

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;

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and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into the aforesaid erroneous belief, and thereby into the purchase thereof:

Held, That said 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.

As respects charges in the complaint that the practice of offering, selling and distributing necklaces of imitation pearls made in the United States from imported base beads, and necklaces of imported cultured pearls, without any label or marking to indicate to purchasers foreign origin, constituted unfair and deceptive acts and practices, the Commission considered similar charges in the matter of *L. Heller & Son, Inc., et al.*, D. 5358, hereinbefore reported at page 34 *et seq.*, and for reasons set forth in its opinion in that matter, which are controlling in the instant case, found that the allegations with respect to imitation pearls made from imported base beads were not adequately sustained, and also that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls should be labeled or marked so as to disclose the foreign origin of such pearls.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.
Weil, Gotschal & Manges, of New York City, 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 Joseph H. Meyer Bros., a corporation, 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 Joseph H. Meyer Bros., 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 389 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent Joseph H. Meyer Bros., 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, 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 respondent causes, and has caused, its said merchandise, when sold, to be shipped from its 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 respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said merchandise 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 and for the purpose of inducing the purchase of its said products, respondent represents and represented to purchasers and prospective purchasers in newspapers, magazines, and other advertising matter having a general circulation in various States of the United States and in the District of Columbia, that its products designated "Richelieu Pearls" are genuine pearls, when in truth and in fact said products are nothing more than glass beads treated with several coatings of a preparation or solution to simulate genuine pearls. Said products are not genuine pearls, but only imitation pearls, which are strung and made into the completed necklaces.

In some advertisements, respondent displays the words "Richelieu Pearls" in very large and conspicuous type and the word "simulated" appears in much smaller type at some other place in the advertisement, and in no wise connected or in close proximity to the words "Richelieu Pearls."

Through the use of the words "Richelieu Pearls" respondent represents and implies, and the purchasing public is led to believe, that said products so designated are in fact genuine pearls, and as a result thereof many members of the public have purchased respondent's said products as aforesaid.

PAR. 4. In connection with the sale and distribution of its said products, respondent has imported from Japan, Spain, and other foreign countries, large quantities of imitation pearls, bead bases for the manufacture of imitation pearls and cultured pearls. During the last several years, respondent has also purchased large quantities of imitation pearls, bead bases, and cultured pearls of foreign origin from importers engaged in the sale of said products in the United States. Respondent operates a factory in Brooklyn, N. Y., where it causes domestic bead bases, as well as bead bases of foreign origin, to be finished by dipping or spraying said products in a solution, thereby completing the said bead bases into imitation pearls. After said processing as aforesaid, the respondent sells and distributes its imitation pearl necklaces and cultured pearl necklaces in commerce, together with other merchandise.

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PAR. 5. Respondents' imitation pearl necklaces when offered for sale and sold in commerce as aforesaid are all marked or labeled with the words and letters "Made In U. S. A." Respondent thereby represents and implies, and the purchasing public is led to believe, that said products so marked or labeled are composed entirely of domestic materials. In truth and in fact said products are made in whole or in part from imported materials as aforesaid. As a result thereof many members of the public have purchased respondents' said products in commerce as aforesaid.

PAR. 6. At the time of the importation into the United States of the above enumerated products, and at the time the said respondent received 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 respondent causes the words or marks indicating their foreign origin to be removed therefrom, and thereafter sells and distributes the said products in commerce as above set forth without any words or marks thereon indicating their foreign origin and causes 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. 7. 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 and 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. 8. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of 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. 9. The practice of the respondent as aforesaid of offering for sale, selling and distributing its imitation pearl necklaces and cultured pearl necklaces 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 pearl necklaces and cultured pearl necklaces has had, and now has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondent's said practice places in the hands of retailers of respondent's imitation pearl necklaces and cultured pearl necklaces a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 10. 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 June 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Joseph H. Meyer Bros., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts, dated December 18, 1946, was entered into by, and between, Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and the respondent, which provided, among other things, that subject

to the approval of the Federal Trade Commission the statement of facts contained therein may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said complaint, the answer of the respondent, and said statement of facts to make its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding, without the presentation of argument or the filing of briefs. Respondents specifically waived the filing of a trial examiner's report upon the evidence. Thereafter this proceeding came on for final consideration by the Commission on the complaint, answer, and stipulation as to the facts (said stipulation having been approved by the Commission); and the Commission, having duly considered same 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, Joseph H. Meyer Bros., 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 389 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent, Joseph H. Meyer Bros., is now, and for several years last past has been, engaged in the wholesale distribution and sale of merchandise of various kinds, including necklaces of imitation pearls and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

The respondent causes, and has caused, its said merchandise, when sold, to be shipped from its 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 respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In connection with the sale of its imitation pearl articles of jewelry in commerce and as an inducement for the purchase thereof by members of the purchasing public, the respondent has advertised its products, in newspapers, magazines, and other advertising literature having a general circulation in the various States of the United States and in the District of Columbia, as follows:

"Richelieu Pearls
They're Beautiful"

In some advertisements respondent displays the words "Richelieu Pearls" in very large and conspicuous type, and the word "simulated" appears in much smaller type at some other place in the advertisement and in no wise connected or in close proximity with the words "Richelieu Pearls."

PAR. 4. Through the use of the words "Richelieu Pearls" as aforesaid, respondent has falsely represented and implied to purchasers and prospective purchasers that its said products are genuine pearls. In truth and in fact, respondent's said products are not genuine pearls but are only imitation pearls made from glass beads treated with several coatings of a preparation or solution to simulate genuine pearls.

The aforesaid practice of the respondent has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that respondent's imitation pearls are genuine pearls and into the purchase thereof in reliance upon such erroneous belief.

PAR. 5. In the course and conduct of its aforesaid business respondent prior to December 1941, imported large quantities of imitation pearls from Japan. Both prior to and since December 1941, respondent has imported large quantities of imitation pearls from Spain and other foreign countries and has also purchased large quantities of imitation pearls from importers engaged in the sale of such products in the United States. Such imported imitation pearls were received in the United States in boxes or in graduated strings. After stringing or restringing and affixing clasps, the respondent has offered for sale and sold such imported imitation pearls in the same State in which they were imported.

PAR. 6. Respondent's necklaces of imported imitation pearls when offered for sale and sold in commerce as aforesaid have all been marked and labeled with the words and letters "Made in U. S. A." Respondent has by such marking and labeling falsely represented and implied, and many members of the purchasing public have been led to believe, that said necklaces of imported imitation pearls were composed entirely of domestic materials. In truth and in fact, said products were composed in substantial part of imported imitation pearls as aforesaid.

PAR. 7. At the time of importation into the United States and when received by the respondent said imitation pearls were 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 with other word or words so as to indicate the country of origin.

The respondent caused the labels or markings indicating the country of origin to be removed from said imported imitation pearls and, after restringing and attaching clasps as hereinabove set forth, offered for sale, sold, and distributed imitation pearl necklaces without disclosing by any mark or label, or otherwise, that such imitation pearls were of foreign origin, and caused said products to be offered for sale and sold to members of the consuming public in that condition without informing the purchasers thereof that the imitation pearls were of foreign origin.

PAR. 8. A substantial portion of the purchasing public, including purchasers and users of imitation pearls, has a general preference for products produced in the United States and containing domestic materials. During recent years there has been 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. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces offered for sale and sold in the United States are products of domestic manufacture and origin in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 9. The complaint herein also alleges that the practice of offering for sale, selling, and distributing necklaces of imitation pearls manufactured in the United States from imported base beads, and necklaces of cultured pearls, without any label or marking to indicate to purchasers the foreign origin of the base beads and of the cultured pearls constitutes unfair and deceptive acts and practices. Charges similar to these were contained in the complaint against L. Heller & Son, Inc., et al., docket No. 5358. Testimony and other evidence in support of and in opposition to such charges in that case were taken before a trial examiner of the Commission and the case was fully briefed and argued before the Commission. The Commission found that the allegations with respect to imitation pearls made from imported base beads were not adequately sustained. The Commission also 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. The opinion of the Commission accompanying its findings as to the facts and order to cease and desist in that proceeding sets forth the reasons for such determinations. The reasons therein set forth are controlling in this matter.¹

¹ See *ante*, at p. 43.

PAR. 10. Respondent's aforesaid acts and practices of offering for sale, selling and distributing necklaces of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of the imitation pearls composing such necklaces 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 imitation pearl necklaces are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondent's said acts and practices also place in the hands of retailers of such 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 imitation pearl necklaces are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

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, the answer of the respondent, and a stipulation as to the facts entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and the respondent, in which stipulation the respondent waived all intervening procedure and further hearing 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, Joseph H. Meyer Bros., 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, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of imitation pearls, whether offered for sale and sold as necklaces or in other articles of jewelry, do forthwith cease and desist from:

(1) Representing by the use of the word "pearls" or any other word or words of similar import or meaning, or in any other manner, that said imitation pearls are genuine pearls: *Provided, however*, That

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the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, wherever used, the word "pearls" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated," or other word of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

It is further ordered, That the respondent, Joseph H. Meyer Bros., 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, 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:

(1) Representing by the use of the words and letters "Made in U. S. A.," or otherwise, that said products are composed entirely of domestic materials.

(2) 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 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.

Syllabus

IN THE MATTER OF
DAVID GENSER ET AL. TRADING AS GENSER
MANUFACTURING CO.

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

Docket 5347. Complaint, June 30, 1945—Decision, Aug. 25, 1950

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 and Spain, and also understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where six partners engaged in the interstate sale and distribution at wholesale of domestic and imported merchandise, including necklaces and other jewelry composed of imitation pearls, which, imported in quantity by them from Japan, Spain, and other foreign countries, were, when received by them, on strings or in bulk, so marked with tags or labels, either on the strings or on the containers, as to disclose the name of the country of origin; and were ordinarily thereafter, with only incidental use of domestic materials, graded, sorted, and strung into graduated or ungraduated necklaces, to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing by any mark, label or otherwise the foreign origin of said imported imitation pearls, which are not generally distinguishable from the domestic product, and from which, during the handling and processing as above set out, they caused to be removed all tags, labels, or other means of identification indicative of said 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 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 a means by which members of the public might be misled and deceived into such false belief, and thereby into their purchase:

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.

As respects the charge in the complaint that the practice of offering, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads, without any label or marking to indicate to purchasers the foreign origin of such base beads, constituted an unfair and deceptive act and practice: