

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

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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 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 Colonial Bead Co., Inc., a corporation, and Abraham Abramovitz and Abraham Goldenberg, individually and as officers of said 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 Colonial Bead Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 1 East Thirty-third Street, city of New York, State of New York.

Individual respondents Abraham Abramovitz and Abraham Goldenberg are president and secretary, respectively, of respondent corporation. Acting in their said official capacities, said individual respondents formulate and control, and have formulated, directed, and controlled, the respective acts, policies, and business affairs of said corporation.

PAR. 2. The respondents are now, and for several years last past, have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and alabaster 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.

Respondents cause their said products, when sold, to be transported from their said place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their business the respondents, in connection with the sale and distribution of their said products, import from Japan, Spain, and other foreign countries, large quantities of imitation pearl necklaces and alabaster bead bases for the manufacture of imitation pearls. Respondents cause their bead bases of foreign origin to be finished by dipping or spraying said bead bases in a solution, thereby completing the said products into imitation pearls. While said products are being sprayed or dipped, the tags of foreign origin are removed. After said processing, as aforesaid, respondents sell and distribute their 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 respondents receive 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 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 cause 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 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 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 respondents, as aforesaid, of offering for sale, selling, and distributing their imitation pearl necklaces and other articles of jewelry 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, 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, respondents' said practice places in the hands of retailers of respondents' 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 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 August 22, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Colonial Bead Co., Inc., a corporation, and Abraham Abron (desig-

nated as Abraham Abramovitz in the complaint) and Abraham Goldenberg, individuals, charging them 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 respondents' 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 respondents, 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 respondents, 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 2, 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 of 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 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 Colonial Bead Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1 East Thirty-third Street, New York, N. Y.

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

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Individual respondents Abraham Abron and Abraham Goldenberg are president and secretary, respectively, of respondent corporation. Acting in their said official capacities, said individual respondents formulate and control, and have formulated, directed, and controlled, the acts, policies, and business affairs of said corporation.

PAR. 2. The respondents are now, and for several years last past have 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 respondents cause, and have caused, their said merchandise, when sold, to be transported from their said place of business 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 respondents maintain, and at all times mentioned herein have maintained, a course of trade in their 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 their aforesaid business respondents, 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 respondents said imitation pearls were all marked with tags or labels, either on the 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. Respondents 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, 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 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 alleges that the respondents' practice of offering for sale, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls made 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. 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.

¹ See *ante*, p. 43.

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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, answer of the respondents, 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 respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondent, Colonial Bead Co., Inc., and its officers, agents, representatives, and employees, and the individual respondents, Abraham Abron and Abraham Goldenberg, and their 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:

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.

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IN THE MATTER OF
LOUIS DETKIN ET AL. TRADING AS ROYAL BEAD
NOVELTY CO.

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

Docket 5374. Complaint, Aug. 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 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 two 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 large quantities by them from Japan, prior to December 1941, and thereafter also purchased from importers and others in the United States, 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.

- (a) Without disclosing 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:

- (b) Represented and implied through the use of words "American Made", with which some of their necklaces of imported imitation pearls were marked and labeled when offered and sold as aforesaid, that such products were composed entirely of domestic materials, when in fact they were composed in substantial part of imported imitation pearls; and
- (c) Represented, through use of the words "La Royal Pearl Indestructible," with which some of their said necklaces were marked or labeled when offered and sold, without any tag or label informing purchasers that they

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were made of imitation pearls, that said products were genuine pearls; when in fact they were only imitation pearls made from alabaster or glass beads treated with coatings of a preparation to simulate genuine pearls;

With tendency and capacity to mislead and deceive purchasers into the false belief that their said necklaces of imported imitation pearls were composed entirely of domestic materials, and that the imitation pearls were genuine pearls, and into the purchase thereof in reliance upon such erroneous belief:

Held, That such acts and practices, under the circumstances set forth, were all 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 Callarway* for the Commission.

Davies, Richberg, Beebe, Busick & 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 Louis Detkin and Lillian Detkin, individually and as co-partners, trading as Royal Bead Novelty Co., 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. Respondents Louis Detkin and Lillian Detkin, are individuals and co-partners, trading as Royal Bead Novelty Co., with their office and principal place of business located at 34-36 West Thirty-second Street, New York, N. Y.

PAR 2. Respondents are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and alabaster bead bases for the manufacture of 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.

Respondents 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 their 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 and distribution of their said products, respondents have imported from Japan, Spain, and other foreign countries large quantities of imitation pearl necklaces and alabaster bead bases for the manufacture of imitation pearl necklaces. During the last several years respondents have also purchased large quantities of imitation pearl necklaces of foreign origin from importers and others engaged in the sale and distribution of said products in the United States. Respondents ship their alabaster bead bases from their place of business aforesaid to manufacturers who thereupon dip or spray said alabaster bead bases in a solution, which process completes their manufacture into imitation pearls. The finished imitation pearls are then returned to the respondents, who thereafter sell and distribute said imitation pearls made into necklaces in commerce, together with other merchandise.

PAR. 4. Respondents' imitation pearl necklaces when offered for sale and sold in commerce, as aforesaid, are all marked or labeled with the words and letters "American Made." Respondents thereby represent and imply, 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. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, respondents have marked or labeled their products with the words or letters "La Royal Pearls Indestructible" and thereby represent to purchasers and prospective purchasers that their products so designated are genuine pearls and indestructible, when in truth and in fact said products are not genuine pearls, but are nothing more than glass beads treated with several coatings of a preparation or solution to simulate genuine pearls. Said products are not indestructible.

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PAR. 6. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents receive 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. 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 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 parts 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 respondents as aforesaid of offering for sale, selling, and distributing their imitation pearl necklaces of Jap-

anese, 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 the use of the trade name "La Royal Pearls Indestructible", 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 all the parts thereof are wholly of domestic manufacture and origin and that such imitation pearls are genuine natural pearls and indestructible, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of retailers of respondents' imitation 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 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 respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 30, 1945, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on October 10, 1945. On March 8, 1946, October 6, 1947, and June 24, 1949, respectively, certain stipulations were entered into by and between counsel, and in said stipulations it was provided, among other things, that, subject to the approval of the Commission, (1) the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, should be made a part of the record in this proceeding to the same extent as if the testimony taken in said *Heller* case were initially taken in this proceeding, (2) that the statement of facts contained in said stipulations, together with the transcript of all hearings in said *Heller* case, may be made a part of the record in this proceeding and considered together with the complaint and answer thereto, and (3) that the briefs and oral

arguments of counsel in the aforesaid *Heller* case should be considered as the briefs and arguments in this proceeding.¹

Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondents' answer thereto, the stipulations between counsel (said stipulations having been approved by the Commission), the testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et. al.*, docket No. 5358, the recommended decision of the trial examiner and exceptions thereto (which exceptions have been separately disposed of), and the briefs and oral arguments of counsel in the aforesaid *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. Respondents Louis Detkin and Lillian Detkin are copartners trading as Royal Bead Novelty Co., with their office and principal place of business located at 34-36 West Thirty-second Street, in the city of New York, State of New York.

