

IN THE MATTER OF
EDWARD P. PAUL & COMPANY, INC.

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

Docket 5202. Complaint, Aug. 9, 1944—Decision, Oct. 24, 1946

Where a corporation engaged in the importation and manufacture and interstate sale and distribution of porcelain products, art ware, and gift ware, principally to and through retail stores and gift shops, and in advertising its merchandise chiefly through an annual catalog distributed to some 25,000 retail dealers throughout the United States—

Represented that certain porcelain candy boxes and table lamps were imported from France and that the latter were of French or British origin through use in said catalog of the language "imported 'Du Barry' porcelain," and "IMPORTED Hand Decorated 'Du Barry' Porcelain—'Du Barry' Porcelain Table Lamps are nationally famous as reproductions of rare original French and English 'Old Pieces' * * *";

The facts being that neither of said products were porcelain ware made in France and the British Isles, for which there is a preference on the part of a substantial portion of the purchasing public, but both the lamps and candy boxes, or the porcelain bodies thereof, were in fact made in Japan and imported by it into the United States; the addition by it of domestic metal bases and other parts obscured the words "Made in Japan" or "Japan" which appeared on the porcelain parts at the time of their importation; and the completed articles, when sold by it, bore no visible marks informing dealers or the purchasing public of their origin in Japan, against the articles of which there is similarly a prejudice;

With tendency and capacity to mislead and deceive a substantial number of retail dealers and members of the purchasing public with respect to the origin of its products, and thereby cause such persons to purchase substantial quantities thereof, and with result of placing in the hands of uninformed or unscrupulous retail dealers an instrumentality whereby such dealers might be enabled to mislead and deceive the purchasing public:

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. John W. Addison*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Samuel A. Fried, of New York City, and *Mr. Nathan L. Silberberg*, of Washington, D. C., 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 Edward P. Paul &

Co., Inc., 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 Edward P. Paul & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 43 West Thirteenth Street, New York, N. Y.

PAR. 2. The respondent is now and for several years last past has been engaged in the importation, manufacture, sale, and distribution of lamps, porcelain and art ware, which are sold principally to retail stores and gift shops for resale to the purchasing public. Some of respondent's products are manufactured wholly from domestic materials. Some are imported in a finished state. Other products are imported and finished by the respondent into marketable form by adding bases and ornaments of domestic material.

In the course and conduct of its said business, respondent causes said products when sold to be transported from its place of business in the State of New York to the 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 products 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 products in commerce, respondent has made certain false, deceptive and misleading statements and representations regarding the country of origin of certain porcelain lamps and porcelain candy dishes by means of advertisements inserted in its catalog and in various other ways. Typical representations, in regard to the lamps and candy dishes are as follows:

Imported "Du Barry" Porcelain.

Imported hand decorated "Du Barry" porcelain.

"Du Barry" porcelain table lamps are nationally famous as reproductions of rare, original French and English "old pieces" * * *

The lids of the porcelain candy dishes were ornamented with a crest which simulated the royal arms of the British Empire in that it depicted a crown superimposed above a shield supported between two rampant animals, one having the appearance of a lion and the other the appearance of a unicorn. Respondent affixed to said lamps and candy dishes a red and gold label whereon appeared the letters "EPPCo," together with the words "New York, Paris, and London."

PAR. 4. Through the foregoing statements, representations, and practices the respondent has represented and implied, and purchasers

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for resale and ultimate purchasers have been led to believe, that said lamps and candy dishes were products of British or French origin.

PAR. 5. The foregoing representations are false, deceptive, and misleading in the following respect: The lamps and candy dishes were made in Japan and at the time of entry into the United States had stamped across the bottoms thereof the words "Made in Japan." The respondent added metal bases and ornaments of domestic material, thus finishing them into marketable form without causing loss of identity as lamps and candy dishes. As a result of the finishing processes the words, "Made in Japan" were obscured from the purchasers' view so that when sold by the respondent in commerce as aforesaid, there were no visible markings thereon to inform the purchasing public that these lamps and candy dishes were made in Japan.

PAR. 6. There is an established custom and practice in the United States for all products of foreign origin to be marked in such manner as to indicate the country of origin. The purchasing public is familiar with and relies upon such custom and practice. A substantial portion of the purchasing public has a preference for porcelain ware made in France and the British Isles and a decided prejudice against any products manufactured in Japan.

