

Complaint

IN THE MATTER OF
RECOTON CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6322. Complaint, Apr. 1, 1955—Decision, Aug. 2, 1955*

Consent order requiring manufacturers in New York City of phonograph needles with points made of synthetic materials to cease representing falsely in catalogues, on packages and containers, and in sales promotional material furnished to dealers, that the needles had points of sapphire or ruby or jewel; and to cease representing that they were the world's largest manufacturer of phonograph needles.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Cahn, Schwartzreich & Mathias, 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 Recoton Corporation and Herbert H. Borchardt, Jack Karns and Alfred Wish, 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 Recoton Corporation, 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 147 West 22nd Street, New York, N. Y. Respondents Herbert H. Borchardt, Jack Karns and Alfred Wish are respectively President, Vice-President and Secretary of said corporate respondent. These individuals acting in cooperation with each other formulate, direct and control all of the policies, acts and practices of said corporation. Their address is the same as that of corporate respondent.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the sale and distribution of phonograph needles to wholesalers and dealers in commerce, among and between the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have main-

tained, a substantial course of trade in said phonograph needles, in commerce, among and between the various States of the United States.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have made many representations as to the materials used in making their phonograph needles. These representations were made in catalogs, and on counter display cards, packages, containers and other sales promotional material supplied to dealers to be exhibited to the purchasing public. Typical and illustrative of such representations are the following:

Polished Sapphire Tip * * * tipped with a precious sapphire point.

Recoton Ultra Sapphire Tipped Phonedle.

Ruby Point.

Rubypoint * * * with a sparkling dark red ruby point.

Jewel and Osmium Tipped.

Point Material: Jewel.

PAR. 4. Through the use of the foregoing representations and others of similar import and meaning, respondents have represented directly and by implication that said phonograph needles have points or tips made of sapphire, or ruby or jewel.

PAR. 5. The said representations are false, misleading and deceptive. In truth and in fact the said needles do not have points or tips made of sapphire or ruby or jewel; but said needles have points or tips made of synthetic materials.

PAR. 6. By selling and distributing to wholesalers and dealers said phonograph needles packaged as aforesaid and furnishing to such wholesalers and dealers counter display cards and other sales promotional material as aforesaid, respondents furnish to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the composition of the points or tips of said phonograph needles.

PAR. 7. Through the use of the statement "world's largest manufacturers of phonedles" on certain of its phonograph needle packages respondents have represented that they are the world's largest manufacturers of phonograph needles and produce more phonograph needles than any other manufacturer in the world. In truth and in fact, there are other manufacturers in the world whose businesses are larger than respondents' and who produce substantially more phonograph needles than the respondents.

PAR. 8. In the course and conduct of their business respondents are in direct and substantial competition with other corporations and firms and individuals engaged in the sale in commerce of phonograph needles.

PAR. 9. The use by the respondents of the false, misleading and deceptive representations herein set forth has had and now has the capacity and tendency to mislead and deceive a substantial number of wholesalers and dealers and members of the purchasing public with respect to the material of which the tips or points of respondents' said needles are made and with respect to the size and capacity of respondents' manufacturing facilities. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents Recoton Corporation, a New York corporation located at 52-35 Barnett Avenue, Long Island City, New York, and Herbert H. Borchardt, Jack Karns and Alfred Wish, individually and as officers of said corporation, with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of phonograph needles.

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement for consent order with counsel for complaint disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement, the answer heretofore filed by respondents was withdrawn and the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission,

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and all further and other procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein, that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and it appearing that said agreement and order provides for appropriate dispositions of this proceeding, the same is hereby accepted and made a part of the record and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Recoton Corporation, a corporation, and its officers, and Herbert H. Borchardt, Jack Karns and Alfred Wish, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of phonograph needles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the points or tips of phonograph needles made of synthetic sapphires, rubies, jewels or other precious stones are sapphires, rubies, jewels or other precious stones without clearly stating that they are synthetic.

2. Through the use of the statement "world's largest manufacturers of phonedneedles" or representations of similar import or meaning that

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said corporate respondent is the world's largest manufacturer of phonograph needles.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practices, the initial decision of the hearing examiner shall, on the 2nd day of August, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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 the order to cease and desist.

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IN THE MATTER OF

AMERICAN STAINLESS KITCHEN COMPANY, INC.,
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6294. Complaint, Feb. 18, 1955—Decision, Aug. 3, 1955*

Consent order requiring sellers in Milwaukee, Wis., to cease making false claims for the health-inducing properties of their stainless steel cooking utensils and with disparaging competitive aluminum products.

Before *Mr. John Lewis*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Kelley, Drye, Newhall & Maginnes, 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 American Stainless Kitchen Company, Inc., a corporation, and Wesley A. Ryan, Frank W. Ladky and Randall G. Taylor, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Stainless Kitchen Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 161 West Wisconsin Avenue, Milwaukee, Wisconsin. Respondents Wesley A. Ryan, Frank W. Ladky and Randall G. Taylor are the officers of corporate respondent. These individuals formulate and control the policies, activities and practices of the corporate respondent, including the acts and practices herein-after alleged. The address of respondent Wesley A. Ryan is Room 303, Eighteen West Cheltenham (Germantown) Philadelphia, Pennsylvania. The address of respondents Frank W. Ladky and Randall G. Taylor is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for more than three years last past have been engaged in the sale and distribution of stainless steel cooking utensils in commerce between and among the various States of the United States. Respondents cause and have caused said products, when sold to be shipped from Sheboygan, Wisconsin, where they are