PAR. 2. Respondents are now, and for several years last past they have 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.

Respondents cause and have caused their said merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in their 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 their aforesaid business respondents, prior to December 1941, imported large quantities of imitation pearls from Japan. Since December 1941 respondents have also purchased imitation pearls from importers and others engaged in the sale and distribution of said products in the United States. Such imported imitation pearls were received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When

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

imported and when received by respondents said imitation pearls are marked with tags or labels either on the 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 are processed by the application of additional coats of pearling solution. Respondents ordinarily, however, do nothing more than grade and sort such imitation 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 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 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, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan. 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. 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

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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 mislead 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.

PAR. 7. Some of respondents' necklaces of imported imitation pearls, when offered for sale and sold in commerce as aforesaid, have been marked and labeled with the words "American Made." Some of such necklaces of imported imitation pearls have also been marked or labeled with the words "La Royal Pearl Indestructible" and after being so marked or labeled have been offered for sale and sold in commerce without any tag or label informing the purchasers thereof that the necklaces were made of imitation pearls.

PAR. 8. Through the use of the words "American Made" the respondents represented and implied to purchasers and prospective purchasers that the products so marked or labeled were composed entirely of domestic materials. In truth and in fact said products were composed in substantial part of imported imitation pearls.

Through the use of the words "La Royal Pearl Indestructible," as aforesaid, respondents represented and implied to purchasers and prospective purchasers that the products so marked or labeled were genuine pearls. In truth and in fact these products were not genuine pearls but were only imitation pearls made from alabaster or glass beads treated with several coats of a preparation or solution to simulate genuine pearls.

PAR. 9. The use by respondents of the aforesaid marks or labels has had the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the false and erroneous beliefs that respondents' necklaces of imported imitation pearls were composed entirely of domestic materials, and that imitation pearls were genuine pearls, and into the purchase of such products in reliance upon such erroneous beliefs.

PAR. 10. The complaint herein also alleges that the practice of offering for sale, 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 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.

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 respondents' answer thereto, certain stipulations entered into by and between counsel, the 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, the recommended decision of the trial examiner herein and exceptions thereto, and briefs and oral arguments of counsel in the aforesaid *Heller* case, and the Commission having disposed of the exceptions to the trial examiner's recommended decision and 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 respondents Louis Detkin and Lillian Detkin, individually and as co-partners trading as Royal Bead Novelty Co., or trading under any other name or trade designation, and said respondents' 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 or 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 the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, whenever 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.

¹ See *ante*, p. 43.

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It is further ordered, That said respondents and their 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 "American Made," 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 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.

Syllabus

IN THE MATTER OF
CORO, 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 5395. Complaint, Dec. 21, 1945¹—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 subsidiary, and three individuals who were officers or directors of one or both and formulated, directed and controlled their acts, policies, and business affairs, engaged at wholesale in the interstate sale and distribution of domestic and imported merchandise, including necklaces and other articles of jewelry composed of imitation pearls made from alabaster or glass beads treated with coatings of a preparation to simulate genuine pearls; in advertising in newspapers, magazines, and other advertising matter of general circulation—

- (a) Falsely represented and implied that its said imitation pearls were genuine through designating them as "Coro Pearls" and did not in any way indicate that they were made of imitation pearls up to a certain period, and thereafter displayed said words in large and conspicuous type and set forth at some other place and not in close proximity thereto, the word "simulated" in smaller type;

With tendency and capacity through use of said words "Coro Pearls" as above set out 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 corporations and individuals, engaged in importing from Japan and other foreign countries quantities of imitation pearls, which, when received by them, on strings or in bulk, were 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

¹ Amended.

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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 respondents.

AMENDED COMPLAINT¹

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 Coro, Inc., a corporation, Coro, Inc., of Rhode Island, a corporation, and Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, individually and as officers of said corporations, hereinafter referred to as respondents have violated the provisions of said act and it appear-

¹ The Commission on July 3, 1947, issued an order substituting a party respondent, as follows:

This matter coming on to be heard upon stipulation of counsel, which stipulation among other things, contained the agreement of all parties that the Commission might by its order make Coro, Inc., of Rhode Island, a corporation, a party respondent herein, without the issuance and service of formal amended complaint, or notice with respect thereto; that the name of Coro, Inc., of Rhode Island should be substituted for the name of Coro, Inc., of Providence wherever the latter appears in the amended complaint herein and the answer thereto; and the Commission having duly considered said stipulation and the record herein and being now fully advised in the premises;

It is ordered, That Coro, Inc., of Rhode Island, a corporation, be made a party respondent herein without the issuance and service of formal amended complaint, or notice with respect thereto: that the name of Coro, Inc., of Rhode Island, shall be substituted for the name of Coro, Inc., of Providence wherever the latter appears in the amended complaint herein and the answer thereto.

ing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Coro, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 47 West Thirty-fourth Street, New York, N. Y. Respondent Coro, Inc., was incorporated under the laws of the State of New York in 1913 as Cohn and Rosenberger, Inc. The name of the corporation was changed to Coro, Inc., in 1942.

PAR. 2. Respondent Coro, Inc., of Rhode Island is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island with its office and principal place of business located at 167 Point Street, Providence, R. I.

Respondent Coro, Inc., of Rhode Island was incorporated under the laws of the State of Rhode Island in the year 1910 as Cohn and Rosenberger, Inc., of Providence. The name of the corporation was changed to Coro, Inc., of Rhode Island in 1942. The respondent Coro, Inc., of Rhode Island is a subsidiary of the respondent Coro, Inc. and the said respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged. Respondent Gerald E. Rosenberger is president of the corporate respondent Coro, Inc., and treasurer of corporate respondent Coro, Inc., of Rhode Island. Respondent Carl Rosenberger is chairman of the board of directors of corporate respondent Coro, Inc., and is also president of the corporate respondent Coro, Inc., of Rhode Island. Respondent Henry Rosenblatt is a member of the board of directors of the corporate respondent Coro, Inc.

Acting in their official capacities, said individual respondents formulate and control and have formulated, directed, and controlled the respective acts, policies, and business affairs of said corporations.

PAR. 3. Respondents are now and for several years last past and while doing business under the corporate names Cohn and Rosenberger, Inc. and Cohn and Rosenberger, Inc. of Providence have been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces 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 respondents cause and have caused their said merchandise when sold to be shipped from their said places of business located in the

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State of New York and in the State of Rhode Island, 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 their said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products respondents represent and have 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 their products designated "Coro Pearls" are genuine pearls when in truth and in fact said products are nothing more than base 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, a clasp attached, and made into completed imitation pearl necklaces. In some advertisements respondents display the words "Coro 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 "Coro Pearls." Through the use of the words "Coro Pearls" respondents represent and imply 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 respondents' said products as aforesaid.

PAR. 5. In connection with the sale and distribution of their said products respondents have imported from Japan, Spain, and other foreign countries large quantities of imitation pearl necklaces and base beads for the manufacture of imitation pearl necklaces.

Respondents operate and control the output of the factory located at 167 Point Street, Providence, R. I., where they cause 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, respondents cause said products to be strung and made into imitation pearl necklaces and sold in commerce, together with other articles of merchandise.

PAR. 6. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents receive 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. 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 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. 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 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 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 respondents as aforesaid of offering for sale, selling and distributing their imitation 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 has had, and now has, the capacity and tendency to, and does, mislead and deceive pur-

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chasers and prospective purchasers into the false and erroneous belief that said imitation 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, respondents' said practice places in the hands of retailers of respondents' imitation 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 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 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 December 21, 1945, issued and subsequently served its amended complaint in this proceeding upon the respondents, Coro, Inc., a corporation, Coro, Inc. of Providence, a corporation, and Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, individuals, charging them 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 respondents' answer thereto, the Commission ordered, on July 3, 1947, pursuant to stipulation of counsel, that Coro, Inc., of Rhode Island, a corporation, be made a party respondent without the issuance and service of a formal amended complaint or notice with respect thereto and that the name Coro, Inc., of Rhode Island be substituted for the name Coro, Inc. of Providence wherever the latter appears in the amended complaint and answer thereto. Said stipulation, dated July 1, 1947, entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondents, provided, among other things, that subject to the approval of the Federal Trade 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, and that the statement of facts contained in said stipulation may be made a part of the record herein and considered together with the transcript of all hearings held in the *Heller* case, the amended

complaint, and the answer thereto. A further stipulation between counsel, dated June 14, 1949, provided that subject to the approval of the Federal Trade Commission the briefs and oral argument of counsel in said *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 amended 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 Coro, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 47 West Thirty-fourth Street, New York, N. Y. Respondent Coro, Inc., was incorporated under the laws of the State of New York in 1913 as Cohn & Rosenberger, Inc. The name of the corporation was changed to Coro, Inc., in 1942.

Respondent Coro, Inc., of Rhode Island, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 167 Point Street, Providence, R. I. It was incorporated under the laws of the State of Rhode Island in the year 1910, as Streeter & Co., Inc. The name was changed to Cohn & Rosenberger, Inc., of Rhode Island, in 1915, and to Coro, Inc., of Rhode Island, in 1943. The respondent Coro, Inc., of Rhode Island is a subsidiary of the respondent Coro, Inc.

Respondent Gerald E. Rosenberger is president of the corporate respondent Coro, Inc., and treasurer of the corporate respondent Coro, Inc., of Rhode Island. Respondent Carl Rosenberger is chairman of the board of directors of corporate respondent Coro, Inc., and is also president of the corporate respondent Coro, Inc., of Rhode Island. Respondent Henry Rosenblatt is a member of the

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

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board of directors of the corporate respondent Coro, Inc. Acting in their official capacities, said individual respondents formulate and control, and have formulated, directed, and controlled, the respective acts, policies, and business affairs of said corporations.

PAR. 2. Respondents are now, and for several years last past and while doing business under the corporate names of Cohn & Rosenberger, Inc., and Cohn & Rosenberger, Inc., of Rhode Island have 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 respondents cause, and have caused, their said merchandise, when sold, to be shipped from their said places of business located in the State of New York and in the State of Rhode Island 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 their 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 their aforesaid business and for the purpose of inducing the purchase of their said products, respondents have designated their products composed of imitation pearls as "Coro Pearls" 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. Prior to February 1944 there was nothing in respondents' advertising to indicate that the products designated "Coro Pearls" were made of imitation pearls. In some advertisements beginning in February 1944, and prior to the issuance of the original complaint in this matter in October 1945, the respondents displayed the words "Coro Pearls" in large and conspicuous type, while the word "simulated" appeared in smaller type at some other place in the advertising and not in close proximity to the words "Coro Pearls."

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

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

PAR. 5. In the course and conduct of their aforesaid business respondents have imported from Japan, Spain, and other foreign countries quantities of imitation pearls. Such imported imitation pearls are received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When imported and when received by the respondents said imitation pearls are marked with tags or labels, either on the 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 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 claps of domestic manufacture are attached, or use 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. 6. During the handling and processing of imported imitation pearls as described in paragraph 5, 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. 7. 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. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces and other articles of jewelry

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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. 8. The complaint herein also alleges that the respondents' practice of offering for sale, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls made 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, the Commission is of the opinion, and finds, that such charge has not been adequately sustained.¹

PAR. 9. 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 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, answer of the respondents, stipulations entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondents, testimony and other evidence introduced before a trial

¹ See *ante*, p. 43.

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 respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondents, Coro, Inc., and Coro, Inc., of Rhode Island, and their officers, agents, representatives, and employees, and the individual respondents, Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, and their 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:

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 the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, whenever 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 corporate respondents, Coro, Inc., and Coro, Inc., of Rhode Island, and their officers, agents, representatives, and employees, and the individual respondents, Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, and their 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:

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.

IN THE MATTER OF
**LAWRENCE B. DOTTENHEIM ET AL. TRADING AS
VICTOR IMPORTING CO.**

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

Docket 5403. Complaint, Nov. 20, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products of domestic origin over those of foreign origin, and has a prejudice against some imported products, particularly those originating in Japan, and 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 four individuals engaged in the interstate sale and distribution at wholesale of domestic and imported merchandise, including necklaces and other articles of jewelry composed of imitation pearls which, purchased by them from importers engaged in the sale and distribution of such products in the United States, were, when received by them, all labeled or marked "Japan", or "Made In Japan", or with other indications of the country of origin, and were strung by them into 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, from which, during the handling and processing above described they caused to be removed all tags, labels, or other indication of foreign origin, offered, sold, and distributed such necklaces and other articles of jewelry which, composed 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 such 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 of misleading the public into such false belief and thereby into their purchase:

Held, That such acts and practices, under the circumstances set forth, were all 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 respondent's practice of offering, selling, and distributing necklaces and other articles of jewelry composed of cultured pearls, without any label or marking to indicate to purchasers the foreign origin of such cultured pearls, constituted unfair and deceptive acts and practices, the Commission determined for reasons stated in its opinion accompanying its findings and order to desist in the matter of *L. Heller & Son, Inc., et al.*, D. 5358, hereinbefore reported at page 34, *et seq.*, that under the circumstances it should not require that necklaces or jewelry composed of imported cultured pearls should be labeled or marked so as to disclose the foreign origin of such pearls.

Complaint

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

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

Mr. Morton B. Frederick, of New York City, for respondents.

COMPLAINT¹

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 Lawrence B. Dottenheim and Mark Dottenheim, individually and trading as Victor Importing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Lawrence B. Dottenheim and Mark Dottenheim are individuals trading as Victor Importing Co. with their office and principal place of business located at 302 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents Lawrence B. Dottenheim and Mark Dottenheim are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls made into necklaces, 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.

Respondents cause and have caused their said merchandise when sold to be shipped from their said place of business located in the

¹The Commission on October 20, 1947, issued an order making Beatrice Dottenheim and May Dottenheim respondents, and providing that the evidence heretofore taken shall be applicable to them, as follows:

This matter coming on to be heard on stipulation of all parties to the effect that the Commission may, by its order, make Beatrice Dottenheim, wife of the respondent Mark Dottenheim, and May Dottenheim, sister of the respondent Lawrence B. Dottenheim, and Mark Dottenheim, parties respondent herein, designating them as copartners with respondents Lawrence B. Dottenheim and Mark Dottenheim, doing business as the Victor Importing Co. without the issuance and service of formal amended complaint or notice with respect thereto, and that the Commission may order further that the evidence heretofore taken in this proceeding shall apply to the said Beatrice Dottenheim and the said May Dottenheim and have the same force and effect as if they had been named respondents in the first instance, duly served with copy of complaint and given due notice of all hearings and all other proceeding in the matter and the Commission having duly considered said stipulation and the record herein, and being now fully advised in the premises:

It is ordered, That Beatrice Dottenheim, wife of the respondent Mark Dottenheim, and May Dottenheim, sister of the respondent Lawrence B. Dottenheim, and Mark Dottenheim, are hereby made parties respondent herein, and designated as copartners with respondents Lawrence B. Dottenheim and Mark Dottenheim, doing business as the Victor Importing Co. It is further ordered that the evidence heretofore taken in this proceeding shall apply to said Beatrice Dottenheim and the said May Dottenheim, and have the same force and effect as if they had been named respondents in the first instance, duly served with copy of complaint and given due notice of all hearings and all other proceedings in the matter.

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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 their 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 their said business in connection with the sale and distribution of said necklaces and other articles of jewelry respondents have purchased large quantities of imitation pearls for the manufacture of imitation pearl necklaces and cultured pearls made into necklaces of foreign origin from importers engaged in the sale and distribution of said products in the United States. Respondents manufacture necklaces and other articles of jewelry from said imported imitation pearls and cultured pearls and sell and distribute said products in said commerce as aforesaid.

PAR. 4. At the time of the importation into the United States of said imitation pearls and cultured pearls and at the time the said respondents receive said products of foreign origin from importers such products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan," or the "Spanish" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received by them the respondents caused the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute 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 cause 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 pearl necklaces and cultured 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 and cultured 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 respondents, as aforesaid, of offering for sale, selling, and distributing their imitation pearl necklaces and cultured pearl necklaces, and other articles of jewelry 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 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, respondents' said practice places in the hands of unformed retailers of respondents' imitation pearl necklaces and cultured 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 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. 8. The aforesaid acts and practices of the 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 November 20, 1945, issued and

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subsequently served its complaint in this proceeding upon the respondents Lawrence B. Dottenheim and Mark Dottenheim, individually and trading as Victor Importing Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer thereto, the Commission ordered, on October 20, 1947, pursuant to a stipulation of all parties concerned, that Beatrice Dottenheim and May Dottenheim be made parties respondent herein, and designated as copartners with respondents Lawrence B. Dottenheim and Mark Dottenheim, doing business as the Victor Importing Co., and that the evidence theretofore taken shall apply to said Beatrice Dottenheim and said May Dottenheim, and have the same force and effect, as if they had been named respondents in the first instance, duly served with copy of complaint, and given due notice of all hearings and all other proceedings in the matter. 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, answer thereto, testimony and other evidence, recommended decision of the trial examiner, to which no exceptions were filed, and briefs in support of the allegations of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); 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, Lawrence B. Dottenheim, Mark Dottenheim, Beatrice Dottenheim, and May Dottenheim, are individuals trading as Victor Importing Co., with their office and principal place of business located at 302 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have 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, among and between the various States of the United States.

Respondents cause, and have caused, their said merchandise, when sold, to be shipped from their place of business located in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have purchased imitation pearls from importers engaged in the sale and distribution of said products in the United States. When received by the respondents said imported imitation pearls have been, and are, all labeled or marked with the word "Japan" or the words "Made in Japan," or other word or words indicating the country of origin. The respondents string such imported imitation pearls into 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 imported imitation pearls, are substantially of foreign origin.

PAR. 4. During the handling and processing of imported 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 of domestic origin over those of foreign origin, and has a prejudice against some imported products, particularly those originating in Japan. 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 alleges that the respondents' practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of cultured pearls without any label or marking to indicate to purchasers the foreign origin of such cultured pearls constitutes unfair and deceptive acts and practices.

The Commission has determined, 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 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, answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, to which no exceptions were filed, brief in support of the allegations of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); 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:

¹ See *ante*, p. 43.

It is ordered, That the respondents, Lawrence B. Dottenheim, Mark Dottenheim, Beatrice Dottenheim, and May Dottenheim, individually and trading as Victor Importing Co., or trading under any other name, and their 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:

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.

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IN THE MATTER OF
HARRY SUSSMAN AND MICHAEL SCHNITZER TRADING
AS ATLAS PUTTY COMPANY

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

Docket 5751. Complaint, Mar. 15, 1950—Decision, Sept. 1, 1950

Where two partners engaged in the interstate sale and distribution of putty—
Represented through the use of the words "Pure Linseed Oil Putty" on the labels
attached to the containers in which certain products were packaged and sold,
that the only oil used therein was pure linseed oil, when in fact substantial
quantities of other oils were also included;

With tendency and capacity to mislead a substantial portion of the purchasing
public in such respect, and cause it to purchase substantial quantities thereof:
Held, That such acts and practices, under the circumstances set forth, were all to
the prejudice of the public and constituted unfair and deceptive acts and
practices in commerce.

Before *Mr. William L. Pack*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Wegman, Epstein & Burke, of New York City, 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 Harry Sussman and Michael Schnitzer, individually and trading as Atlas Putty Co., hereinafter referred to as respondents, have violated the provisions of the 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. Respondents Harry Sussman and Michael Schnitzer are individuals, trading as partners under the name Atlas Putty Co., with an office and principal place of business located at 510 Smith Street, Brooklyn, N. Y.

PAR. 2. The respondents are now, and for more than 2 years last past, have been engaged in the sale and distribution of putty.

In the course and conduct of such business respondents cause their said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in

commerce among and between the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of certain of their products, respondents, subsequent to March 21, 1938, have represented, directly and by implication, by means of painted labels upon the containers in which the product is sold and by other means that the only oil used in the composition of certain of their putty, described on the said labels as "Pure Linseed Oil Putty" is pure linseed oil.

PAR. 4. The said representation is false and misleading. In truth and in fact the oil content of respondents' said putty does not consist solely of linseed oil, but includes substantial quantities of other oils.

PAR. 5. The use by the respondents of the foregoing false and misleading representation has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representation is true and induces and has induced members of the public to purchase substantial quantities of respondents' product as a result of such belief.

PAR. 6. The aforesaid acts and practices of the respondents as herein alleged are all to the 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 1, 1950, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION

By WILLIAM L. PACK, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 15, 1950 issued and subsequently served its complaint in this proceeding upon the respondents, Harry Sussman and Michael Schnitzer, individually and trading as Atlas Putty Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of the complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evi-

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dence in support of and in opposition to the allegations of the complaint were introduced before the above-named trial examiner therefore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the trial examiner on the complaint, the answer thereto, and testimony and other evidence; and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Harry Sussmann and Michael Schnitzer, are individuals trading as partners under the name Atlas Putty Co., with their office and principal place of business located at 510 Smith Street, Brooklyn, N. Y. Respondents are now and for a number of years last past have been engaged in the sale and distribution of putty.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business respondents have used the words "Pure Linseed Oil Putty" to designate and describe certain of their products, these words appearing on the labels attached to the containers in which such products were packaged and sold. Through the use of these words respondents have represented that the only oil used in the products in question was pure linseed oil.

PAR. 4. The record establishes and the examiner therefore finds that this representation was erroneous and misleading. Actually, the oil content of the products in question did not consist solely of linseed oil but included substantial quantities of other oils.

PAR. 5. The record indicates that respondents have discontinued the use of such other oils and that the oil now used in all of their products is exclusively linseed oil.

PAR. 6. The use by respondents of the representation referred to above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and

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composition of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as hereinabove set out are all to the 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

It is ordered, That the respondents, Harry Sussman and Michael Schnitzer, individually and trading as Atlas Putty Co., or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of putty in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Pure Linseed Oil Putty," or any other words of similar import, to designate or describe putty whose oil content is not linseed oil exclusively.

2. Representing in any manner, directly or by implication, that the oil content of respondents' products is linseed oil exclusively, when such is not the fact.

In the case of putty which contains both linseed oil and other oils, this order shall not be construed as prohibiting respondents from referring to such linseed oil content, provided the presence of such other oils is clearly disclosed in connection with the reference to the linseed oil content.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein, Harry Sussman and Michael Schnitzer shall, within sixty (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 [as required by said declaratory decision and order of September 1, 1950].

IN THE MATTER OF
HAMILTON MANUFACTURING COMPANY

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

Docket 3944. Complaint, Nov. 8, 1939—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution of pushcards and punchboards including many which, arranged with explanatory instructions or blank spaces therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby the purchaser of a push or punch who by chance selected a concealed winning number, secured an article of merchandise at much less than its normal retail price, and others received nothing other than the privilege of a push or punch—

Sold such devices to dealers in such merchandise as candy, cigarettes, clocks, razors, cosmetics, clothing, etc., by whom assortments were made up of various articles together with a card or board, and sold to retailers and others who exposed and resold the same to the purchasing public in accordance with the aforesaid sales plan, involving a chance to procure articles at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises or games of chance in the sale and distribution of merchandise to the consuming public, contrary to an established public policy of the United States Government, and in violation of criminal laws;

With the result that members of the purchasing public were thereby induced to deal with retailers using such sales devices; many retailers were thereby induced to trade with manufacturers, wholesalers and jobbers who thus sold and distributed their products; competitors of such retailers were faced with the alternatives of also using such devices or suffering loss of substantial trade; and competitors of such suppliers who did not use such devices often lost sales to those who did:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Guesmer, Carson & MacGregor, of Minneapolis, Minn., and *Mr. J. Bond Smith* and *Mr. Joseph A. Padway*, of Washington, D. C., for respondent.

Mr. Joseph A. Padway and *Mr. Herbert S. Thatcher*, of Washington, D. C., for Minneapolis Printing Pressmen and Assistants Union No. 20; Bookbinders and Bindery Women, Twin City Local No. 12, I. B. of B.; and Stenographers, Bookkeepers, Typists and Assistants Union, Minneapolis Local No. 17661; intervenors.

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 Hamilton Manufacturing 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hamilton Manufacturing Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 413 South Fifth Street, Minneapolis, Minn. Respondent is now and for some time last past has been engaged in the manufacture of devices commonly known as pushcards and punchboards and in the sale and distribution of such merchandise to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various states of the United States, and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from its aforesaid place of business to purchasers thereof in various states of the United States other than the State of Minnesota, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such pushcard and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes and has sold and distributed to said manufacturers and dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes, when used in making sales of merchandise to the consuming public. Respondent sells and distributes and has sold and distributed many kinds of said pushcards and punchboards, but all of said pushcards and punchboards involve the same chance or lottery features when used in connection with the sale or distribution of merchandise, and vary only in detail. Many of such pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device.

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Each purchaser is entitled to one push or punch from the pushcard or punchboard, and when a push or punch is made, a disk or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers, and prospective purchasers, until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by respondent on said pushcard and punchboard devices hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, have purchased respondent's said pushcard and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said pushcard and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale or distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal or

trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms or corporations have many competitors who sell or distribute like or similar articles of said merchandise in commerce between and among the various States of the United States, and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of pushcard or punchboard devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others pushcard or punchboard devices or any other similar devices which are to be used, or which may be used, in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, said devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of said merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of criminal laws, and constitutes unfair methods of competition and unfair acts and practices in said commerce.

The sale or distribution of said pushcards and punchboards by respondent as hereinabove alleged supplies to, and places in the hands of, others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices

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within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove alleged are all to the prejudice and injury of the public, and constitute unfair 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 November 8, 1939, issued and subsequently served upon the respondent, Hamilton Manufacturing Co., its complaint in this proceeding, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of that act. The respondent's original answer to said complaint was filed on December 19, 1939, but on October 7, 1940, the respondent filed with the Commission a motion for permission to withdraw said answer and to file in lieu thereof a substitute answer admitting, with certain exceptions, all of the allegations of fact set forth in the complaint, and this motion was granted and the substitute answer was accordingly received and filed. On July 23, 1941, the Commission directed that the case be held in abeyance pending disposition by the Commission of certain other proceedings involving the same principle of law. These proceedings have now been disposed of and the principle of law involved has been established. The membership of the Commission having been substantially changed in the interim, however, the respondent was extended an opportunity, in conformity with the Commission's policy in such circumstances, to reargue this matter before the Commission as presently constituted, but the Commission was informed by letter dated July 19, 1950, from counsel for the respondent, that such reargument was not desired. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondent's substitute answer thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Hamilton Manufacturing Co., is a corporation organized and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of

business located at 413 South Fifth Street, in the city of Minneapolis, State of Minnesota.

PAR. 2. Said respondent is now, and for more than 25 years last past it has been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent causes and has caused said devices, when sold, to be transported from its place of business in the State of Minnesota to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards vary in detail, but all of them involve the same general principle. Many of said devices have printed on the faces thereof certain legends or instructions which explain the manner in which they are to be used or may be used in the sale or distribution of specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price thereof. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by respondent on said pushcard and punchboard devices hereinabove described. The only use to be

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made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing and other articles of merchandise, have purchased the respondent's pushcards and punchboards, and such purchasers have made up assortments consisting of various articles of merchandise and a card or board and have sold and distributed their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. Retail dealers who have purchased assortments of merchandise herein referred to have exposed and sold said merchandise to the purchasing public by the use of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, the respondent supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the consuming public.

PAR. 6. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise through the use of such devices. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with said pushcards and punchboard devices.

Such retail dealers have competitors who sell or distribute like or similar articles of merchandise. Said competitors are faced with the alternative of also using pushcards and punchboards and other similar devices in connection with the sale and distribution of their merchandise or suffering the loss of substantial trade.

Manufacturers, wholesale dealers, and jobbers who use pushcards, punchboards and similar devices in connection with the sale of their merchandise to retailers also have competitors who do not use such devices. Such manufacturers, wholesalers, and jobbers who do not use lottery devices in promoting the sale of their merchandise often have their sales and potential sales diverted to those who do use these devices.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchboards in the manner

above described involves a game of chance or the sale or a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair 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 respondent's substitute answer thereto, in which answer said respondent admitted, with certain exceptions, all of the allegations of fact set forth in the complaint, and briefs and oral argument of counsel, 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, Hamilton Manufacturing Co., and said respondent's officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the respondent shall, within sixty (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.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.¹

¹ See 46 F. T. C. 606. March 10, 1950.

IN THE MATTER OF
MAX LEVIN ET AL. TRADING AS LEVIN BROS.

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

Docket 3954. Complaint, Nov. 20, 1939—Decision, Sept. 7, 1950

Where the surviving partner engaged in carrying on under the partnership name the competitive interstate sale and distribution of pushcards and punchboards, including devices which, arranged with explanatory instructions or blank spaces therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby the purchaser of a push or punch who by chance selected a concealed winning number, secured an article of merchandise for much less than its normal retail price, and others received nothing for their money other than the push or punch—

- (a) Sold such pushcards and punchboards to dealers in candy, cigarettes and other articles who made up and sold assortments consisting of various articles and a card or board, to retailers and others, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan; and

Where said individual, engaged also in the sale and distribution of assortments of knives, watches, candy, blankets, radios, cigarette lighters and other articles of merchandise packed for sale to the purchasing public, through use of a lottery scheme, consisting, typically of boxes of candy of varying size, together with a punchboard for use in their sale under a plan whereby the purchaser of a punch received for the 5 cents paid, more or less, depending on the number disclosed, one of the boxes of candy, the value of which was in excess of 5 cents, or nothing other than the privilege of making a punch—

- (b) Sold such and similar assortments to wholesale dealers, jobbers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance to procure articles of merchandise at prices much less than their normal retail price; and

Thereby supplied to and placed in the hands of others, through such assortments and through those assembled by the purchasers of his punchboards and pushcards, the means of conducting lotteries, etc. in the sale of merchandise to the purchasing public, contrary to an established public policy of the United States Government, and in violation of criminal laws;

With the result that many members of the purchasing public, by reason of the element of chance involved, were attracted by said method of sale and were induced to deal with retailers and others who thus distributed their merchandise, and many retailers and others were induced to trade with manufacturers, wholesalers and jobbers who sold their products together with pushcards or punchboards; and trade in commerce was unfairly diverted to those employing said plan or method from their competitors who did not use such methods, and with tendency and capacity so to do:

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Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition in commerce, and unfair acts and practices therein.

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. J. W. Brookfield, Jr. for the Commission.

Dix, Dix & Patrick, of Terre Haute, Ind., 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 Max Levin, Morris L. Levin, and Isaac P. Levin, individuals and copartners trading as Levin Bros., 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondents, Max Levin, Morris L. Levin, and Isaac P. Levin, are individuals and copartners trading as Levin Bros., with their principal office and place of business located in Terre Haute, Ind. Respondents are now and for some time last past have been engaged in the sale and distribution of knives, watches, candy, blankets, radios, cigarette lighters and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise when sold to be transported from their aforesaid place of business in Terre Haute, Ind., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers,

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jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of boxes of candy of varying size, together with a device commonly called a punchboard. Said boxes of candy are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each, more or less, and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitled the purchaser thereof to receive a box of candy. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the boxes of candy receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said boxes of candy are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less

than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance of the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to, and does unfairly, divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondents from their said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. Respondents, Max Levin, Morris L. Levin, and Isaac P. Levin, are individuals and copartners trading as Levin Bros., with their principal office and place of business located at Terre Haute, Ind. Respondents are now, and for some time last past have been, engaged in the sale and distribution of devices commonly known as punchcards and punchboards, to dealers in various other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business in Terre Haute, Ind., to purchasers thereof, at their respective points of location, in various States of the United States other than the State of Indiana, and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondents in such pushcards

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and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of their merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of said pushcards and punchboards, but all of said pushcards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate

purchasers to sell or distribute said other merchandise by means of lot or chance, as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said pushcard and punchboard devices and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said pushcard and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards, in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise, together with said devices. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices, or other similar devices, which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of pushcard or punchboard devices, or similar devices, because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to or placing in the hands of, others pushcard or punchboard devices, or any other similar devices which are to be used, or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof, substantial trade in commerce between and among the various States of the United States and in the District of Columbia

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has been unfairly diverted to said persons, firms, and corporations from said competitors, who do not sell or use said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States, and in violation of criminal laws, and constitutes unfair methods of competition in commerce, and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said pushcard and punchboard devices by respondents, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale of distribution of their merchandise. The respondents thus supply to and place in the hands of said persons, firms, and corporations the means of, and the instrumentalities for, engaging in unfair methods of competition in commerce, and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public, and constitute unfair 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 November 20, 1939, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on December 9, 1939, and on January 18, 1941, a trial examiner of the Commission was designated by it to take testimony and other evidence and to perform all other duties authorized by law. On March 21, 1950, after the introduction of certain testimony and other evidence, there was filed with the trial examiner on behalf of Morris L. Levin, surviving

partner of the former partnership composed of Max Levin, Morris L. Levin, and Isaac P. Levin, a motion for permission to withdraw the original answer to said complaint and to file in lieu thereof a substitute answer admitting, with certain exceptions, the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which said motion was granted, and the substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Morris L. Levin, an individual, is the surviving partner of a copartnership formerly composed of the said Morris L. Levin, Max Levin, and Isaac P. Levin who traded under the name of Levin Bros. Said partnership maintained its principal office and place of business in Terre Haute, Ind. Since the deaths of Max Levin and Isaac P. Levin the business of the former partnership has been carried on under the same name and at the same address by the surviving partner, Morris L. Levin, and the term respondent as used hereinafter, when such term is unqualified, refers to Morris L. Levin as such surviving partner.

PAR. 2. The respondent, Morris L. Levin, together with his copartners Max Levin and Isaac P. Levin, was formerly engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent caused said devices, when sold, to be transported from his place of business in the State of Indiana to purchasers thereof at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. During the time the respondent was engaged in the sale of pushcards and punchboards there was a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise were many which were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards varied in detail, but all of them in-

volved the same general principle. Many of said devices had printed on the faces thereof certain legends or instructions which explained the manner in which they were to be used or might have been used in the sale or distribution of specified articles of merchandise. The prices of the sales on said pushcards and punchboards varied in accordance with the individual device. Each purchaser was entitled to one push or punch from the device, for the amount of money paid, and when a push or punch was made a disk or printed slip was separated and a number was disclosed. The numbers were effectively concealed from purchasers and prospective purchasers until a selection had been made and the push or punch completed. Certain specified numbers entitled purchasers to articles of merchandise. Persons securing lucky or winning numbers received articles of merchandise at prices which were much less than the normal retail price thereof. Persons who did not obtain one of the lucky or winning numbers received nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise were thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices had no instructions or legends thereon but had blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof placed instructions or legends which had the same import and meaning as the instructions or legends placed by the respondent on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they were used by the ultimate purchasers thereof, was in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance, as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sold and distributed various articles of merchandise in commerce, such as candy, cigarettes, and other articles, purchased the respondent's pushcards and punchboards, and such purchasers made up assortments consisting of various articles of merchandise and a card or board and sold their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. In addition to selling pushcards and punchboards as separate items, as herein described, the respondent engaged also in the sale and distribution of knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise. He caused such articles of merchandise, when sold, to be transported from his place of

business in the State of Indiana to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. During the time the respondent was engaged in the sale of such articles of merchandise there was a regular course of trade in such merchandise by the respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of this business the respondent was in competition with other individuals and with partnerships and corporations also engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In connection with this phase of the respondent's business it was his practice to sell to wholesale dealers, jobbers, and retail dealers certain assortments of knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise was sold and distributed to the purchasing public. For the purpose of illustrating this practice one of such assortments is described as follows:

The assortment consisted of boxes of candy of varying size, together with a punchboard. The boxes of candy were sold and distributed to the consuming public by means of said punchboard in the following manner: Sales were 5 cents each, more or less, and when a punch was made from the board, a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. The board bore the statement or statements informing prospective purchasers that certain specified numbers entitled the purchaser thereof to receive a box of candy. A purchaser who did not qualify by obtaining one of the lucky numbers received nothing for his money other than the privilege of punching a number from the board. The boxes of candy were worth more than 5 cents each and the purchaser who obtained one of the numbers calling for one of the boxes of candy received the same for the price of 5 cents. The numbers were effectively concealed from purchasers and prospective purchasers until a punch or selection had been made and the particular punch separated from the board. The said boxes of candy were thus distributed to purchasers of punches from the board wholly by lot or chance.

The respondent sold and distributed various other assortments of merchandise and punch boards so packed and assembled as to involve the same lottery feature when the merchandise was sold to the pur-

chasing public, but all of such assortments were similar to the one hereinabove described, varying only in detail.

PAR. 6. Retail dealers who purchased the assortments of merchandise herein referred to, both those packed and assembled by the respondent and those packed and assembled by the purchasers of the respondent's pushcards and punchboards as separate items, directly or indirectly exposed and sold said merchandise to the purchasing public by means of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, both in the sale of his knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise packed and assembled by the respondent as hereinabove described and in the sale of his pushcards and punchboards as separate items, the respondent supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the purchasing public.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchboards in the manner above described involved a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, was a practice which was contrary to an established public policy of the Government of the United States and was in violation of criminal laws.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many members of the purchasing public were attracted by this method of sale and were induced to deal or trade with retail dealers and others who distributed their merchandise by means thereof. As a result, many retail dealers and others were induced to deal or trade with manufacturers, wholesale dealers and jobbers who sold and distributed their products together with pushcards or punchboards. The use of said plan or method thus had the tendency and capacity to and did unfairly divert trade in commerce to those employing it from their competitors who did not use the same or an equivalent method.

CONCLUSION

The acts and practices of the respondent as herein found were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair acts and practices in

commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, Morris L. Levin, surviving partner of the former copartnership composed of the said Morris L. Levin, Max Levin, and Isaac P. Levin, in which answer said respondent admitted, with certain exceptions, all of the material allegations of fact set forth in the complaint and stated that he 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, Morris L. Levin, individually and trading as Levin Bros., or trading under any other name or trade designation, and said respondent's agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That said respondent and his 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 knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pushcards, punchboards, or other lottery devices, either with assortments of knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise, or separately, which said pushcards or punchboards are to be used, or may be used, in selling or distributing such knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise to the public.

2. Selling or distributing knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise so packed or assembled that sales of such knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is

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sold by the respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.¹

¹ See 46 F. T. C. 606, March 10, 1950.

Syllabus

IN THE MATTER OF
ARTHUR WOOD TRADING AS ARTHUR WOOD AND CO.

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

Docket 4069. Complaint, Mar. 20, 1940—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution of pushcards and punchboards including many which arranged with explanatory legends or instruction or, in some cases, with blank spaces provided therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby a lucky purchaser of a push or punch secured, by his chance selection of a concealed winning number, an article of merchandise at much less than its normal retail price and others received nothing for their money other than the privilege of making a push or punch—

(a) Sold such devices to dealers in such merchandise as candy, cigarettes, etc. who made up assortments of various articles together with a pushcard or punchboard, and sold the same to retailers by whom they were exposed and sold to purchasing public in accordance with the aforesaid sales plan; and

Where said individual, engaged also in the competitive interstate sale and distribution of knives and other articles, including assortments which were so packed and assembled as to involve the use of a lottery scheme in the sale and distribution thereof, typical one consisting of 12 knives together with a punchboard, under a plan, as explained thereon, whereby those who secured by chance certain lucky numbers, or the last sale in the different sections, received for their 5 cents, a knife, the value of which was in excess thereof, others receiving nothing other than the privilege of a punch;

(b) Sold such assortments to wholesalers, jobbers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public by means of the pushcards and punchboards in accordance with such plans; and

Thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale and distribution of merchandise to the purchasing public, involving sale of a chance to procure articles at much less than their normal retail prices; contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that many members of the purchasing public were attracted by such method of sale and were induced to trade with retailers and others who thus distributed their merchandise; and many retailers and others were induced to deal with manufacturers, wholesalers, and jobbers who thus sold and distributed their products; whereby trade in commerce was unfairly diverted to those employing such plans from their competitors who did not use such methods, and with tendency and capacity so to do:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. J. W. Brookfield, Jr. for the Commission.

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 Arthur Wood, an individual trading as Arthur Wood & Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent, Arthur Wood, is an individual trading as Arthur Wood & Co. with his principal office and place of business located at 219 Market Street, St. Louis, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of knives and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of game of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for

the purpose of showing the method used by respondent and is as follows:

This assortment consists of 12 knives, together with a device commonly called a punchboard. Said knives are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a knife and that purchasers of the last sale in each section receives a knife. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number in one of the sections receives nothing for his money other than the privilege of punching a number from the board. The said knives are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the knives, or the last punch on the board, receives the same for the price of 5 cents. The said numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These said knives are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition

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with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. Respondent Arthur Wood is an individual trading as Arthur Wood & Co., with his principal office and place of business located at 219 Market Street, St. Louis, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of devices commonly known as pushcards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to purchasers thereof, at their respective points of location, in various States of the United States, other than the State of Missouri, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such pushcards and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed, many kinds of said pushcards and punchboards but all of said pushcards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail. The majority of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing punchboards or pushcards without said printed instructions or legends thereon place printed instructions or legends on the faces of said pushcards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of pushcard or punchboard devices by respondent, as hereinabove described.

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondent's said pushcards and punchboard devices and have packed and assembled

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assortments comprised of various articles of said merchandise, together with said pushcards and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards or punchboards in accordance with the sales plan as described in paragraph 2 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of or together with respondent's said pushcards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise or to suffer the loss of substantial trade. Said competitors do not sell and distribute their said merchandise by means of pushcard or punchboard devices or similar devices because of the element of chance or lottery feature involved therein and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such pushcard or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance. As a result thereof substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair meth-

ods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said pushcards and punchboards by respondent, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of their merchandise. The respondent thus supplies to and places in the hands of said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent, as hereinabove 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 March 20, 1940, issued and thereafter served upon the respondent Arthur Wood, an individual trading as Arthur Wood & Co., its complaint in this proceeding, charging said respondent with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. The respondent's original answer to said complaint was filed on May 10, 1940. At a hearing held on March 13, 1947, before a trial examiner of the Commission theretofore designated by it, the respondent requested of the trial examiner and was by him granted permission to withdraw the original answer to said complaint and to file in lieu thereof a substitute answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, and said substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Arthur Wood, is an individual trading and doing business as Arthur Wood & Co., with his principal of-

fice and place of business located 926 North Broadway, in the city of St. Louis, State of Missouri.

PAR. 2. Said respondent is now, and for a number of years last past he has been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent causes and has caused said devices, when sold, to be transported from his place of business in the State of Missouri to purchasers thereof at their respective points of location in the various States of the United States other than Missouri and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards vary in detail, but all of them involve the same general principle. The majority of said devices have printed on the faces thereof certain legends or instructions which explain the manner in which they are to be used or may be used in the sale or distribution of specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price thereof. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing pushcards or punchboards without said printed instructions or legends thereon place printed instructions or legends on the faces of said pushcards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed

or printed on the faces of pushcard or punchboard devices by the respondent, as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, and other articles, purchase and have purchased the respondent's pushcards and punchboards, and such purchasers make up and have made up assortments consisting of various articles of merchandise and a board or card and sell and have sold their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. In addition to selling pushcards and punchboards as separate items, as herein described, the respondent is now, and for a number of years last past he has been, engaged also in the sale and distribution of knives and other articles of merchandise. He causes and has caused such knives and other articles of merchandise, when sold, to be transported from his place of business in the State of Missouri to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such merchandise by the respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of this business, the respondent is and has been in competition with other individuals and with partnerships and corporations also engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In connection with this phase of the respondent's business it is and has been his practice to sell to wholesale dealers, jobbers, and retail dealers certain assortments of knives and other articles of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to the purchasing public. For the purpose of illustrating this practice one of such assortments is described as follows:

The assortment consists of 12 knives, together with a punchboard. The knives are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing

prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a knife and that purchasers of the last sale in each section receive a knife. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number in one of the sections receives nothing for his money other than the privilege of punching a number from the board. The said knives are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the knives, or the last punch on the board, receives the same for the price of 5 cents. The said numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These knives are thus distributed to purchasers of punches from the board wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various other assortments of merchandise and punchboards so packed and assembled as to involve the same lottery feature when the merchandise is sold to the purchasing public, but all of such assortments are and have been similar to the one hereinabove described, varying only in detail.

PAR. 6. Retail dealers who purchase the assortments of merchandise herein referred to, both those packed and assembled by the respondent and those packed and assembled by the purchasers of the respondent's pushcards and punchboards as separate items, directly or indirectly expose and sell said merchandise to the purchasing public by means of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, both in the sale of his knives and other merchandise packed and assembled by the respondent as hereinabove described and in the sale of his pushcards and punchboards as separate items, the respondent supplies to and places in the hands of others the means of conducting lotteries, gift enterprises or games of chance in the sale and distribution of merchandise to the purchasing public.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchboards in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many mem-

bers of the purchasing public are attracted by this method of sale and are induced to deal or trade with retail dealers and others distributing their merchandise by means thereof. As a result, many retail dealers and others are induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with pushcards or punchboards. The use of said plan or method thus has the tendency and capacity to and does unfairly divert trade in commerce to those employing it from their competitors who do not use the same or an equivalent method.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer said respondent admitted all of the material allegations of fact set forth in the complaint and stated that he 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 Arthur Wood, individually and trading as Arthur Wood & Co., or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That said respondent and his 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 knives or any other article of merchandise, do forthwith cease and desist from:

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1. Supplying to or placing in the hands of others pushcards, punchboards, or other lottery devices, either with assortments of knives or other merchandise or separately, which said pushcards or punchboards are to be used, or may be used, in selling or distributing such knives or other merchandise to the public.

2. Selling or distributing knives or other merchandise so packed or assembled that sales of such knives or other merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by the respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.¹

¹ See 46 F. T. C. 606. March 10, 1950.

Syllabus

IN THE MATTER OF

MARIUS J. GLERUP, TRADING AS PACIFIC SALES BOARD
COMPANY

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

Docket 5595. Complaint, Oct. 26, 1948—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution in the Territory of Alaska and elsewhere of pushcards and punchboards, which were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby a lucky purchaser punching by chance a concealed winning number secured an article of merchandise at much less than its normal retail price, and others received nothing for their money other than the privilege of making a push or punch—

- (a) Sold said devices to dealers in such merchandise as candy, cigarettes, razors, cosmetics, clothing, etc., who made up assortments of various articles together with a pushcard or punchboard, and sold them to retailers and others by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan; and

Where said individual, engaged also in the sale and distribution of dolls, novelties, sporting goods, and other articles, including assortments packed for lottery selling, and, as illustrative, an assortment of dolls of varying size and a number of packages of cigarettes together with a punchboard, for use under a plan, as explained thereon, whereby those who secured by chance certain lucky numbers or made the last punch in the board's section or the last one on the board, received a doll, worth more than the 5 cents paid, or one or more packages of cigarettes;

- (b) Sold such assortments to purchasers by whom they were directly or indirectly exposed and sold to the purchasing public by means of the pushcards and punchboards included therewith; and

Thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale and distribution of merchandise to the purchasing public, involving sale of a chance to procure articles at much less than their normal retail prices, contrary to an established public policy of the United States Government, and in violation of criminal laws;

With the result that many members of the purchasing public were attracted by such method of sale and were induced to deal with retailers and others who thus distributed their merchandise, and many retailers and others were induced to trade with manufacturers, wholesalers, and jobbers who sold and distributed their products together with pushcards or punchboards:

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