

Complaint

IN THE MATTER OF
CASTLE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 20, 1914*Docket 4785. Complaint, July 17, 1942—Decision, Mar. 15, 1943*

Where a corporation, engaged in interstate sale and distribution of jewelry, including its "Our Lady of the Miraculous Medal" pendants—

(a) Represented that the settings therein were precious stones, through referring thereto in newspaper advertisements as "birthstones," and displayed them on cards bearing such words, for example, as "January" and, immediately beneath, the word "Garnet";

The facts being settings in question were not precious stones as long understood from the word "birthstone," but were made of glass colored to simulate such precious stones as garnets, rubies, emeralds, etc.; and

(b) Falsely represented, through use of word "Manufacturers" on its letter-heads, that it was the manufacturer of the jewelry sold by it;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character of its business and composition of certain of its merchandise, thereby causing said public's purchase thereof because of such mistaken belief:

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

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. John Lockwood, 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 Castle Co., Inc., 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, Castle 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 1374 Broadway, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of silver chains with "Our Lady of the Miraculous Medal Pendants" and other articles of

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jewelry in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said articles of jewelry, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in said medal pendants and other articles of jewelry in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Castle Co., Inc., in connection with the sale and distribution of said medal pendants, and other articles of jewelry and for the purpose of inducing the purchase thereof, makes, and has made, certain representations in its advertising literature, on its business stationery, and otherwise, to the effect that it is a "manufacturer" of jewelry and that the "Our Lady of the Miraculous Medal Pendants" which it sells contain "Your Own Birthstone."

PAR. 4. All of said representations, together with other similar statements appearing in respondent's advertising literature and otherwise, constitute representations to the purchasing public that the respondent manufactures the aforesaid medal pendants and other articles of jewelry which it sells and distributes, as herein alleged, and that certain of the settings in its medal pendants are precious or semiprecious stones.

PAR. 5. In truth and in fact said statements and representations are false and misleading in that neither do the medal pendants contain precious or semiprecious stones nor does the respondent manufacture the said medal pendants or other articles of jewelry sold and distributed by it as aforesaid.

PAR. 6. Many purchasers of articles of jewelry have a preference for those of such articles which may be purchased direct from the manufacturer in the belief that in so purchasing they may have the advantage of lower prices, better quality and other advantages which would not be available if said purchases would have to be made through middlemen, wholesalers or retailers.

For a long period of time the word "birthstone" has had, and still has, a definite and significant meaning in the minds of the purchasing public in that they know that diamonds, emeralds, rubies, garnets, and other precious or semiprecious stones have been, and still are, designated as the "birthstones" for particular months of the year.

PAR. 7. The respondent, by representing itself as being the manufacturer of the jewelry sold and distributed by it as aforesaid, and by representing that the settings in its medal pendants are "birthstones,"

leads the purchasing public into the mistaken and erroneous beliefs that respondent, in fact, manufactures the various articles of jewelry sold and distributed by it as aforesaid and that, in fact, the settings appearing in the medal pendants are precious or semiprecious stones.

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 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 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Castle Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (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. The respondent, Castle 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 1374 Broadway, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the sale and distribution of various articles of jewelry, including certain pendants described by respondent as "Our Lady of the Miraculous Medal" pendants.

PAR. 2. Respondent causes and has caused its jewelry, including such pendants, when sold, to be transported from its place of business

in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its merchandise 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 and for the purpose of inducing the purchase of its pendants, respondent has represented through advertisements in newspapers that certain of the settings in the pendants are "birthstones." The cards on which the pendants are displayed and sold also make reference to such settings. For example, one of such cards bears the word "January," and, immediately beneath, the word "Garnet."

Through the use of these statements or legends, respondent has represented that the settings referred to are precious stones. The evidence shows that the word "birthstone" has long been associated in the public mind with precious stones, and that when the word is used to designate or describe a jewelry setting, the purchasing public or a substantial portion thereof understands that the setting referred to is a precious stone.

PAR. 4. The Commission finds that these representations are false and misleading in that the settings in question are not precious stones but are in fact made of glass colored in such manner as to simulate various precious stones, such as garnets, rubies, emeralds, etc.

PAR. 5. Respondent has also represented, through the use of the word "Manufacturers" on its letterheads, that it is the manufacturer of the jewelry sold by it. This representation is likewise false and misleading, as respondent is not a manufacturer but is engaged only in the retail sale of jewelry. There is a preference on the part of a substantial portion of the purchasing public for dealing with manufacturers, such preference being due to a belief on the part of such portion of the public that by dealing with manufacturers, lower prices and other advantages may be obtained.

PAR. 6. The Commission further finds that the use by respondent of the false and misleading representations set forth herein has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's business status and with respect to the character and composition of certain of its merchandise, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's merchandise as a result of the erroneous and mistaken belief engendered by such representations.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public 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, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Castle Co. Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's jewelry in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Birthstone" or "Garnet" or any other word which is indicative of a precious stone, to designate or describe any substance which is not in fact a precious stone.

2. Using the word "Manufacturers," or any other word of similar import, to designate or describe respondent's business; or otherwise representing, directly or by implication, that respondent manufactures the articles sold by it.

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
ELECTRICAL ALLOY SECTION OF NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, ET AL.

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

Docket 4558. Complaint, Aug. 7, 1941—Decision, Mar. 16, 1943

Where a section of an unincorporated trade association together with its five member corporations, engaged in the manufacture, sale, and interstate distribution of electrical alloy resistance wire, and in active and substantial competition with each other and with others except insofar as such competition was restrained and suppressed as below set forth;

Entered into a combination, agreement, and understanding among themselves and through said section for the purpose of restraining price competition in the sale of the unpatented wire concerned; and pursuant thereto, and making use of said section, which aided and abetted acts in question, from time to time—

- (a) Fixed and maintained identical prices and uniform discounts and other conditions for the sale of electrical alloy resistance wire;
- (b) Exchanged price and discount information between and among themselves, with expectation and understanding that prices set forth in price lists and discount sheets would be adhered to until replaced by others similarly filed; and agreed they would not reduce their prices through assumption of any part of certain State sales taxes;
- (c) Adopted and maintained uniform resistance standards and other uniform standards for use in the manufacture of said wire, with the effect, in some instances, of fixing and maintaining identical prices therefor; and
- (d) Submitted uniform bids in connection with the sale of said wire;

With effect of unduly and unlawfully restraining and preventing price competition in the sale of electrical alloy resistance wire in commerce; of unduly restricting and restraining trade and such commerce; of eliminating competition; of creating in said manufacturers a monopoly in the sale of such products therein; of placing in them power to control and enhance prices; and of unreasonably restraining such commerce in said products:

Held, That such acts and practices under the conditions set forth, were all to the prejudice of the public; had a dangerous tendency unduly to hinder and prevent, and actually hindered and prevented, competition in the sale and distribution of unpatented electrical alloy resistance wire in commerce; had a dangerous tendency to create in said manufacturers a monopoly therein; and constituted unfair methods of competition in commerce.

Mr. Fletcher G. Cohn for the Commission.

Donovan, Leisure, Newton & Lumbard, of New York City, for Electrical Alloy Section of National Electrical Manufacturers Ass'n, George B. Cumming and William J. Donald.

Mr. Francis E. Neagle, of New York City, for Wilbur B. Driver Co., and along with—