

IN THE MATTER OF
L. HELLER & SON, INC. AND THE HELLER DELTAH CO.,
INC.

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

Docket 5358. Complaint, July 25, 1945—Decision, Aug. 25, 1950

The protection of the public interest, as respects the duty of the Commission under the statute, is a practical and flexible conception which must be adapted to fit the various needs of the public interest as they may appear in particular circumstances, since the necessary corollary of the statutory direction to the Commission to issue its complaint where it has reason to believe that an unfair or deceptive act or practice is being used in commerce if it appears to it that a proceeding by it in respect thereof would be to the interest of the public, is that the Commission should terminate a practice after proceeding against it only where it appears that such action would be to the interest of the public—a corollary which requires the Commission to apply its judgment and experience realistically in determining what, if any, remedy is needed to protect the public interest in the particular circumstances of a case presented to it for decision.

As respects a remedy sought by counsel supporting the complaint and recommended by the trial examiner in the instant matter, namely, the required disclosure of foreign origin of cultured pearls contained in necklaces and other articles of jewelry, which would establish a principle of the widest application, as to which it would be highly uncertain where a line of reasonable distinction could be drawn; the Commission was of the opinion that if so broad a principle was to be applied, it should be done in an atmosphere in which the showing of public interest rested upon a broader base than was found in the proceeding in question; and in so deciding the Commission exercised a broad discretion in withholding a remedy which, in its opinion—even though it was also of the opinion that the record would support such a remedy if it were imposed—would afford little protection to the public interest, and would place unnecessary burdens upon normal business practices.

With regard to the question as to whether or not disclosure of foreign origin of certain products is necessary to avoid deception of the public, and the contention that certain imported products become commingled with like domestic products and are thereafter indistinguishable so that it would be prohibitively burdensome to keep them separate—though no such difficulty appeared in the case of a comparable more expensive product—difficulties which may be involved in keeping imported products separate from domestic products, for purposes of identification, must be met by businessmen when necessary to avoid deception of the public.

As respects the question as to whether or not failure to disclose foreign origin of ingredients in products constitutes misrepresentation and an unfair and deceptive practice, it is to be recalled that, as stated in *Segal v. Federal Trade*

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Commission, 142 F. (2d) 255, 38 F. T. C. 867, "there comes a point where marking becomes impossible," and that "the identity of a foreign-made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective."

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain, and understands that articles offered for sale in this country and not so marked as to disclose foreign origin, are products of American manufacture.

Where two corporations, under common ownership and control, engaged in the offer and interstate sale and distribution, respectively, to wholesale jewelers, and to department, specialty, and costume jewelry stores (but not to retail jewelers direct), of necklaces and other jewelry made in whole or in part from imitation pearls which, imported by them in large quantities from Spain, Czechoslovakia, and prior to December 1941, from Japan, were, when received in the United States, either on strings or in bulk, so marked with tags or labels, as to disclose the name of the country of origin; and were thereafter, with only incidental use of domestic materials, strung into graduated and ungraduated necklaces to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing the foreign origin of said imported imitation pearls, which are not generally distinguishable in quality or in appearance from the domestic product, and from which, during the handling and processing thereof as above set out, they had caused to be removed all tags, labels, or other indications of foreign origin, offered, sold, and distributed said jewelry products which, composed in whole or in substantial part of said imported imitation pearls, were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers means by which members of the public might be misled into such false belief, and thereby into purchase of such products:

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

When imitation pearls which have been fully manufactured in foreign countries are used in necklaces—which requires only proper assembling after being brought into this country, without disturbing their essential characteristics as products of foreign manufacture—they represent the principal component and the part which makes the necklaces valuable to the consumer, who purchases such a necklace, not because of the string which holds the pearls together or the clasp which joins its ends, but because of the imitation pearls which are thus assembled and made useful as ornaments, their only utility. And just as the spectacle frames in the matter involved in *Segal v. Federal Trade Commission*, 142 F. (2d) 255, 38 F. T. C. 867, served merely as the carrier of the imported lenses there concerned, so in the instant situation

the string and clasp in the necklace, or the incidental parts of other articles of jewelry, are merely the carriers of the imitation pearls, which constitute the only element of importance and which do not lose their identity either in appearance or in function.

As respects the charge in the complaint that respondent's practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of imitation pearls made from imported alabaster or glass beads, without any label or marking to indicate to purchasers the foreign origin of said beads, constituted an unfair and deceptive act and practice, the same reasoning and conclusion do not apply, it appearing that the beads are not resold in the form in which they are imported; have no utility except as the core of imitation pearls; are transformed from glass beads into imitation pearls by processing and are of value in necklaces and other articles of jewelry only in said form; and are only one of the raw materials used in the production of imitation pearls by American manufacture, and that their identity is so lost in manufacture that any marking would be positively misleading unless so qualified as to be ineffective. As to such beads, the Commission, therefore, was of the opinion and found that the allegations of the complaint with respect thereto had not been adequately sustained, and that respondents should not be required to disclose their foreign origin when used in the domestic manufacture of imitation pearls for necklaces and other articles of jewelry.

In considering the needs of the public interest with respect to imitation pearls and cultured pearls, as respects the question of requiring disclosure of their foreign origin in the instant proceeding, there are certain distinctions. No cultured pearls are produced commercially in this country, hence the Commission is not concerned with the protection of domestic sources of supply against unfair competitive practices in connection with foreign products. Furthermore, since cultured pearls sell at much higher prices than imitation pearls, it seems only reasonable to believe that consumers are likely to ask the reason for their higher price, and to obtain information concerning their nature, character, and foreign origin.

In considering further the question of requiring the disclosure of the foreign origin of cultured pearls which, like the imported imitation pearls, are undoubtedly products of foreign origin, and which differ little from natural pearls, are found commercially in the same general area, and are produced by the same processes following the introduction into the oyster of some foreign irritating matter, whether by man or by accident, it is apparent that to require such disclosure in the case of necklaces and other jewelry containing cultured pearls would establish a principle of the widest application, since apparently the Commission could not logically fail to require similar disclosure with respect to natural pearls. The same reasons would apply to articles of jewelry containing diamonds and probably other precious stones which come primarily from foreign sources, and the principle could doubtlessly be extended to other types of products, with great attendant uncertainty as to where a line of reasonable distinction could be drawn, and the Commission, accordingly, was of the opinion, under all the circumstances, including the failure of the present record to supply a broader basis to justify such an order, that the public interest did not require such disclosure.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Landa & Richardson, of Washington, D. C., for respondents.

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 L. Heller & Son, Inc., a corporation, and The Heller Deltah Co., Inc., a corporation, hereinafter 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 L. Heller & Son, 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 411 Fifth Avenue, city of New York, State of New York.

Respondent The Heller Deltah 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 411 Fifth Avenue, city of New York, State of New York. The respondent The Heller Deltah Co., Inc., acts as a sales agency for the respondent L. Heller & Son, Inc.

PAR. 2. Respondent L. Heller & Son, Inc., is now and for several years last past has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls, alabaster bead bases for the manufacture of imitation pearls, and cultured pearls, made into necklaces and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

The respondents, acting concertedly and in cooperation each with the other, cause and have caused their said merchandise, when sold, to be shipped from their said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of its business, respondent L. Heller & Son, Inc., in connection with the sale and distribution of its said products, imports from Japan, Spain and other foreign countries large quantities of imitation pearls, alabaster bead bases for the manufacture of imitation pearls, and cultured pearls. Respondent controls the output of a factory for the manufacture of imitation pearls. Respondent also sells and ships its alabaster bead bases from its place of business aforesaid to other manufacturers, who thereupon dip said alabaster bead bases in a solution, which process completes their manufacture into imitation pearls. The finished imitation pearls are then returned by the said manufacturers to the respondent L. Heller & Son, Inc., who thereafter, through its sales agency, The Heller Deltah Co., Inc., sells and distributes its said imitation pearls and cultured pearls in commerce, together with other merchandise.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the respondent L. Heller & Son, Inc., receives said products of foreign origin, such products have been, and are, all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom, and thereafter sell and distribute the said products in commerce as above set forth, without any words or marks thereon indicating their foreign origin, and cause the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearls. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of 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 labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of articles made from imitation pearls, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of respondents as aforesaid of offering for sale, selling, and distributing their products made from said imitation pearls, manufactured as aforesaid, and cultured pearls of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearls, or parts thereof, and cultured pearls, has had, and now has, the capacity and tendency to and has and does mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearls and cultured pearls, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' products made from said imitation pearls and cultured pearls a means and instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearls and cultured pearls, and all the parts thereof, are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. 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 July 25, 1945, issued and subsequently served its complaint in this proceeding upon the respondents,

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L. Heller & Son, Inc., and The Heller Deltah Co., Inc., both corporations, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondents filed their answer, testimony and other evidence in support of and in opposition to the allegations of 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, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto, and briefs, oral argument, and reargument in support of and in opposition to the complaint; 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. Respondents, L. Heller & Son, Inc., and The Heller Deltah Co., Inc., are both corporations organized and existing under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 411 Fifth Avenue, New York, N. Y. The same persons own and control both corporations and direct the policies and practices of both. Said respondents are now, and for more than 10 years last past have been, engaged in the offering for sale, sale, and distribution of jewelry, including necklaces and other articles of jewelry made in whole or in part from imported imitation pearls. All sales of said jewelry are made at wholesale. Respondent L. Heller & Son, Inc., sells such jewelry products exclusively to wholesale jewelers, while respondent The Heller Deltah Co., Inc., sells them to department, specialty, and costume-jewelry stores. No sales are made direct to retail jewelers. Both respondents employ traveling salesmen and do considerable advertising. In 1944 their total volume of sales was approximately 2½ million dollars.

PAR. 2. In the course and conduct of their aforesaid business respondents cause, and have caused, their said jewelry products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia; and maintain, and at all times mentioned herein have maintained, a course of trade in said jewelry 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 aforesaid business, respondent L. Heller & Son, Inc., imports large quantities of imitation pearls from Spain, Czechoslovakia, and, prior to December 1941, from Japan. Such imported imitation pearls are received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When so received they are marked with tags or labels, either on the strings or the containers, so as to disclose the name of the country in which they originated. After being received in the United States, a minor portion of such imitation pearls are processed by the application of additional coats of pearling solution. Respondents ordinarily, however, do nothing more than grade and sort such pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces to which clasps of domestic manufacture are attached, or use them in other articles of jewelry. The necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of said imported imitation pearls, are therefore substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 4. During the handling and processing of imitation pearls as described in paragraph 3, respondents cause to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, et cetera, are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain. A substantial portion of the purchasing public also understands and believes that necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imitation pearls, offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

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PAR. 6. The complaint herein also alleges that the respondents' practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of cultured pearls and of imitation pearls made from imported alabaster or glass beads without any label or marking to indicate to purchasers the foreign origin of the cultured pearls and of the alabaster or glass beads constitutes unfair and deceptive acts and practices. For the reasons stated in the opinion accompanying these findings as to the facts, the Commission is of the opinion, and finds, that the allegations with respect to imitation pearls made from imported alabaster or glass beads have not been adequately sustained. Also, for the reasons stated in said opinion, the Commission has determined that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

PAR. 7. Respondents' aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

The acts and practices of respondents as herein found are all to the injury and 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 respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended

decision of the trial examiner and exceptions thereto, and briefs, oral argument, and reargument in support of and in opposition to the complaint; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, L. Heller & Son, Inc., and The Heller Deltah Co., Inc., corporations, their officers, representatives, agents, 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 necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

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.

OPINION OF THE COMMISSION

AYRES, *Commissioner*.

The respondents are two corporations engaged in the sale and distribution of jewelry at wholesale. The same persons own and control both corporations, and direct their policies. Respondents are charged with unfair and deceptive acts and practices in violation of the Federal Trade Commission Act by failing to mark necklaces and other articles of jewelry so as to disclose to consumers the foreign origin of cultured pearls, imported imitation pearls, or imported alabaster or glass beads contained in such articles of jewelry. Substantially the same charges are made with respect to all three of these products, but they present materially different considerations.

The alabaster or glass beads have been imported into this country from Spain, Czechoslovakia, and Japan. After importation, they are washed in an acid solution, sized with a base coat to hold lacquer, attached to dipping boards, and submerged in a prepared lacquer or pearling solution from 3 to 10 times, depending upon the quality of the finished product desired. Sometimes the imitation pearls manufactured in this way are hand-polished during the processing. This processing of the beads to transform them into imitation pearls requires several days.

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Respondents have also imported imitation pearls from Spain, Czechoslovakia, and Japan. The imitation pearls are sometimes further processed by adding coats of pearling solution, but ordinarily are used by respondents without such further processing. It appears that there is no distinguishable difference in the quality or appearance of imported imitation pearls and domestic imitation pearls.

Cultured pearls are grown in commercial quantities only in waters which, prior to the last war, were under Japanese control. Cultured pearls are grown in oysters by the same physiological processes which produce natural pearls, and develop from the natural reaction of the oyster to the intrusion of some foreign, irritating matter. In cultured pearls, however, the irritant, which forms the core of the pearl, is inserted by man, and in natural pearls it intrudes by accident. After the insertion of the irritant, the formation of the material around it which produces the natural pearl or cultured pearl, as the case may be, follows the same process. There is no charge here that the respondents fail to identify cultured pearls in necklaces and other articles of jewelry which they sell. The only charge is that in connection with such articles they fail to disclose the foreign origin of cultured pearls.

When all three of the foregoing products are imported into this country they are marked on their envelopes or containers or by tags on their strings so as to disclose their respective countries of origin. In the handling of the products in this country, however, the marks of origin are removed. After the operations referred to above in connection with each of these products have been performed, such products are graded and sorted and, using incidental domestic materials, are strung into necklaces or used in other articles of jewelry, such as pins, clips, earrings, and bracelets. These articles of jewelry are not marked by respondents in any manner to disclose the foreign origin of the beads, imitation pearls, or cultured pearls contained in them.

The record discloses that a substantial portion of the purchasing public has a general preference for domestic products over foreign products, other considerations such as style, quality, etc., being equal, and that a substantial portion of the purchasing public has a prejudice against products from certain countries, including Japan and Spain. The record also discloses that a substantial portion of the purchasing public understands that articles offered for sale in this country not so marked as to disclose foreign origin, are products of American manufacture.

One of the general and practical considerations urged by respondents is the contention that the imported beads and imitation pearls become

commingled with domestic beads and imitation pearls and are thereafter indistinguishable; and that it would be prohibitively burdensome to keep them separate. No such contention is made, however, with respect to cultured pearls. There are no cultured pearls of domestic origin, and the value of cultured pearls is substantially greater than the value of imitation pearls. Respondents, therefore, have a real incentive for keeping them segregated from imitation pearls, and find no unreasonable burden in doing so. Without laboring the point, it is readily apparent that any difficulties which may be involved in keeping imported products separate from domestic products for purposes of identification must be met by businessmen when appropriate identification is necessary to avoid deception of the public.

As indicated above, imitation pearls which have been fully manufactured in foreign countries are imported by respondents and incorporated in necklaces and other articles of jewelry, which are then resold without marks to disclose the foreign origin of the imitation pearls. When such imitation pearls are used in necklaces they represent the principal component and the part which makes the necklaces valuable to the consumer. The consumer purchases an imitation pearl necklace not because of the string which holds the pearls together or the clasp which joins its ends, but because of the imitation pearls which are thus assembled and made useful as ornaments. The same is true of other articles of jewelry composed in substantial part of imitation pearls. Their only utility is for ornamentation and for that purpose imported imitation pearls require only proper assembling after being brought into this country. After such assembling, however, they still retain their essential characteristics as products of foreign manufacture.

