

Complaint

IN THE MATTER OF
DODGE INCORPORATED ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6438. Complaint, Nov. 7, 1955—Decision, Apr. 4, 1956

Consent order requiring a Chicago manufacturer to cease falsely representing trophies, awards, and miscellaneous synthetic jewelry with simulated silver lettering as genuine onyx or marble through describing them as "Rio Onyx" and "Marblette," "engraved * * * in Silver," in catalogs and advertising material furnished to dealers and by them widely distributed to prospective purchasers.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Lord, Bissell & Brook, of Chicago, Ill., 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 Dodge Incorporated, a corporation and Ray E. Dodge and J. J. Kuhn, 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 and stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dodge Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 702-706 North Hudson Avenue, Chicago, Illinois. Respondents Ray E. Dodge and J. J. Kuhn are respectively President and Vice-President of the corporate respondent. The individual respondents, acting in cooperation with each other, formulate, direct and control all of the policies and acts of said corporation. The address of said individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now and have been for more than one year last past, engaged in the manufacture, sale and distribution of trophies, cups, plaques, medals, jewelry, and gift items, in commerce, among and between the various States of the United States and in the District of Columbia. Respondents maintain, and at

Complaint

52 F. T. C.

all times mentioned herein have maintained, a substantial course of trade in said articles, 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 are now and for more than one year last past have been engaged in the manufacture, sale and distribution of the aforesaid articles under the name of the said corporate respondent and under the trade name, Lawrence Manufacturing Company. Sale of said articles by the respondents are to retailers and dealers for resale to the purchasing public.

PAR. 4. To facilitate and assist in the sale of the said articles to the purchasing public respondents supply to said retailers and dealers a variety of catalogs, leaflets and other advertising material. Said advertising material is widely distributed by said retailers and dealers to prospective purchasers of the merchandise advertised and offered for sale therein. Said advertising material contains numerous false, misleading and deceptive representations respecting the quality, composition and characteristics of the merchandise offered for sale therein.

Typical and illustrative of said representations are the following:

1. Lawrence Manufacturing Company,
Golden Arrow Awards for Champions
Imported Pedrara Onyx
Black and Gold Italian Marble and
Rio Onyx.
2. Latest Styles Feature "Rio Onyx" the newest trend in modern design depicting real Brazilian Green Onyx.
3. RIO ONYX (this representation is made in immediate conjunction with pictorial depictions of trophies, awards etc., which appear to be made in part of an onyx-like material).
4. Series CS5C3 feature Marblette bases and are available in a choice of Ivory and "Onyx Red" color.
5. Genuine Black Marblette.
6. The R51C, RB51C, and R52C series of awards embody Diamond Black Engraving columns. When engraved the lettering shows through in Silver against an Ebony Black Background.

PAR. 5. Through the use of the foregoing representations respondents represent that certain of the aforesaid articles are made in part of genuine Onyx; that certain of the aforesaid articles are made in part of genuine marble; and that the lettering in certain of the aforesaid articles is made of silver metal.

PAR. 6. Such representations are false, misleading and deceptive. In truth and in fact the material described by respondents in their aforesaid advertising material as "Rio Onyx" and "Marblette" is

1059

Decision

not genuine onyx and marble, respectively, but such material is of synthetic composition simulating genuine onyx or marble. Furthermore, the lettering on certain of aforesaid articles is not made of silver metal but is done in such a manner as to simulate letters made of silver.

PAR. 7. By selling and distributing to retailers and dealers said catalogs and advertising material as aforesaid, respondents furnish to such retailers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the quality, composition and characteristics of the said articles offered for sale therein.

PAR. 8. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribution in commerce of trophies, cups, plaques, medals, jewelry and gift items.

PAR. 9. The distribution in commerce of respondents said advertising material has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into erroneous and mistaken beliefs respecting the quality, composition and characteristics of said trophies, cups, plaques, medals, jewelry and gift items and into the purchase of substantial quantities of such articles because of such erroneous and mistaken beliefs. 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 ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 7, 1955, charging them with having violated the Federal Trade Commission Act. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated January 31, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Decision

52 F. T. C.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

The proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Dodge Incorporated is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 702-706 North Hudson Avenue, in the City of Chicago, State of Illinois. Respondents Ray E. Dodge and J. J. Kuhn are individuals and are respectively president and vice president of the said corporate respondent. The address of the said individual respondents is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

1059

Order

ORDER

It is ordered, That respondents, Dodge Incorporated, a corporation, and its officers, and Ray E. Dodge and J. J. Kuhn, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of trophies, cups, plaques, and gift items, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Rio Onyx" or any other word or words implying genuine onyx to describe the aforesaid or other articles not made of genuine onyx, provided, however, that nothing contained herein shall prevent representations, not implying genuineness, that the aforesaid articles have the color of onyx;

2. Using the word "Marblette" or any other word or words implying genuine marble to describe the aforesaid or any other articles not made of genuine marble without revealing the fact that such articles are not made of genuine marble;

3. Using the word "Silver" or other words implying precious metals to describe lettering not made of silver or precious metals on the aforesaid or other articles, provided, however, that nothing contained herein shall prevent representations that the lettering on the aforesaid or such other articles has the color of silver or other precious metals.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of April, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Dodge Incorporated, a corporation, and Ray E. Dodge and J. J. Kuhn, individually and as officers of said corporation, 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.

Complaint

52 F. T. C.

IN THE MATTER OF
HUDNUT SALES CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (d) OF THE CLAYTON ACT

Docket 6440. Complaint, Nov. 8, 1955—Decision, Apr. 4, 1956

Consent order requiring a New York City manufacturer of cosmetics, beauty aids, and toilet preparations, sold under trade names "Richard Hudnut," "Courtley," "DuBarry," and "Chen Yu," to cease violating Sec. 2 (d) of the Clayton Act, through entering into cooperative advertising arrangements with certain favored customers whereby it paid all, or a portion, of the cost of newspaper advertisements of its products run by them.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Donald K. King for the Commission.

Mudge, Stern, Baldwin & Todd, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Hudnut Sales Company, Inc., hereinafter designated as respondent, has violated and is now violating the provisions of sub-section (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Hudnut Sales Company, Inc., is a corporation organized 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 113 West 18th Street, New York, New York.

PAR. 2. The respondent is now and for a number of years has been engaged in the business of manufacturing and selling cosmetics, beauty aids, and toilet preparations under various trade names such as Richard Hudnut, Courtley, DuBarry and Chen Yu. Said products are sold to customers with places of business located throughout the several states of the United States and in the District of Columbia for resale to consumers within the United States.

PAR. 3. In the course and conduct of said business, respondent has engaged in commerce as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, having shipped its products or caused them to be transported from its said place of business to said customers with places of business located in the