Syllabus

IN THE MATTER OF

D. LISNER & CO.

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

Docket 5349. 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 a corporation engaged in the interstate sale and distribution in commerce of domestic and imported merchandise, including necklaces and other jewelry of imitation pearls, which, imported by it in large quantities from Japan, were, when received by it, 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: the Commission was of the opinion and found, for the reasons stated in its opinion accompanying its findings and desist order in *L. Heller & Son, Inc., et al.*,

docket 5358, hereinbefore reported at page 34 *et seq.*, that such charge was inadequately sustained.

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

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

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., 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 D. Lisner & Co., 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 D. Lisner & Co., 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 303 Fifth Avenue, city of New York, State of New York.

PAR. 2. Respondent D. Lisner & Co., 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 and base beads for the manufacture of imitation 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 business, respondent D. Lisner & Co., in connection with the sale and distribution of its said products, imports from Japan, Spain, and other foreign countries, large quantities of imitation pearl necklaces and base beads for the manufacture of imitation pearls. Respondent causes its base beads of foreign origin to be finished by dipping or spraying said products in a solution, thereby completing the said base beads into imitation pearls. After said processing as aforesaid, respondent sells and dis-

tributes its imitation pearls made into necklaces in commerce together with other articles of jewelry.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondent 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 respondent causes the words or marks indicating their foreign origin to be removed therefrom and thereafter sells and distributes the said products made into necklaces and other articles of jewelry in commerce as above set forth, without any words or marks thereon indicating their foreign origin, and causes said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchaser thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to make 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 pearl necklaces. 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 imitation pearl necklaces, 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 the respondent, as aforesaid, of offering for sale, selling, and distributing its imitation pearl necklaces and other articles of jewelry of Japanes, 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, 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 other articles of jewelry, 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 other articles of jewelry 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 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 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 June 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, D. Lisner & Co., 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, dated March 8, 1946, was entered into by and between Richard P. Whiteley, Assistant Chief Counsel for the Commission, and counsel for the respondent, which provided, among other things, that subject to the approval of the Commission the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, shall be made a part of the record in this proceeding to the same extent as if the testimony taken in the *Heller* case were initially taken in this proceeding. Another stipulation, dated October 6, 1947, entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondent, 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 considered together with the transcript of all hearings held in the aforesaid *Heller* case, the complaint herein, and the answer thereto. A further stipulation between counsel, dated June 14, 1949, provided that subject to the approval of the Commission the briefs and oral argument of counsel in the aforesaid *Heller* case may be considered as briefs and oral argument in this proceeding.[1]

Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answer thereto, stipulations between counsel (said stipulations having been approved by the Commission), testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and the briefs and oral argument of counsel in said *Heller* case; 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, D. Lisner & Co., 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 303 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent, for several years last past, has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl 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 its said merchandise, when sold, to be shipped from its place of business in New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent has maintained a course of trade in said 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, prior to December 7, 1941, imported large quantities of imitation pearls from Japan. Such imported imitation pearls were received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When imported and when received by the respondent said imitation pearls were all marked with tags or labels, either on the

[1] See, for findings and order in said case, *ante*, at p. 34.

strings or on 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 imported imitation pearls were processed by the application of additional coats of pearling solution. Respondent ordinarily, however, did 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 were attached, or used them in other articles of jewelry. The necklaces of such 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 imported imitation pearls as described in paragraph 3, respondent causes to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondent then offers for sale, sells, and distributes 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 imitation pearl necklaces, 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.

PAR. 6. The complaint herein also charges that the practice of offering for sale, selling, and distributing necklaces and 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 the base beads constitutes unfair and deceptive acts and practices. For the reasons stated in its opinion accompanying its findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No.

5358,[1] the Commission is of the opinion, and finds, that such charge has not been adequately sustained.

PAR. 7. Respondent's 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 capacty 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. Respondent's 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 the respondent 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, answer of the respondent, stipulations between counsel, testimony and other evidence introduced before a trial examiner of the Commission in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel in said *Heller* case; 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, D. Lisner & Co., 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] See *ante*, p. 43.

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

COLONIAL BEAD CO., INC. ET AL.

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

Docket 5371. Complaint, Aug. 22, 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 a corporation and its president and secretary, who directed and controlled its acts, policies and business affairs, 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 large quantities by them from Japan, prior to December 7, 1941, 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 manufacturers 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