PAR. 7. Respondent by the distribution of its catalog and other advertising matter containing the aforesaid representations in regard to said lamps and candy dishes and by obscuring and concealing the words "Made in Japan" on the said lamps and candy dishes and by affixing the labels with the wording "New York, Paris, London," supplied to and placed in the hands of the retailers to whom it sells, the means and instrumentalities designed to enable and capable of enabling said retailers to mislead and deceive the ultimate purchasers as to the country of origin of the said lamps and candy dishes.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements and representations and deceptive acts and practices in connection with the offering for sale and sale of its products in commerce has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said lamps and candy dishes were made in the British Isles or France and into the purchase of substantial quantities of such products because of such erroneous and mistaken belief.

PAR. 9. 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 August 9, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Edward P. Paul & 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 to the complaint, evidence in support of and in opposition to the complaint was introduced before a trial examiner of the Commission theretofore duly designated by it, and such evidence was 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, answer, evidence, report of the trial examiner and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; 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, Edward P. Paul & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 43 West Thirteenth Street, New York, N. Y. Respondent is engaged in the importation, manufacture, sale, and distribution of porcelain products, art ware, and gift ware, which merchandise is sold by respondent principally to retail stores and gift shops for resale to the purchasing public.

PAR. 2. Respondent causes and has caused its products, 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 at all times mentioned herein has maintained, a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The principal medium employed by respondent for advertising its merchandise is a catalog which is issued annually and distributed to some 25,000 retail dealers throughout the United States. Among the articles of merchandise advertised in the 1941 catalog were certain porcelain candy boxes and table lamps. On page 1 of the catalog certain candy boxes were described by respondent as

"Imported 'Du Barry' Porcelain." On page 7 of the catalog there appeared the following language as descriptive of certain lamps, "IMPORTED Hand Decorated 'Du Barry' Porcelain—'Du Barry' Porcelain Table Lamps are nationally famous as reproductions of rare original French and English 'old pieces' * * *."

Through the use of these statements respondent represented, directly or by implication, that the candy boxes in question were imported from France, and that the lamps in question were of French or British origin.

PAR. 4. These representations were erroneous and misleading. Neither the articles nor any parts thereof were of French or British origin. Both the lamps and candy boxes, or the porcelain bodies thereof which constituted the principal portion of the articles, were in fact made in Japan and imported by respondent from that country into the United States. At the time the porcelain parts were imported there appeared thereon the words "Made in Japan" or "Japan." As a result, however, of the addition by respondent of metal bases and other parts made of domestic material the words disclosing that the articles were of Japanese origin were obscured from view, and when sold by respondent there were no visible marks on the articles informing dealers or the purchasing public that the articles originated in Japan.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for porcelain ware made in France and the British Isles and a prejudice against products manufactured in Japan.

PAR. 6. The use by respondent of the erroneous and misleading representations herein set forth has the tendency and capacity to mislead and deceive a substantial number of retail dealers and members of the purchasing public with respect to the origin of respondent's products, and the tendency and capacity to cause such persons to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered. The use by respondent of these representations serves also to place in the hands of uninformed or unscrupulous retail dealers an instrumentality whereby such dealers may be enabled to mislead and deceive the purchasing public with respect to the origin of respondent's products.

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, evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; 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, Edward P. Paul & 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 porcelain products, artware and giftware in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the legend "Imported—Du Barry," or any other legends or words indicative of French origin, to designate or describe products made in whole or in substantial part in Japan, without clearly disclosing such Japanese origin.

2. Representing in any manner that products made in whole or in substantial part in Japan are of French or British origin.

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.

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IN THE MATTER OF
ROBERT ROSOFF

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

Docket 5370. Complaint, Aug. 22, 1945—Decision, Oct. 30, 1946

Where an individual engaged in New York City in the purchase of furs and fur garments from manufacturers and sellers in New York and other states, (1) as agent and representative of a New Jersey family enterprise; (2) for several other business establishments located in various States, in which he owned substantial interest; and (3) as purchasing agent and representative for several classes of purchasers in whose respective businesses he had no financial interest, including retail furriers and chain and department stores, for which he filled orders to purchase a stated quantity according to specifications on the most favorable terms and conditions obtainable and, usually, for direct shipment to purchaser—

Received and accepted from the sellers brokerage fees or commissions in substantial amounts on such purchases, whether for his own account or for other purchasers:

Held, That the receipt and acceptance by said individual of brokerage fees or commissions from sellers, under the circumstances set forth, violated subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Abraham Aaron, of Brooklyn, N. Y., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is 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. Respondent Robert Rosoff is an individual, trading as Robert Rosoff, with his principal office and place of business located at 370 Seventh Avenue, New York, N. Y. The respondent, since June 19, 1936, has engaged and is now engaged in the business of buying furs and fur garments for himself and for others for resale.

PAR. 2. The respondent Robert Rosoff is the sole owner of the registered trade name "Rochelle Fur Company" and the business of buying and selling furs and fur garments which is conducted under such name. The respondent maintains the principal office and place of