Failure to disclose foreign origin, under previous decisions of the Commission, constitutes misrepresentation and an unfair and deceptive practice. It is sufficient to refer to *Segal v. Federal Trade Commission*, 142 F. (2d) 255. [38 F. T. C. 867]. In that case, respondent imported lenses for cheap spectacles and sun glasses from Japan and cut, edged, beveled, and bored them and fitted them into frames. Through these operations, the respondent assembled them into spectacles and sold them without any mark to show their foreign origin. The *per curiam* opinion of the court in that case, affirming the order of the Commission, read in part as follows:

* * * If it is true that a substantial number of buyers suppose that unmarked goods are home made goods and have a preference for such goods, the

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sale of unmarked foreign goods is a misrepresentation, which the Commission was authorized to stop. * * *

* * * It is of course true, as the petitioner argues, that there comes a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective. That is not the case with lenses used in spectacles; the frame is merely the carrier of the lens, which is the only element of importance, and which does not lose its identity either in appearance or in function.

And in the present situation the string and clasp in a necklace, or the incidental parts of other articles of jewelry, are merely the carriers of the imitation pearls, which constitute the only element of importance, and which do not lose their identity either in appearance or in function.

It is the opinion of the Commission, therefore, that respondents should be required to cease and desist from offering for sale or selling necklaces or other articles of jewelry composed in substantial part of imported imitation pearls without disclosing the foreign origin of the imitation pearls.

The same reasoning and conclusion, however, do not apply to the alabaster or glass beads imported by respondents and used in the manufacture in this country of imitation pearls. The beads are not resold in the form in which they are imported and, so far as this record discloses, they have no utility except as the core of imitation pearls. The processing to which they are subjected in this country transforms them from glass beads into imitation pearls, and they are of value in necklaces and other articles of jewelry only in the form of imitation pearls. The beads are only one of the raw materials or ingredients used in the manufacture of imitation pearls, and the imitation pearls are products of American manufacture.

Numerous products of American manufacture contain ingredients obtained from various parts of the world, but it could not be seriously urged that the origin of each of the foreign ingredients must be disclosed in selling the finished product. The difficulties of such a requirement become readily apparent when we consider the problem of so marking an automobile, for instance, to show the foreign origin of each of its parts or component materials which may have been imported. As stated in the *Segal* case, *supra*:

* * * there comes a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective.

In the present situation it appears that the identity of the glass beads as foreign products is so lost in manufacture that any marking would be positively misleading unless it was so qualified as to be ineffective. Under the circumstances involved here, therefore, the Commission is of the opinion that the respondents should not be required to disclose the foreign origin of imported glass beads used in the domestic manufacture of imitation pearls when selling necklaces and other articles of jewelry containing such imitation pearls.

The cultured pearls imported by respondents and used by them in necklaces and other articles of jewelry are undoubtedly products of foreign origin. It would seem that the same line of reasoning should apply to imported cultured pearls as to imported imitation pearls. If this were so, we would readily conclude that necklaces and other articles of jewelry composed in substantial part of cultured pearls should be so marked as to disclose the foreign origin of the cultured pearls contained in them. There are, however, special considerations in connection with cultured pearls which we cannot ignore.

We approach these special considerations with the thought that the protection of the public interest is a practical and flexible conception which must be adapted to fit the various needs of the public interest as they may appear in particular circumstances. Section 5 (b) of the Federal Trade Commission Act provides that where it has reason to believe that an unfair or deceptive act or practice is being used in commerce, the Commission shall issue its complaint if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public. As a necessary corollary, the Commission should terminate a practice after proceeding against it only where it appears that such action would be to the interest of the public. This requires the Commission, we believe, to apply its judgment and experience realistically in determining what, if any, remedy is needed to protect the public interest in the particular circumstances of a case presented to it for decision.

