

Complaint

IN THE MATTER OF

NEW YORK MERCHANDISE COMPANY, INC.

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

Docket 4765. Complaint, May 26, 1942—Decision, Sept. 28, 1944

Where a corporation engaged in the interstate sale and distribution of numerous articles, including tooth brushes—

Represented directly or by implication that certain of its tooth brushes were designed by certain physicians, dentists, or dental surgeons named "Dr. Strong," "Dr. Pasteur," or "Dr. Pasteur, Jr.," through adoption and use as trade names therefor of the aforesaid names, which it displayed upon the brushes and upon their cartons and in depictions in its catalogues;

Notwithstanding the fact they were not designed by anyone thus named, but by a physician who had for many years been connected with its business;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and design of said brushes, and to cause its purchase of substantial quantities thereof as a result of the erroneous belief so engendered:

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* and *Mr. John W. Addison*, trial examiners.
Mr. B. G. Wilson for the Commission.
Mr. David J. Moscovitz, of New York City, for respondent.

COMPLAINT ¹

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 the New York Merchandise Co., Inc., a corporation, 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. The respondent, New York Merchandise Co., Inc., is a corporation, duly chartered, organized and existing under and by virtue of the laws of the State of New York with its principal office and place of busi-

¹ The complaint is published as amended by order dated October 6, 1943, which substituted paragraphs 2, 3 and 4 as published herewith for the correspondingly numbered paragraphs in the original complaint, and which further provide—

"That the testimony and other evidence heretofore introduced in support of, and in opposition to the allegations of the complaint, insofar as the same may be competent and material, shall be considered and is hereby made applicable to the complaint as amended," and

"That a copy of this order shall be served upon the respondent by registered mail and that said respondent shall, within 20 days after the service thereof, be permitted to file an answer to said amended complaint, and to introduce evidence in opposition to the allegations thereof, if it shall so desire."

ness located at 32-46 West 23rd Street, city of New York, State of New York. Respondent is now, and for several years last past has been, engaged in the sale and distribution of numerous articles of merchandise, including tooth brushes.

Said respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of New York, State of New York, to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. For several years last past said respondent has maintained a course of trade in the aforesaid products sold and distributed by it in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business respondent has adopted as the trade names for certain of its tooth brushes the names "Dr. Strong," "Dr. Pasteur" and "Dr. Pasteur, Jr." and has caused said names to be imprinted upon said tooth brushes and upon the cartons in which they are enclosed, which said tooth brushes are caused to be transported, in commerce, to jobbers and to retailers for display and sale to the purchasing public. Respondent has also advertised said tooth brushes by the aforesaid trade names in its catalogues distributed throughout the United States, which catalogues also contain depictions of said tooth brushes showing the said trade names imprinted thereon.

Through the use of the said trade names "Dr. Strong," "Dr. Pasteur" and "Dr. Pasteur, Jr." in the manner above set forth, respondent represents that said tooth brushes are made in accordance with the design or under the supervision of physicians, dentists or dental surgeons by names of Dr. Strong, Dr. Pasteur and Dr. Pasteur, Jr. and that said tooth brushes possess special or scientific features not found in ordinary tooth brushes because of such designing or supervision.

PAR. 3. The use by the respondent of the aforesaid brand and trade names is misleading and deceptive. In truth and in fact, the tooth brushes labeled, branded and advertised under said trade names are not and were not made in accordance with the design or under the supervision of physicians, dentists or dental surgeons by the names of Dr. Strong, Dr. Pasteur or Dr. Pasteur, Jr. and they do not possess special or scientific features not found in ordinary tooth brushes and do not differ materially from ordinary tooth brushes.

PAR. 4. The use by the respondent of the aforesaid trade names, brands and designations has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that its said tooth brushes were designed by or constructed under the supervision of physicians, dentists or dental surgeons by the names of Dr. Strong, Dr. Pasteur or Dr. Pasteur, Jr. and that by reason thereof possess features not common to ordinary tooth brushes. In consequence of such mistaken and erroneous belief, so engendered, a substantial number of the purchasing public have purchased respondent's said product.

PAR. 5. 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 May 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, New York Merchandise 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 by respondent of its answer, testimony and other evidence in support of and in opposition to the complaint were introduced 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 came on for hearing before the Commission upon the complaint, answer, testimony and other evidence, report to the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument. Subsequently the Commission, upon the motion of its Assistant Chief Counsel and after due consideration of respondent's objections to the motion, issued its order amending the complaint in certain respects and directing that the evidence theretofore introduced in support of and in opposition to the original complaint, insofar as it was competent and material, be considered as applicable to the complaint as amended. The order further provided that the respondent might answer the amended complaint and introduce evidence in opposition thereto if it should so desire. Thereafter, respondent having filed its answer to the complaint as amended, a further hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which a stipulation as to certain facts was entered into by the attorney for the Commission and the attorney for respondent. The attorneys also waived the filing by the trial examiner of a further report upon the evidence, and waived the filing of additional briefs in support of and in opposition to the complaint and oral argument before the Commission. Subsequently the proceeding came on for final hearing before the Commission upon the entire record, 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, New York Merchandise Co., Inc., is a corporation, chartered, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 32-46 West 23d Street, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the sale and distribution of numerous articles of merchandise, including tooth brushes.

PAR. 2. Respondent causes and has caused its merchandise, 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 respondent has adopted and used as trade names for certain of its tooth brushes the names "Dr. Strong," "Dr. Pasteur," and "Dr. Pasteur, Jr." These names are imprinted both upon the brushes themselves and upon the cartons in which the brushes are enclosed. The brushes are displayed by retailers to the purchasing public and are advertised in respondent's catalogs, which are distributed throughout the United States. These catalogs contain pictures of the brushes showing the trade names imprinted thereon.

PAR. 4. Through the use of these trade names to designate and describe its tooth brushes, respondent represents, directly or by implication, that such brushes were designed by certain physicians, dentists, or dental surgeons named Dr. Strong, Dr. Pasteur, and Dr. Pasteur, Jr., respectively.

PAR. 5. These representations are erroneous and misleading. None of respondent's brushes was designed by any physician, dentist, or dental surgeon named Dr. Strong, Dr. Pasteur, or Dr. Pasteur, Jr. The brushes were in fact designed by a physician named Dr. Harold M. Weinberg, who has for many years been connected with respondent's business.

PAR. 6. The use by respondent of these trade names to designate and describe its brushes has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and design of respondent's brushes, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such brushes as a result of the erroneous and mistaken belief so engendered.

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 original and amended complaints of the Commission, the answers of respondent thereto, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the first trial examiner upon the evidence (a report by the second trial examiner having been waived), briefs in support of and in opposition to the original complaint (briefs in support of and in opposition to the amended complaint having been waived), oral argument, and a stipulation as to certain facts entered into by the attorney for the Commission and the attorney for respondent; 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, New York Merchandise 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 tooth brushes in

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the names "Dr. Strong," "Dr. Pasteur," or "Dr. Pasteur, Jr." to designate, describe or refer to respondent's brushes; or otherwise representing, directly or by implication, that such brushes were designed by physicians, dentists, or dental surgeons bearing such names.

2. Representing, through the use of trade names or otherwise, that respondent's brushes were designed by any person other than the person who did in fact design such brushes.

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
WESTINGHOUSE ELECTRIC SUPPLY COMPANY ET AL.¹

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

Docket 4798. Complaint, Aug. 6, 1942—Decision, Sept. 29, 1944

Where an individual, agent in city concerned of a corporation engaged in the interstate purchase and sale of "electrical equipment and supplies" (including electric cable, wire, switches, conduits, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories), along with others similarly there engaged, and in competition among themselves and with others, including two certain concerns, except insofar as said competition had been restricted or forestalled as below set forth; instrumental, together with a second similarly engaged agent of said corporation, in effecting purchase and sale of such equipment and supplies;

Following arrangements by the Navy with a shipbuilding company under which latter was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the facilities at the company's shipyards in said city, including office buildings and shipways, to be expended under the general supervision of the Navy and subject to its approval, and (2) the company contracted with a general contractor for the reconstruction by him of said office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms, and award a contract to the firm quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy or his representative, and to be subject to his approval before award of the subcontract—

With intent and effect of deceiving and misleading buyers and prospective buyers into believing, considering and approving bids submitted as genuine and competitive bids of three competing sellers of "electric equipment and supplies," prepared and submitted to them over a period of some fifteen months or more fictitious bids, which he prepared on stationery bearing the letterheads of other firms, and competitors (including the two concerns aforesaid), and procured by him from them, and which, over the purported but false signatures of officials of said concerns, written by him or at his direction, tendered bids quoting higher prices than his own;

With the result that said corporation enjoyed awards of numerous contracts to it by said contractor, his employees, agents and subcontractors, with the approval of officials of said ship building company and representatives of the Navy Supervisor of Shipbuilding, secured through deception as aforesaid; and with the effect of depriving buyers and prospective buyers of electrical equipment and supplies, of the benefit of competition in commerce between and among said sellers thereof, and between them and their competitors:

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.