

Complaint

IN THE MATTER OF

ALFRED UNGAR, TRADING AS AMERICAN FOOD
SHIPPING COMPANY

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

Docket 5147. Complaint, Apr. 1, 1944—Decision, Sept. 7, 1944

Where an individual engaged in the interstate sale and distribution of combination packages of food, candy, cigarettes, razor blades, and other merchandise to members of the armed forces of the United States and foreign countries, on orders from relatives and friends; through statement in newspapers, periodicals, and circular letters—

Represented that for the price shown he supplied and mailed to members of such forces the articles included in the listed combination package, and was equipped to handle orders thus solicited, and had specialized in sending packages to soldiers;

The facts being he failed to supply all the articles listed, substituted items of lesser value, had neither experience nor facilities for handling such orders, which in many instances he referred to others for filling and mailing, in which event he had no knowledge as to the actual contents of the packages shipped, and maintained no stock of merchandise for supplying orders;

With effect of misleading and deceiving a substantial portion of the buying public, into the erroneous belief that the packages shipped by him consisted of the items described and were of the value represented in said lists, and thereby into purchasing aforesaid packages:

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. W. Brookfield, Jr. 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 Alfred Ungar, an individual, trading as American Food Shipping 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, Alfred Ungar, is an individual, trading and doing business under the trade name of American Food Shipping Co., with his office and principal place of business located at 55 West 87th Street, in the city of New York, N. Y.

PAR. 2. Respondent is now and for more than six months last past has been engaged in the business of selling combination packages of food, candy, cigarettes, razor blades, and other items of merchandise, and shipping them to members of the armed forces at their points of location in the

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United States and in foreign countries. Respondent receives orders from relatives and friends of members of the armed forces and causes the said packages of food and other merchandise to be shipped from his said place of business in the city of New York, N. Y. to said members of the armed forces at their various points of location in the various States of the United States, at sea, and in foreign countries. Respondent maintains and at all times mentioned herein has maintained a course of trade in said packages of food and other merchandise in commerce between and among the various States of the United States, the territories of the United States, and foreign countries.

PAR. 3. In the course and conduct of his said business, respondent has caused to be published in newspapers and periodicals and has distributed by United States mails circular letters offering combination packages of food and other merchandise packed and mailed to members of the armed forces in the United States, at sea and abroad. Respondent has by means of the above said circulars solicited orders from the families of said members of the armed forces, offering several assortments of food and merchandise, said assortments being listed and priced in the said circulars.

One of said packages of food and merchandise listed by respondent in his advertising circular is as follows:

- Bottle of Pure Raspberry Syrup (a thirst-quenching fruit juice),
- Pound box of 60 Assorted Ice Box Cookies,
- Box of Cheese Tid-Bits,
- Box Hors d'Oeuvre Crackers,
- Jar of Anchovy Paste (a fancy Sandwich Spread),
- Jar of Orange Jelly,
- Jar of Papaya Jam,
- 2 Marchpane Candy Bars (choice Continental morsels),
- Bag of Toffees (old British recipe),
- Bag of Bridge Mixture (Chocolate Nuts, Raisins, etc.),
- Package of Cigarettes (Chesterfield, Camel, Old Gold, etc.),
- Package of Double-Edged Razor Blades,
- Large Tube of Triple-Action Dental Cream,
- Pocket Comb with Sheath.

The respondent thereby represents that for the price shown on the list he supplies and mails to members of the armed forces the articles included in such listed combination package.

In truth and in fact respondent has failed to supply all of the articles included on such list, and also substituted articles of lesser value than those listed.

PAR. 4. In the circular letters soliciting orders for packages of food from friends and relatives of the members of the armed forces, respondent has represented that he is equipped to handle these orders, and has represented that he has specialized in sending packages to soldiers.

In truth and in fact respondent has neither experience nor facilities for handling such orders, and said orders are in many instances by him referred to others for filling and mailing, and in such instances respondent has no knowledge as to the actual contents of the packages shipped. Respondent maintains no stock of merchandise for supplying orders received, and his experience in handling such orders is limited.

PAR. 5. The aforesaid acts and practices of respondent and the aforesaid false advertisement have had and have the tendency and capacity to and do mislead and deceive a substantial portion of purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that the packages of food and other merchandise shipped by respondent consist of the items above described and are of the value represented in said lists, and into the purchase of said packages of food and other merchandise because of such erroneous belief.

PAR. 6. 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 April 1, 1944, issued and thereafter served its complaint in this proceeding upon respondent, Alfred Ungar, an individual, trading as American Food Shipping Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 29, 1944, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Alfred Ungar, is an individual, trading and doing business under the trade name of American Food Shipping Co., with his office and principal place of business located at 55 West 87th Street, in the city of New York, N. Y.

PAR. 2. Respondent is now and for more than six months last past has been engaged in the business of selling combination packages of food, candy, cigarettes, razor blades, and other items of merchandise, and shipping them to members of the armed forces at their points of location in the United States and in foreign countries. Respondent receives orders from relatives and friends of members of the armed forces and causes the said packages of food and other merchandise to be shipped from his said place of business in the city of New York, N. Y. to said members of the armed forces at their various points of location in the various States of the United States, at sea, and in foreign countries. Respondent maintains and at all times mentioned herein has maintained a course of trade in said packages of food and other merchandise in commerce between and among the various States of the United States, the territories of the United States, and foreign countries.

