

Complaint

39 F. T. C.

IN THE MATTER OF

HARRY GREENBERG, TRADING AS PIONEER SPECIALTY
COMPANY AND CANDYLAND COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5128. Complaint, Feb. 5, 1944—Decision, Sept. 14, 1944*

Where an individual engaged in interstate sale and distribution of candy to dealers, including its "General MacArthur" packages which retailed for 5¢, and its "U. S. Navy Warships," "U. S. Warplanes" or "Remember Pearl Harbor" which retailed at 1¢ each—

Offered and sold said packages in cartons of substantially greater size than necessary and which, in case of first, with dimensions of 1" × 3" × 5" included several pieces of candy taffy and a toy of infinitesimal value, and in the other cases, with dimensions of 1½" × 2" × 3", contained a few pieces of candy of the size of a small bean and a toy or novelty of no appreciable value;

With effect, through such employment of said "slack filling" practice, of misleading and deceiving a substantial portion of the buying public into the erroneous belief that said packages or containers were filled to capacity and contained the quantity of candy indicated by their capacity, and into the purchase of said candy in reliance upon such erroneous belief, and of placing in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public:

Held, That said acts and practices, under the circumstances above 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.

Mr. I. Zimmerman, 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 Harry Greenberg, an individual, trading and doing business under the name of Pioneer Specialty Co. and Candyland 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Greenberg, is an individual, trading and doing business under the names of Pioneer Specialty Co. and Candyland Co. with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now and for more than one year last past has been engaged in the sale and distribution of candy to dealers. Respondent causes and has caused his said candy when sold to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various

other States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent has sold and offered for sale candy packaged in cardboard containers in the following manner. One of respondent's said packages of candy labeled "General MacArthur" and retailing for 5¢, is packed in a cardboard carton 1" × 3" × 5", said carton containing five or six small pieces of candy taffy and a toy of infinitesimal value. The carton in which said candy is packed is substantially larger than necessary to contain the amount of candy therein packed. Others of respondent's packages of candy labeled "U. S. Navy Warships," "U. S. Warplanes" or "Remember Pearl Harbor" and retailing for 1¢ each, consist of a few pieces of candy of the size and shape of a small bean and a toy or novelty of no appreciable value which are packed in a carton 1½" × 2" × 3" in dimension, said cartons being of substantially greater size than is necessary to contain the candy and novelty.

Thus said containers of candy when offered for sale and sold to the purchasing public are not filled to capacity and the quantity of candy contained therein is substantially less than the capacity of said cartons or containers. The practice of using over-size containers or cartons is known in the trade and generally as "slack filling" and has the force and effect of misleading and deceiving members of the purchasing public with respect to the quantity of candy contained in such packages.

PAR. 3. The aforesaid acts and practices of the respondent have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that said packages or containers are filled to capacity, and contain the quantity of candy indicated by the capacity of said containers, and into the purchase of said candy in reliance upon such erroneous belief. The said practices further place in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public.

PAR. 4. The aforesaid acts and practices of 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 5, 1944, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him 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, respondent filed his answer thereto admitting all the material allegations of fact set forth in said complaint and waiving further hearing as to said facts, and by letter dated February 21, 1944, respondent's counsel advised the Commission that respondent waived all

intervening procedure. 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, Harry Greenberg, is an individual, trading and doing business under the names of Pioneer Specialty Co. and Candyland Co., with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of candy to dealers. Respondent causes, and has caused, his said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent has sold and offered for sale candy packaged in cardboard containers in the following manner. One of respondent's said packages of candy labeled "General MacArthur," and retailing for 5¢, is packed in a cardboard carton 1" × 3" × 5", said carton containing five or six small pieces of candy taffy and a toy of infinitesimal value. The carton in which said candy is packed is substantially larger than necessary to contain the amount of candy therein packed. Others of respondent's packages of candy labeled "U. S. Navy Warships," "U. S. Warplanes," or "Remember Pearl Harbor," and retailing for 1¢ each, consist of a few pieces of candy of the size and shape of a small bean and a toy or novelty of no appreciable value, which are packed in a carton 1½" × 2" × 3" in dimension, said cartons being of substantially greater size than is necessary to contain the candy and novelty.

Thus said containers of candy, when offered for sale and sold by the purchasing public, are not filled to capacity, and the quantity of candy contained therein is substantially less than the capacity of said cartons or containers. The practice of using over-size containers or cartons is known in the trade and generally as "slack filling" and has the force and effect of misleading and deceiving members of the purchasing public with respect to the quantity of candy contained in such packages.

PAR. 3. The aforesaid acts and practices of the respondent have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that said packages or containers are filled to capacity, and contain the quantity of candy indicated by the capacity of said containers, and into the purchase of said candy in reliance upon such erroneous belief. The said practices further place in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public.

CONCLUSION

The aforesaid acts and practices of 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 respondent, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived further hearing as to said facts, and respondent having, through counsel, waived all intervening procedure, 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, Harry Greenberg, trading as Pioneer Specialty Co., as Candyland Co., or under any other 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 his candy products or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from offering for sale or selling any of such candy products or other merchandise in a container or package which is substantially larger in size or capacity than that required for packaging the quantity of product contained or placed therein.

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
BUREAU OF ENGRAVING, INC., AND ART
INSTRUCTION, INC.

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

Docket 4914. Complaint, Feb. 15, 1943—Decision, Sept. 18, 1944

Where a corporation, subsidiary of a commercial printing and engraving concern, engaged in the conduct of a correspondence school and in the competitive interstate sale and distribution of correspondence courses in commercial designing, illustrating and cartooning, soliciting purchasers therefor through the mails and through agents or so-called "registrars" who called upon prospective students and their parents and guardians and whom it supplied with sales literature—

- (a) Falsely represented or implied that competing resident art schools or institutes did not have competent instructors and the requisite facilities for the teaching of the aforesaid subjects, and that its correspondence courses of instruction therein were of greater benefit to the student than similar courses offered by said resident schools, through such statements of their "Registrars" to prospects as " * * * there are very few resident or local art institutes having an educational division wholly comprised of men and women of ability, judgment, poise, balance, discrimination and experience as teachers. Too many of them are extremists, faddists, and poseurs who permit and encourage the perpetration of abominations and perversities in the name of art. . . ." and "There are a few—VERY FEW—Art Institutes in the country that have facilities for the teaching of commercial designing and illustrating. I do not know of one art institute that has really excellent facilities nor a thoroughly competent, practical, experienced professional body of educators";
- (b) Made use of undated testimonials or excerpts therefrom in catalogues and other advertising matter, as descriptive of its said courses, representing or implying thereby that such testimonials were recently executed by their authors, when in fact many of them were procured more than 15 years prior to said use thereof; and
- (c) Made use of fictitious trade name "Metropolitan Collection Bureau" for the purpose of collecting delinquent accounts, falsely representing thereby that said Metropolitan Collection Bureau was an independent and separate organization employed to collect accounts which were in arrears; when in fact said agency was operated solely by said concerns and used by them to coerce and intimidate purchasers of said courses and to compel them to pay therefor, though purchased as a result of the mistaken belief engendered by aforesaid deceptive practices;

With tendency and capacity to mislead and deceive members of the purchasing public into the mistaken belief that said representations were true, whereby trade was unfairly diverted to them from their competitors in commerce:

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

Mr. William L. Pencke for the Commission.

Mr. John A. Bresnahan, of Washington, D. C., for respondents.