We must recognize that there are certain distinctions in the needs of the public interest with respect to imitation pearls and cultured pearls. For instance, no cultured pearls are produced commercially in this country. For that reason we are not concerned here with the protection of domestic sources of supply of cultured pearls against unfair competitive practices in connection with foreign products. It should also be considered that cultured pearls sell at a much higher price than imitation pearls. It seems only reasonable to believe that in buying necklaces and other articles of jewelry composed in substan-

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tial part of cultured pearls, consumers are likely to ask the reason for their higher price and to obtain information concerning the nature, character, and foreign origin of cultured pearls.

There is, however, a somewhat different consideration of substantial practical importance. In outward appearance there is little appreciable difference between natural pearls and cultured pearls and they are found commercially in the same general areas. It is apparent that a requirement for the disclosure of foreign origin of cultured pearls contained in necklaces and other articles of jewelry would establish a principle of the widest application. It does not appear that we could logically fail to require similar disclosure with respect to natural pearls. The same requirement for the same reasons would apply to articles of jewelry containing diamonds and probably other precious stones which come primarily from foreign sources. The principle could doubtless be extended to other types of products and it is highly uncertain where a line of reasonable distinction could be drawn.

The record does not contain a showing so full and complete as to convince the Commission that in the circumstances of this case the public interest requires the adoption of a principle so broad in its scope. If this principle is to be applied, we believe that it should be done in an atmosphere in which the showing of public interest rests upon a broader base than we find here. In short, the showing here does not convince us that the public interest requires the remedy sought by counsel supporting the complaint and recommended by the trial examiner, even though it is our opinion that the record would support such a remedy if it were imposed.

Under all these circumstances the Commission is of the opinion that the public interest does not require disclosure of the foreign origin of cultured pearls contained in necklaces and other articles of jewelry. In reaching this decision the Commission is exercising a broad discretion in withholding a remedy which, in its opinion, would afford little protection to the public interest and would place unnecessary burdens upon normal business practices.

The Commission has accordingly issued an order to cease and desist which, in effect, requires appropriate disclosure of the foreign origin of imported imitation pearls contained in substantial part in necklaces and other articles of jewelry but which does not require such disclosure with respect to imported glass beads or cultured pearls.

Syllabus

IN THE MATTER OF

JOSEPH H. MEYER BROS.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5346. Complaint, June 30, 1945—Decision, Aug. 25, 1950*

A substantial portion of the purchasing public, including purchasers of imitation pearls, has a general preference for products produced in the United States and containing domestic materials, and during recent years has had a decided and overwhelming preference for products of American manufacture and origin as distinguished from those wholly or partly of Japanese manufacture and origin; and in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated understands and believes that imitation pearl necklaces offered for sale and sold in the United States are domestic products.

Where a corporation engaged at wholesale in the interstate sale and distribution, among other articles of jewelry, of necklaces of imitation pearls, made from glass beads coated with preparation to simulate genuine pearls; in advertising in newspapers, periodicals, and other advertising literature of general circulation—

(a) Falsely represented and implied that its said imitation pearls were genuine through the statement "Richelieu Pearls—they're beautiful", and through displaying the words "Richelieu Pearls" in very large and conspicuous type, with the word "simulated", in much smaller type at some other place, in no wise connected with or in close proximity thereto;

With tendency and capacity, through such use of words "Richelieu Pearls", to mislead and deceive purchasers and prospective purchasers into the false belief that its imitation pearls were genuine, and thereby into the purchase thereof; and

Where said corporation, engaged in importing and in purchasing from importers, large quantities of imitation pearls from Spain and other foreign countries, including Japan prior to December 1941, and in stringing or restringing said pearls, affixing clasps thereto, and offering them for sale—

(b) Falsely represented and implied, through marking and labeling said necklaces "Made in U. S. A.," that they were composed entirely of domestic materials, when in fact composed in substantial part of imported imitation pearls as aforesaid, whereby many members of the purchasing public were misled; and,

(c) Offered, sold, and distributed said imitation pearl necklaces, and caused them to be offered and sold to members of the consuming public, without disclosing the foreign origin of said imported imitation pearls, from which during the process above described it had caused to be removed the labels or markings indicating the country of origin, such as "Made in Japan" or "Made in Spain," with which said pearls were marked at time of importation;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that such imitation pearl necklaces were wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such belief;