

Complaint

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IN THE MATTER OF

CHARLES A. GEARING

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

Docket 5292. Complaint, Mar. 9, 1945—Decision, Mar. 26, 1947

Where an individual engaged in the interstate sale and distribution of religious flags and banners; in advertising in newspapers and periodicals, and through circulars—

- (a) Represented that his flags and banners were made of silk and that the fringes were gold; when in fact the flags and banners and the fringes also were composed of rayon; and
- (b) Represented that certain of the flags and banners were given free; when in order to obtain such so-called gifts the recipients were required to purchase other flags or banners, prices charged for which included the prices of the "free" products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce the purchase by it of a substantial quantity of said products:

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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Brust & Pakenham, of Chicago, Ill., 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 Charles A. Gearing, an individual 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. Charles A. Gearing is an individual with his office and principal place of business located at 311 South Twenty-second Avenue, Bellwood, Ill.

PAR. 2. Respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of flags and banners. Respondent causes said products when sold to be transported from his place of business in the State of Illinois, or from the place of man-

ufacture in the city of New York, to purchasers 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 flags and banners in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of said flags and banners, the respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails and by means of advertising folders, circular letters, and other advertising material, all of general circulation, many false statements and representations concerning said product. Among and typical of said false representations and statements are the following:

ROYAL ANNIVERSARY SPECIAL \$57.00

This set contains 3-x-5 ft. rayon silk taffeta Flags with gold fringes, yellow silk cords and tassels, 5-inch solid-brass eagle and 8-inch solid-brass cross, tapered polished ash staffs, solid-birch stands, including one Church School Banner free. (Without gold fringes, deduct \$5.00.)

ROYAL CHRISTIAN BANNER (set) \$92.00

This set contains 3-x-5 ft. Bemberg rayon silk Flags with gold fringes, yellow silk cords and tassels, 5-inch solid-brass eagle and 8-inch solid-brass cross, tapered polished ash staffs, solid-birch stands, including one Church Pulpit Banner Free.

MAJESTIC CHURCH FLAGS \$117.00

This set contains 4 x 6 ft. Bemberg rayon silk Flags with gold fringes, yellow silk cords and tassels, 7½-inch solid brass eagle and 13-inch solid brass cross, tapered polished ash staffs, solid birch stands, including one Church Pulpit Banner free.

CONVENTIONAL CHURCH FLAGS \$50.00

This set contains 3 x 5 ft. rayon silk taffeta Flags with gold fringes, yellow silk cords and tassels, 4-inch solid brass eagle and 8-inch solid brass cross, straight ash or cherry staffs (state which), solid birch stands. (Without gold fringes deduct \$4.00.)

RECREATIONAL FLAGS \$37.00

This set contains 3 x 5 ft. wool hunting Flags, 4-inch solid brass eagle and 8-inch solid brass cross, straight ash or cherry staffs (state which), yellow silk cords and tassels, solid birch stands. (With gilded wood ball instead of brass eagle and cross and no yellow silk cords and tassels deduct \$9.00.)

RAINBOW CHURCH FLAGS \$50.00

This set contains 3 x 5 ft. rayon silk taffeta Flags with gold fringes, yellow silk cords and tassels, tapered polished ash staffs, solid birch oval tops matching birch stands. Less gold fringes deduct \$4.00. With 4 x 6 ft. Flags and heavier equipment \$62.00. Less gold fringes deduct \$5.00. With 5 x 8 ft. Flags extra heavy equipment \$112.00. Less gold fringes deduct \$7.00.

THE CRUSADE FLAGS \$125.00

This set contains 5 x 8 ft. rayon silk taffeta Flags with gold fringes, yellow silk cords and tassels, 10½-inch solid brass eagle and 13-inch solid brass cross,

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tapered polished ash staff (12 ft. with brass joints) extra heavy solid birch stands. (With Bemberg rayon silk add \$75.00.) Note—This set is used in extra large auditoriums. For most large Churches the 4 x 6 ft. Flags suffice. Including Church Pulpit Banner \$5.00 additional. (See Gearing Exhibits 9 and 10.)

The Universal Christian Flag is the world's genuine authentic Royal Christian Banner symbolizing the eternal Sovereignty and Supremacy of God over all. Its Crusade Cross points the soul of mankind upward to Christ. Make it your Church's OFFICIAL CHRISTIAN EMBLEM!

If Christ were on earth and was asked what Banner he would have for his Universal Kingdom today: Would he choose an emblem copied from some national Flag, or any other that was not glorious in God's sight; Or would he say: Give me the Banner designed after my Father's glory?

The Banner of God's Kingdom must be genuine and authentic Christian. No copy will do. It must have complete universal symbolism. It should be the most beautiful and significant of all Flags, and ought to enhance the interest of the world in preparation for the Lord's coming.

The Universal Christian Flag contains all these qualities and is the life work of its designer. It is the only Christian Flag known in history to have been conceived and based clearly on the Bible and God's glory, according to Ps. 60:4. "Thou has given a Banner to them that fear Thee, that it may be displayed because of truth." Its colors were selected from the rainbow, God's own sign to the world, Gen. 9:13. It is the world's only Christian Flag registered in the United States Copyright Office having two names * * * Universal Christian Flag, the Royal Christian Banner. It is called the Royal Christian Banner because it contains the traditional Church Colors and in honor of what Peter said, 1 Pet. 2:9. It is the Ensign of Christian unit.

The symbolic use of its colors is founded upon God's universal use of them, not on certain nationalistic preferences of colors. It is truly a universal Flag carrying the universality and supremacy of Christ's heavenly glory in its design.

PAR. 4. Through the use of the foregoing statements and representations and others similar thereto, not specifically set out herein, respondent represents that the church flags and banners sold by him have been officially recognized and adopted by Christian orders and sects as the universal Christian flag or banner; that said flags and banners are made of silk; that said flags and banners have fringes made of gold; that church school banners and church pulpit banners are given free.

PAR. 5. The foregoing representations and statements are false and deceptive. In truth and in fact the flags and banners sold by respondent have not been officially recognized, or adopted by Christian religious orders or sects as the universal Christian flag, or as the universal Christian banner. Respondent's flags and banners are not composed of silk, but are made from rayon. The fringes of such flags and banners, which are described as gold fringes, are not made of gold, but consist wholly of textile fibers. The church school banners and church pulpit banners are not gratuities or gifts, or given

free, but the recipient of same is required as a consideration to purchase other flags or banners and the prices of such so-called free banners are included in the price charged for other flags or banners.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements and representations disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

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 March 9, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Charles A. Gearing, charging him 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 his answer to the complaint, 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 regularly came on for final consideration by the Commission upon the complaint, answer, testimony, and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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, Charles A. Gearing, an individual, has his office and principal place of business at 311 South Twenty-second Avenue, Bellwood, Ill. He is engaged in the sale and distribution of religious flags and banners, which are manufactured for him by a business concern located in New York, N. Y.

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PAR. 2. Respondent causes his products, when sold, to be transported from his place of business in the State of Illinois, or from the place of manufacture in the State of New York, to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains a course of trade in his products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent advertised his products by means of advertisements inserted in newspapers and periodicals having circulation in several States of the United States, and also by means of circulars distributed among prospective purchasers located at various places throughout the United States. In certain of this advertising respondent has represented that his flags and banners are made of silk, that the fringes thereon are made of gold, and that certain of the flags and banners are given free.

PAR. 4. These representations were erroneous and misleading. The flags and banners are not made of silk but are made of rayon. The fringes thereon are also made of rayon and contain no gold. Nor are any of the flags or banners given free. In order to obtain such so-called gifts the recipients thereof are required to purchase other flags or banners, and the prices of the "free" products are included in the prices charged for the other flags and banners. The record shows that all of these representations were discontinued by respondent after their inaccuracy had been brought to his attention by a representative of the Commission.

PAR. 5. While the complaint contained other charges against respondent, the Commission is of the opinion and finds that such charges are not sustained by the record.

PAR. 6. The use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products 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 complaint of the Commission, the answer of respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested) ; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Charles A. Gearing, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of flags and banners in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are made of silk, unless they are in fact made of such material.

2. Representing that the fringes on said products are made of gold.

3. Using the term "free" or "gift," or any other term of similar import, to designate, describe, or refer to any product the price of which is included in the price of other products.

It is further ordered, That said 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.

Commissioner **Mason** not participating.

IN THE MATTER OF

CANUTE CO.¹

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

Docket 5234. Complaint, Oct. 14, 1944—Decision, Mar. 31, 1947

Where a corporation engaged in the interstate sale and distribution of a hair dyeing preparation designated "Canute Water," which (a) consisted of (1) a clear, colorless liquid composed of 1.14 percent silver nitrate, 0.772 percent ammonium hydroxide and 98.008 percent distilled water, and (2) a tablet for use in connection therewith, effect of which was to speed the action of the silver nitrate solution; and which (b) enabled the user through successive applications to make the hair darker than it was before, so that the possessor of white hair might secure a very light blonde shade from a first application or deeper shades through successive applications, continuing to brown or black if desired—

Falsely represented, directly or by implication, through use of the word "water" in its trade name "Canute Water" and use of words "pure," and "colorless and crystal clear" in connection therewith in newspaper and periodical advertisements and in circulars, leaflets, pamphlets, and other advertising literature, that said silver nitrate hair dye was water and clear, colorless and pure;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair or deceptive acts and practices in commerce.

In considering the remedy which might be applied to remove the deception engendered by the use of the term "water" in the trade name for respondent's clear silver nitrate hair dye, the Commission was of the opinion and found that such deception could only be removed by the use of qualifying words in immediate connection with said trade name to indicate that the preparation in question was in fact a silver nitrate hair dye; and further found that the use of the term "pure" to designate or describe said preparation in advertising was misleading and deceptive.

In a proceeding in which the statement by the seller of a hair dye that its preparation "will color hair similar to its original or natural color" was found deceptive by the Trial Examiner in that it implied, contrary to the fact as found by him with respect to red or auburn hair and possibly some other shades, that preparation in question would recolor all gray hair similar to its original natural color, so that, to such extent the charge of the complaint in the proceeding involved had been sustained, and in which the only witness' respondent's president, first testified that hair could be made red through use of preparation in question, and, later, that red

¹The Commission on September 1, 1948 issued an order vacating and setting aside the findings as to the facts, conclusion and order to cease and desist and dismissing finally the complaint.