

Syllabus

IN THE MATTER OF
STANLEY WEINSTEIN DOING BUSINESS AS GENERAL
TACK COMPANY

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

Docket 5688. Complaint, Aug. 12, 1949—Decision, May 23, 1950

By virtue of the established practice of imprinting or otherwise labeling or marking products of foreign origin and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely upon such marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, and when products composed in whole or substantial part of imported articles are offered and sold in the channels of trade in commerce throughout the United States, they are purchased and accepted as and for products wholly of domestic manufacture and origin, unless imprinted, labeled or marked in a manner which informs purchasers of their foreign origin.

There has been and is among members of the buying and consuming public a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from those of foreign manufacture or origin and from those which are in substantial part made of materials or parts of foreign manufacture or origin.

Where an individual engaged in purchasing, in bulk quantities, thumb tacks which had been imported from Belgium and other foreign countries, plainly stamped with the country of origin, and in plating, enameling, or lacquering the same, and mounting them on boards wrapped in cellophane, and thereafter packing them in his own containers for shipment—

Sold said products without any imprinting, labeling or marking upon the boards upon which they were mounted or the wrappers or cartons in which packed, and upon which in all cases there appeared his trade name and the words "Jersey City, New Jersey";

With tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false belief that said thumbtacks were wholly of domestic manufacture and origin, and thereby into the 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 and deceptive acts and practices in commerce.

Mr. Morton Nesmith for the Commission.

Mr. Saul Rubin, of New York City, for respondent.

Complaint

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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 Stanley Weinstein, doing business as General Tack Co., 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, Stanley Weinstein, is an individual trading and doing business as General Tack Co., with his office and principal place of business at 525 Mercer Street, Jersey City, N. J.

PAR. 2. Said respondent is now and has been for several years last past engaged in the business of purchasing thumbtacks imported from Belgium and other foreign countries, plating or otherwise coating the tacks in this country, and selling and distributing said product.

PAR. 3. The respondent causes his said product when sold to be shipped from his place of business in the State of New Jersey to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and dealers in turn sell said thumbtacks to the general public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. His volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of his business, respondent purchases thumbtacks which are imported from Belgium and other foreign countries in bulk quantities, usually 500,000 to the case. These cases are plainly stamped with the country of origin. The respondent removes the tacks from these cases, plates, enamels, or lacquers them, mounts them on boards, ranging from 24 upward per board, wraps the boards in cellophane, and packs them in his own containers for shipment. Neither the boards upon which the tacks are mounted, the cellophane wrappers which enclose said boards, nor the cartons which package the finished product are marked or labeled with the country of origin of said thumbtacks. In some instances, the boards upon which the tacks are mounted are marked "General Tack Co., Jersey City, N. J.," and usually the style or lot number appears thereon. In all instances, the cartons in which the finished boards are packed are marked "General Tack Co., Jersey City, N. J."

PAR. 5. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign

origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made and imported thumbtacks. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times material to this complaint, there has been, and now is, among said members of the buying and consuming public, including purchasers and users of thumbtacks, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The practice of respondent as aforesaid in offering for sale, selling, and distributing his thumbtacks of foreign origin without any imprinting, labeling, or marking on the boards upon which said tacks are mounted or the cartons in which they are packed to indicate to purchasers that said thumbtacks are of Belgian or other foreign origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said thumbtacks are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

PAR. 7. 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 12, 1949, issued and thereafter served upon the respondent, Stanley Weinstein, an individual doing business as General Tack Co., its complaint in this proceeding,

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charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondent's answer to said complaint was filed on October 14, 1949, but on February 28, 1950, he filed with the Commission a motion for leave to withdraw said original answer and to file in lieu thereof a substitute answer dated February 25, 1950, in which he admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, and said motion was subsequently granted. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the substitute answer thereto; 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. Respondent, Stanley Weinstein, is an individual trading and doing business as General Tack Company, with his office and principal place of business located at 525 Mercer Street, in the City of Jersey City, State of New Jersey.

PAR. 2. Said respondent is now and for several years last past he has been engaged in the business of purchasing thumbtacks imported from Belgium and other foreign countries, plating or otherwise coating the tacks in this country, and selling and distributing said product.

PAR. 3. The respondent causes his said product, when sold, to be shipped from his place of business in the State of New Jersey to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and dealers in turn sell said thumbtacks to the general public. Respondent maintains, and at all times mentioned herein he has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. His volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of his business, respondent purchases thumbtacks which are imported from Belgium and other foreign countries in bulk quantities, usually 500,000 to the case. These cases are plainly stamped with the country of origin. The respondent removes the tacks from these cases, plates, enamels, or lacquers them, mounts them on boards, ranging from 24 upward per board, wraps the boards in cellophane, and packs them in his own containers for shipment. When said tacks are so mounted, wrapped and packaged,

however, the country of origin thereof is not shown on the boards upon which they are mounted, the cellophane wrappers which enclose said boards, or the cartons which package them. In some instances, the boards upon which the tacks are mounted are marked "General Tack Co., Jersey City, N. J.," and usually the style or lot number appears thereon. In all instances, the cartons in which the finished boards are packed are marked "General Tack Co., Jersey City, N. J."

PAR. 5. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made and imported thumbtacks. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times mentioned herein there has been, and now is, among said members of the buying and consuming public, including purchasers and users of thumbtacks, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The practice of respondent in offering for sale, selling, and distributing his thumbtacks of foreign origin without any imprinting, labeling, or marking on the boards upon which said tacks are mounted or on the wrappers in which they are enclosed to indicate to purchasers that said thumbtacks are of Belgian or other foreign origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said thumbtacks are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

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CONCLUSION

The acts and practices of the respondent, as herein found, 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 complaint of the Commission and the substitute answer of the respondent, in which answer said respondent admits all of the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearings as to said facts, 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, Stanley Weinstein, individually and trading as General Tack Co., or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of thumbtacks or other similar products, do forthwith cease and desist from:

Offering for sale or selling any such products of foreign origin without clearly and conspicuously disclosing on the boards on which such products are mounted, or other packages or containers in which they are sold to the consuming public, the country or origin of such products.

It is further ordered, That the 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.

Modified Order

IN THE MATTER OF
P. LORILLARD CO.

Modified Cease and Desist Order

Docket 4922. Order, May 24, 1950

Order modifying prior cease and desist order issued on March 31, 1950, 46 F. T. C. 734 at 752—which prohibited respondent from misrepresenting the qualities or properties, etc., of its Beech-Nut, Sensation, or Old Gold cigarettes, or of its Friends smoking tobacco, or the smoke therefrom—so as to provide that nothing in the order with respect to respondent's Beech-Nut cigarettes, or other cigarettes of substantially the same length, shall be construed to prohibit it from representing "that during the time the extra length of any such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes"; and in certain other respects as below set forth.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. John R. Phillips, Jr. for the Commission.

Perkins, Daniels & Perkins, of New York City, and *Bingham, Collins, Porter & Kistler*, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding was heard by the Federal Trade Commission upon the complaint, answer of the respondents, testimony, and other evidence taken before trial examiners of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions filed thereto by counsel supporting the complaint, and brief of counsel supporting the complaint (no brief having been filed by counsel for respondent and oral argument not having been requested), and the Commission, having considered the matter, made and issued its findings as to the facts, conclusion, and order to cease and desist on March 31, 1950.

Thereafter the Commission, acting upon its own motion, reconsidered the matter and on May 12, 1950, issued its rules to show cause why said order to cease and desist should not be modified to read as set forth therein. In response to said rule to show cause, counsel supporting the complaint filed a statement acquiescing in the proposed modification and respondent, by its counsel, filed a statement containing additional proposals for modifying said order to cease and desist; and the Commission having considered such additional proposals and having rejected same for the reason that an order to cease and desist embodying such proposals would not adequately protect the public against a continuation or resumption of the practices found to be unfair and deceptive, and being of the opinion that the order to cease and desist heretofore issued in this proceeding should be modified in the respects set forth in said rule to show cause: