaser or prospective purchaser, nor does respondent place upon said ring any stamp or other information which would apprise such purchaser or prospective purchaser that the ring is not a solid-gold ring. The use of the term "solid-gold" to designate or describe respondent's truss-type ring is false and misleading, since a ring having undisclosed air cavities within its interior is not a solid-gold ring.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and, as a consequence thereof, to cause members of the purchasing public, because of this erroneous belief, to purchase a substantial volume of respondent's products, with the result that trade has been unfairly diverted to the respondent from competitors who are also engaged in the sale and distribution of class rings and other merchandise in commerce among and between the various States of the United States and who do not misrepresent the quality or construction of their merchandise or the size and extent of their business.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's 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 answer of the respondent, testimony and other evidence in support of, and in opposition to, the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence, and briefs filed in support of the complaint and in opposition thereto; 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, Josten Manufacturing Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of class rings and other similar jewelry in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The use of any statements or representations or pictorial representations or composite pictures in advertising or in any other manner which inaccurately portray or misrepresent the size or appearance of respondent's place of business or the comparative volume of business transacted by the respondent.

2. Representing, either directly or by implication, that any ring or other article of jewelry composed in part of base metal is solid gold or solid 10-carat gold.

3. Representing, either directly or by implication, that any ring which is in fact partly hollow or has undisclosed cavities within the interior of such ring is a solid gold or solid 10-carat gold ring.

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.

Syllabus

IN THE MATTER OF

CHARLOTTE BRANDENBURG

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4614. Complaint, Oct. 10, 1941—Decision, Mar. 13, 1943*

Where an individual, engaged in interstate sale and distribution of her "Electro Magnetic Nerve Vitalizer" or "Electro Magnetic Vibrator"; by means of advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented that her device utilized electric current and magnetic radiations to feed and revive the entire system, including all nerve centers; would relax and stimulate the nerves and revitalize, invigorate, and reactivate the entire nervous system; supplied an electrically generated, steady heat, which relaxed all congested conditions and relieved pain, soreness, and inflammation; and that use thereof would promote and increase circulation, equalize the distribution of blood, and improve its quality; soothe and regulate the stomach, aid digestion by breaking up nutritive matter, stimulate the flow of digestive juices, improve the assimilation and elimination of food, relieve and correct constipation; and assist nature in rebuilding new cells and tissue, reactivating the glands, and improving internal secretions;
- (b) Represented that her device had curative powers in the treatment of paralysis, arthritis, neuralgia, epilepsy, hysteria, insanity, locomotor ataxia, St. Vitus dance, all forms of rheumatism, sore spots, contracted muscles, insomnia, hardening of the arteries, and prostate gland trouble; and was effective in the treatment of lumbago, catarrh, head colds, influenza, writer's cramp, infantile paralysis, and deterioration of the tissues;
- (c) Represented that use thereof would defer hardening of the arteries, reduce blood pressure, deter apoplexy, aid in restoring normal productive power, assist the bowels and kidneys to function properly, stimulate the action of the liver, permanently relieve all bladder troubles, strengthen and stimulate heart action, and tear down diseased tissues; and
- (d) Represented that it was effective in eliminating the causes of disease, maintaining health in the normal, and restoring it to the sick;

The facts being that the heat produced by said device was not sufficient to have any effect where application might be indicated, its vibratory properties were not sufficient to have any beneficial effect whatsoever, and the mechanical effect from use thereof was so small as to be incalculable and of no value; it had no therapeutic value in the treatment of any disease or condition of the body, or value in eliminating the causes of disease; any beneficial effect that might be obtained from use thereof would be purely psychological; and the various claims and representations made therefor, as above set forth, were false;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing its purchase of such device: