

Complaint

IN THE MATTER OF

H. BOKER & CO., INC., 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 4121. Complaint, Apr. 26, 1940—Decision, Mar. 14, 1945*

Where the words "Boy Scout," "Scout" and "Scouting" had long since acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America, which had devised and sponsored, among their articles, a pocket knife suitable for the outdoor activities of the boy members of the organization, referred to as a "Scout Knife" and marked in some form or manner with the words "Scout" or "Boy Scout"; and thereafter a corporation and its subsidiary, engaged, respectively, in the interstate sale and distribution, and the manufacture of pocket knives—including certain knives originally made by a concern eventually merged with said manufacturing subsidiary—

Sold said knives bearing the inscription "Scout Knife" or "Junior Scout," and originally "Boy Scout," notwithstanding the fact that aforesaid products had not been and were not manufactured or distributed under the supervision of the Boy Scouts of America and had not been, and were not, products approved, endorsed, or sponsored by that organization, and were not a part of its standard equipment;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous belief that said knives were sponsored by the Boy Scouts of America, and were a part of their standard equipment and thereby induce their purchase thereof;

Held, That said 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. Carrel F. Rhodes for the Commission.

Dwight, Harris, Koegel & Caskey, of New York City, for respondents.

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 Com-

¹ Complaint is published as amended by order of the Commission dated June 21, 1944, as follows:

This proceeding coming on to be considered by the Federal Trade Commission upon a stipulation as to the facts dated May 1, 1941, entered into by counsel for the respondent *H. Boker & Co., Inc.*, a New York corporation, and *H. Boker & Co., Inc.*, a New Jersey corporation, and *W. T. Kelley*, Chief Counsel for the Commission, which provides, among other things, that the complaint heretofore issued in this matter may be amended by changing the complaint, which alleges the name of the New York corporation as *H. Boker & Company, Inc.*, to show the correct name of the New York corporation, which is *H. Boker & Co., Inc.*, and to show *H. Boker & Co., Inc.*, a New Jersey corporation, as a party respondent and that *H. Boker & Co., Inc.*, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, may be made and named a party respondent in this proceeding; and the Commission having duly considered said stipulation and the record herein and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, amended by striking out the word "company" in the name of the New York corporation wherever it appears in the name of said corporation in said complaint and by substituting for the word "company" the abbreviation "Co.," and by adding after the name of the New York corporation, *H. Boker & Co., Inc.*, the phrase "a New York corporation";

It is further ordered, That *H. Boker & Co., Inc.*, a New Jersey corporation, be, and it hereby is, made and named a party respondent in this proceeding and the complaint herein is amended and supplemented by

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mission, having reason to believe that H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey corporation, herein-after referred to as respondents, have 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, H. Boker & Co., Inc., is a New York corporation 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 101 Duane Street, in the city of New York, in the State of New York.

Respondent, H. Boker & Co., Inc., the New Jersey corporation, has its office and principal place of business at 101 Duane Street in the city of New York, N. Y., and it is an affiliate of respondent H. Boker & Co., Inc., the New York corporation.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in manufacturing, advertising and offering for sale, and selling various articles of cutlery, among other things a pocket knife designated and marked as a "SCOUT KNIFE" and a knife on one blade of which appears the words "Junior Scout," the two words separated by respondents' trade-mark design of a tree. Respondents cause its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In 1910 an organization known as The Boy Scouts of America was incorporated under the laws governing the District of Columbia, and later was reincorporated by special Act of Congress. Its purpose was, in general, to organize the boys of the United States and teach them discipline, patriotism, courage, habits of observation, self-control and ability to care for themselves in all exigencies of life.

In furtherance of this purpose and both to attract the boys of the Nation to the movement and to insure safe, adequate and adaptable equipment, the organization adopted, and has since maintained, the policy of devising and planning a great many articles of equipment and supervising their manufacture and distribution through licensing and otherwise authorizing those with whom it would enter into arrangements for such manufacture and distribution.

From the beginning the equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to, by use of the words "Boy Scout," "Scout," and "Scouting," so that these words have long ago acquired a secondary meaning as referring to the equipment and activities of The Boy Scouts of America.

inserting the words "and H. Boker & Co., Inc., a New Jersey corporation," immediately following the name and description of the New York corporation wherever the name of the New York corporation appears in said complaint and by changing the word "respondent" to "respondents" and by changing the singular to the plural wherever necessary in referring to the respondents and by adding the following subparagraph to paragraph 1 of said complaint:

"Respondent H. Boker & Co., Inc., the New Jersey corporation, has its office and principal place of business at 101 Duane Street in the city of New York, New York, and it is an affiliate of respondent H. Boker & Co., Inc., the New York corporation."

Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and of material and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife," has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of The Boy Scouts of America.

PAR. 4. The knives manufactured and sold by respondents, as alleged and described in paragraph 2 hereof, have been and are of such general design and appearance as, when marked or labeled by the use of the words "Scout," "Junior Scout," or "Boy Scout," or any other marks or insignia characteristic of or identifying them with, The Boy Scouts of America, would have, have had and have the capacity and tendency to induce the purchasing public to believe that respondents' said knives have been and are approved, endorsed or sponsored by The Boy Scouts of America and are a part of the standard equipment of that organization; and to cause, and have caused, a substantial part of the public to purchase respondents' said knives because of such belief.

PAR. 5. In truth and in fact, respondents' said knives have not been and are not manufactured or distributed under the supervision of The Boy Scouts of America, have not been and are not approved, endorsed or sponsored by that organization, nor are they a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by The Boy Scouts of America over products which are not so sponsored or approved.

PAR. 7. The aforesaid acts and practices of respondents, 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 26, 1940, issued and subsequently served its complaint in this proceeding upon respondent, H. Boker & Co., Inc., a New York corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of said act. After said respondent filed its answer, a stipulation dated May 1, 1941, was executed and pursuant thereto, by order entered June 21, 1944, the complaint was amended by adding as a respondent, H. Boker & Co., Inc., a New Jersey corporation, and in other particulars as set out in said order. By said stipulation it was further agreed that a statement of facts signed and executed by the respondent corporations or their counsel and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding. It was further stipulated and agreed that the Commission might, without notice to respondents, amend the complaint to conform with the facts stipulated and proceed without briefs or oral argument to dispose of this proceeding and enter its order to cease and desist against the respondents in substantially the same form as the order to cease and desist issued by the Commission in Docket 3466, Adolph Kastor & Bros., Inc., a cor-

poration, in the event that the Circuit Court of Appeals affirmed the said order and certiorari to the United States Supreme Court was not applied for within the period of time permitted by law. The Circuit Court affirmed said order¹ and it became final on February 27, 1944. On June 19, 1944, the Commission approved the stipulation herein, and thereafter this proceeding regularly came on for final hearing before the Commission on said amended complaint, answer, and stipulation; 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. (a) Respondent, H. Boker & Co., Inc., a New York corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 101 Duane Street, New York, N. Y. Said respondent has owned all the outstanding stock of H. Boker & Co., Inc., a New Jersey corporation, since the organization of the latter in 1916.

(b) Respondent, H. Boker & Co., Inc., a New Jersey corporation, is a corporation organized and existing under the laws of the State of New Jersey, with its office and principal place of business at 101 Duane Street, New York, N. Y.

PAR. 2. In 1915 H. Boker & Co., Inc. (New York), acquired all the assets of Carl F. Boker, trading as Hermann Boker & Co., at 101 Duane Street, New York, N. Y. As a part of this acquisition H. Boker & Co. (New York) secured all the outstanding stock of the Valley Forge Cutlery Company, a New Jersey corporation organized about 1899, which stock had been owned by Carl F. Boker since some time prior to 1909. This stock was held by H. Boker & Co. (New York) until the merger of Valley Forge Cutlery Company with H. Boker & Co., Inc. (New Jersey), in 1927. From the date of its acquisition of the stock of the Valley Forge Cutlery Company until the aforesaid merger, H. Boker & Co., Inc. (New York), was the sole selling agent for all products manufactured by said Valley Forge Cutlery Company, and has at all times since said merger been the sole selling agent for all products manufactured by H. Boker & Co., Inc. (New Jersey). From 1911 until it merged with H. Boker & Co., Inc. (New Jersey), the Valley Forge Cutlery Company manufactured a pocket knife and inscribed thereon the term "Boy Scout," except that beginning in 1920 said inscription was changed from "Boy Scout" to "Scout Knife." At all times since said merger H. Boker & Co., Inc. (New Jersey), has continued to manufacture a pocket knife bearing the inscription "Scout Knife." From 1920 to the date of said merger Valley Forge Cutlery Company also manufactured a pocket knife on one blade of which was inscribed the term "Junior Scout," and after its merger with H. Boker & Co., Inc. (New Jersey), the latter continued the manufacture of said knife bearing the inscription "Junior Scout" until about the year 1930.

PAR. 3. In the course and conduct of their aforesaid business, respondents have sold said knives to jobbers and retail dealers, and pursuant to such sales have shipped and do ship such knives, or cause them to be shipped, to the purchasers thereof at their respective locations in States other than the States of origin of the shipments, and maintain, and have

¹ Opinion and decision of the court is reported in 138 F. (2d) 824, 37 F. T. C. 818. For case before Commission, see 31 F. T. C. 1044.

maintained, a course of trade in such knives in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. (a) In 1910 an organization known as the Boy Scouts of America was incorporated under the laws of the District of Columbia and later reincorporated by special Act of Congress. The Boy Scout movement commenced in England some time prior to 1907 and spread to the United States about 1907. Many groups known as Boy Scouts of America were organized throughout the United States between the years 1907 and 1910, and the movement grew rapidly during that period. The incorporation of the Boy Scouts of America in 1910 resulted in the absorption and coordination of these various groups throughout the country into one centralized organization. The purpose of such organization was in general to organize the boys of the United States and to teach them discipline and patriotism; to encourage habits of self-control, and to teach them to care for themselves in all exigencies of life.

(b) In furtherance of these purposes and to attract the boys of the nation to the movement and to insure safe, adequate, and adaptable equipment, the Boy Scouts of America adopted and has since maintained the policy of devising and planning many articles of equipment and supervising the manufacture and distribution thereof through licensing and otherwise authorizing those with whom it entered into arrangements for such manufacture and distribution. From the beginning, equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to by the use of the words "Boy Scout," "Scout," and "Scouting," so that these words long ago acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America. Among the articles of equipment so devised, the production and distribution of which is so supervised, is a pocket knife of design, material, and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife" and has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America.

PAR. 5. Respondents' knives manufactured and distributed as aforesaid have not been, and are not, manufactured or distributed under the supervision of the Boy Scouts of America and have not been, and are not, approved, endorsed, or sponsored by that organization, nor are they a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by the Boy Scouts of America as compared with products which are not so sponsored or approved. Respondents' said knives as heretofore described have been, and are, of such general design and appearance that use of the words "Scout," "Junior Scout," or "Boy Scout," or any other marks or insignia characteristic of or identifying them with the Boy Scouts of America would have, has had, and has, the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that respondents' said knives have been, and are, approved, endorsed, or sponsored by the Boy Scouts of America and are a part of the standard equipment of that organization, and to induce a substantial part of the public to purchase respondents' said knives as a result of such erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondents 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 amended complaint of the Commission, the answer of respondent H. Boker & Co., Inc., a New York corporation, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey corporation, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Marking or labeling said knives, or the containers or coverings in which they are enclosed or display cards to which they are attached or on which they are displayed, with the words "Scout," or "Boy Scout," or "Junior Scout," or with any emblem or symbol adopted and used by the Boy Scouts of America to designate or symbolize that organization or the activities of its members.

2. Marking, designating, or describing knives as "Scout," "Boy Scout," or "Junior Scout."

3. Using, in any manner, any mark, symbol, or emblem adopted and used by the Boy Scouts of America to represent or identify that organization or the activities of its members.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

ARTHUR M. FLORMAN AND LEO FLORMAN TRADING
AS A. M. FLORMAN & BRO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4227. Complaint, Aug. 7, 1940—Decision, Mar. 19, 1945

Where two individuals engaged in New York City as commission resident buyers of millinery for some 40 retailer millinery and department stores in various States—in competition with buying offices maintained in said center by similar millinery dealers and department stores, and with "Fee" buyers regularly employed and compensated by such organizations—through locating and placing with a particular one of a large number of manufacturers and sellers of millinery competitively engaged in said city, orders which met the general requirements as to style, price, etc. of particular customers and which, along with invoice, bill, delivery and other necessary documents of sale, specified the name of the purchaser and recorded the transaction as though he had made the purchase in person—

Received and accepted from said manufacturers and sellers, commissions consisting of a certain percentage of the sales prices agreed upon between each of them and said individuals in the orders for merchandise placed by latter for their principals, which said manufacturers transmitted, paid and delivered to said individuals on the purchases of merchandise by the aforesaid 40 retail millinery and department stores who were the actual purchasers in such transactions and in whose behalf said individuals were in fact acting:

Held, That such receipt of remuneration in the form of commissions from competitive sellers, manufacturers and wholesalers from whom said individuals purchased millinery and other commodities for such buyers or client buyers, was in violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.
Kaufman & Cronan, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, Arthur M. Florman and Leo Florman, are individuals, trading under the name A. M. Florman & Bro. with their principal office and place of business located at 134 West 32nd Street, New York, N. Y. Said respondents, Arthur M. Florman and Leo Florman, are engaged in business as commission resident buyers of millinery. In the course of their said business, respondents act as purchasing agents for and