PAR. 3. In the course and conduct of his said business, respondent has caused to be published in newspapers and periodicals and has distributed by United States mails circular letters offering combination packages of food and other merchandise packed and mailed to members of the armed forces in the United States, at sea and abroad. Respondent has by means of the above said circulars solicited orders from the families of said members of the armed forces, offering several assortments of food and merchandise, said assortments being listed and priced in the said circulars.

One of said packages of food and merchandise listed by respondent in his advertising circular is as follows:

Bottle of Pure Raspberry Syrup (a thirst-quenching fruit juice),
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Jar of Orange Jelly,
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Bag of Toffees (old British recipe),
Bag of Bridge Mixture (Chocolate Nuts, Raisins, etc.),
Package of Cigarettes (Chesterfield, Camel, Old Gold, etc.)
Package of Double-Edged Razor Blades,
Large Tube of Triple-Action Dental Cream,
Pocket Comb with Sheath.

The respondent thereby represents that for the price shown on the list he supplies and mails to members of the armed forces the articles included in such listed combination package.

In truth and in fact respondent has failed to supply all the articles included on such list, and also substituted articles of lesser value than those listed.

PAR. 4. In the circular letters soliciting orders for packages of food from friends and relatives of the members of the armed forces, respondent has represented that he is equipped to handle these orders, and has represented that he has specialized in sending packages to soldiers.

In truth and in fact respondent has neither experience nor facilities for handling such orders, and said orders are in many instances by him referred to others for filling and mailing, and in such instances respondent has no knowledge as to the actual contents of the packages shipped. Respondent maintains no stock of merchandise for supplying orders received, and his experience in handling such orders is limited.

PAR. 5. The aforesaid acts and practices of respondent and the aforesaid false advertisement have had and have the tendency and capacity to and do mislead and deceive a substantial portion of purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that the packages of food and other merchandise shipped by respondent consist of the items above described and are of the value represented in said lists, and into the purchase of said packages of food and other merchandise because of such erroneous belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Alfred Ungar, an individual, trading as American Food Shipping Co., or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of combination packages of food and other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the combination packages of food and merchandise supplied and shipped by him contain certain specified articles or articles of specified value unless such packages when shipped actually contain all of the articles listed and of the value specified.

2. Substituting in packages articles of lesser value than those represented as being placed in such packages.

3. Representing that he is experienced in, and equipped for, the handling of combination packages of food and other merchandise for shipment to soldiers and other members of the armed services.

It is further ordered, That the respondent shall, within 60 days after 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.

IN THE MATTER OF
EASTMAN KODAK COMPANY

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

Docket 4322. Complaint, Sept. 23, 1940—Decision, Sept. 9, 1944

Amateur photographic film for the taking of still and motion pictures in natural color, which was sold under the trade name of the manufacturer and seller, and was made and developed for prints under secret processes protected by patents, was not sold in free and open competition with commodities of the same general class produced or distributed by others, including black-and-white film, other natural color film, and color processed film, so as to bring the seller's resale price maintenance contract covering said film within the Miller-Tydings amendment to the Sherman Anti-trust Act, where it appeared, (1) that an English natural color motion picture film placed on the American market in 1935, was withdrawn in 1939 for recognized deficiencies, that importation of the English still films became impossible subsequent to 1940, following which the American distributor became bankrupt, and that such film was no longer available on the American market, except, possibly in small quantities remaining on dealers' shelves; (2) that the "Dupac" and "Tripac" photographic films on the market since 1937, were not natural color films but were for use in color processing, and were sold on the market entirely for professional use, and that sales of each during the three-and-a-half year period concerned, amounted to less than \$2,000 at wholesale price; (3) that certain German natural color film, both motion picture and still, which had appeared in the United States, had never been imported for resale and sold in competition with the American product, the amount having been limited to extremely small quantities brought in by purchasers thereof in Europe or in Mexico; (4) that the American product herein concerned was the only natural color film made and distributed in the United States for taking motion pictures, and, except for the English product above noted, for taking still pictures, and (5) that purchaser, therefore, wishing to take still or motion pictures in natural color was required to purchase film for such purpose solely from the seller herein concerned.

An amateur so-called "Magazine Film" for taking motion pictures sold under the seller's trade mark and name, and which (1) consisted of the enclosure of either the seller's black-and-white film, or natural color Kodachrome motion picture film, in a special magazine or container designed to fit seller's "Magazine Cine-Kodak Camera," covered by seller's patents—which also covered said magazine, enclosure of aforesaid film therein, and some of the combination features involved in the use of said magazine with said camera; (2) was designed to facilitate loading and unloading of the camera and permitted the removal of one magazine before it was entirely exposed and replacement with another, thus permitting the operator to change at will to either black-and-white or Kodachrome; and (3) by reason of the patents concerned could alone be used in seller's magazine camera or in the motion picture magazine cameras of two other concerns; was not in the same general class with and sold in free and open competition with amateur motion picture roll film produced or distributed by others and that contained in magazines produced and distributed by others, or in free and open competition with commodities of the same general class produced or distributed by others;