

IN THE MATTER OF
EASTMAN KODAK COMPANY

ORDER SUSPENDING IN PART THE OPERATION OF CEASE AND DESIST ORDER
ISSUED SEPTEMBER 9, 1944

Docket 4322. Order, July 3, 1947

Order in proceeding in question, in which original findings and cease and desist order are reported in 39 F. T. C. 154, and findings, as modified, and order, in 41 F. T. C. 137; and in which—

(a) The Commission found, for the reasons set forth, that respondent's resale price agreements with retail dealer customers in some 44 States with fair trade acts, entered into pursuant to respondent's resale price maintenance policy and system since 1938, did not fall within the saving provisions of the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937; and

(b) Said original order required respondent, among other things, in connection with the offer, sale, etc., of its "Kodachrome Film" to cease and desist from entering into any contract, etc., with its dealer-customers which provided that its said film or magazine film is not to be advertised, offered, or sold by them at prices less than those specified by it, or from enforcing or continuing in operation any such contract, etc., as there set out in detail, subject to the provision that "if conditions later change so that there are other commodities of the same general class produced or distributed by others which are sold in free and open competition with respondent's Kodachrome or Magazine Film, then, and in that event, the Commission will, upon proper showing by the respondent, reconsider the terms of this order in the light of such new conditions";

Suspending operation of said order to cease and desist as to Kodachrome Film—following Commission consideration of respondent's petition and affidavits attached thereto, a certain stipulation, and the record in the matter, and its opinion that "respondent's Kodachrome Film is now being sold in free and open competition with color film manufactured, sold, and distributed by General Aniline & Film Corp. so as to bring in operation the provision contained in said order to cease and desist of September 9, 1944, insofar as Kodachrome Film is concerned for the period and during the time that Ansco Color Film manufactured by General Aniline & Film Corp. is sold in free and open competition with respondent's Kodachrome Film"; subject to the provision that nothing therein contained shall affect the operation of said order, insofar as it applies to respondent's "Magazine Film."

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Nixon, Hargrave, Middleton & Devans and *Mr. William F. Shepard*, of Rochester, N. Y., and *White & Case*, of New York City, for respondent.

ORDER SUSPENDING IN PART THE OPERATION OF CEASE AND DESIST
ORDER ISSUED SEPTEMBER 9, 1944

This cause coming on to be heard by the Commission on petition of respondent, Eastman Kodak Co., filed March 20, 1947, to reopen the above proceeding for the purpose of receiving evidence as to free and open competition in Kodachrome Film between the respondent and General Aniline & Film Corp. and that the order be suspended pending further order by the Commission upon said testimony and that the Commission direct its attorneys, agents, and representatives to withhold commencement of any further actions or proceedings to enforce said order or to recover penalties against the respondent with respect to Kodachrome Film; and

It appearing that subsequent thereto a stipulation of facts and conclusions, dated April 2, 1947, was entered into between the respondent, by its attorneys, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Federal Trade Commission, providing that the facts set out therein be considered as established in this proceeding in passing upon the petition filed by the respondent on March 20, 1947; and

It appearing to the Commission that, by the terms of the stipulation of facts the General Aniline & Film Corp. of Delaware, operating a factory at Binghampton, N. Y., has, since March 1946, made color film, both still and motion picture, produced by it and sold under its brand name "Anseo," generally available to dealers in photographic supplies in the principal cities of the United States for resale by them to amateur and professional photographers; and

It further appearing that, by the terms of the order to cease and desist issued by the Commission on September 9, 1944, the respondent was prohibited in connection with the offering for sale, sale, and distribution of its Kodachrome Film from entering into any contract, agreement, or understanding, either directly or indirectly, with its dealer-customers, which provides that respondent's Kodachrome Film or Magazine Film is not to be advertised, offered for sale, or sold by such dealer-customers at prices less than those specified or fixed by the respondent or from enforcing or continuing in operation any contract, agreement, or understanding with its dealer-customers to fix or maintain minimum resale prices at which respondent's Kodachrome Film or Magazine Film is to be offered for sale or sold; and

It further appearing that said order to cease and desist, issued Sep-

Order

44 F. T. C.

tember 9, 1944, contained, in addition to said prohibitions, the following proviso:

Provided, however, That if conditions later change so that there are other commodities of the same general class produced or distributed by others which are sold in free and open competition with respondent's Kodachrome or Magazine Film, then, and in that event, the Commission will, upon proper showing by the respondent, reconsider the terms of this order in the light of such new conditions.

and

The Commission having considered the petition of the respondent filed March 20, 1947, and affidavits attached thereto, the stipulation as to the facts dated April 2, 1947, and the record herein, including the terms of the order to cease and desist heretofore issued on September 9, 1944, and being now of the opinion that respondent's Kodachrome Film is now being sold in free and open competition with color film manufactured, sold, and distributed by General Aniline & Film Corp. so as to bring in operation the proviso contained in said order to cease and desist of September 9, 1944, insofar as Kodachrome Film is concerned; and

The Commission being now fully advised in the premises:

It is ordered, That the operation of the order to cease and desist heretofore issued by the Commission on September 9, 1944, insofar as Kodachrome Film is involved, be suspended for the period and during the time that Ansco Color Film manufactured by General Aniline & Film Corp. is sold in free and open competition with respondent's Kodachrome Film.

It is further ordered, That nothing herein contained shall affect the operation of the Commission's order of September 9, 1944, insofar as it applies to respondent's Magazine Film.

Syllabus

IN THE MATTER OF
THE BOLTA COMPANY AND NEW YORK MERCHANDISE
COMPANY, INC.

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

Docket 4754. Complaint, Apr. 4, 1945¹—Decision, July 3, 1947

The tariff laws of the United States require that articles of foreign origin, when imported into the United States, be marked in such manner as to indicate to the ultimate purchaser the name in English of the country of origin, and a substantial portion of the purchasing public has become familiar with the fact that imported articles customarily bear a mark indicating the country of origin and is accustomed to look for such marks, and when no such mark appears upon an article offered for sale, assume that it is produced in the United States by a domestic manufacturer.

There is now, and for a number of years last past has been, among members of the buying and consuming public, including purchasers of sunglasses, a substantial preference for products of domestic manufacture or origin as compared with those of Japanese or other foreign origin, and, in fact, sunglasses with lenses of Japanese origin would recently have been practically unsalable with the marks of Japanese origin thereon or with disclosure to the public of their origin.

Where a corporation engaged in the manufacture of plastic articles, including frames for sunglasses, and in the interstate sale and distribution of completed sunglasses made with domestic and imported lenses, and in purchasing from a New York dealer quantities of sunglass lenses which had been imported by the latter from Japan and which, when imported, bore pasted labels or stickers designating the country of origin, and in purchasing also from another seller a relatively small quantity of similarly marked lenses made in and imported from other foreign countries, and in placing in its sunglass frames such lenses, from which, as the result of a cleaning process, assertedly necessary, aforesaid labels showing foreign origin had been removed—

(a) Sold said completed sunglasses to said New York dealer and a few other purchasers, with no label or other marks thereon indicating the country of origin of the lenses, which, in some cases, were mounted on display cards which bore the legend "Made in U. S. A.," and in others were on cards or in cartons which did not disclose their foreign origin; and

Where said New York dealer, while it was selling Japanese lenses to said corporation and purchasing completed sunglasses therefrom, and knew or had good and sufficient reason to know that many of such sunglasses contained Japanese lenses—

(b) Sold said sunglasses—in which such imported lenses were completed products and required no processing other than insertion in the frames—without any disclosure of foreign origin and mounted and containered as above set forth; and distributed catalogs containing illustrations of said products on display cards bearing the statement "Made in U. S. A.";

With capacity and tendency to mislead and deceive members of the purchasing

¹ Amended and supplemental.