

It is ordered, That 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.

IN THE MATTER OF
UTICA CUTLERY COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7427. Complaint, Feb. 27, 1959—Decision, Apr. 2, 1960

Order requiring a Utica, N.Y., manufacturer to cease distributing for retail sale stainless steel tableware imported from Japan with no marking on the packages to indicate the foreign origin of the contents.
A charge of preticketing said merchandise with fictitious prices was settled by consent on Nov. 17, 1959, p. 509 herein, at which time the complaint was dismissed as to three respondents individually.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Ames W. Williams for the Commission.

Kernan and Kernan, of Utica, N.Y., for respondents.

INITIAL DECISION AS TO ALLEGATIONS SET FORTH IN PARAGRAPHS
FOUR, FIVE, SIX AND SEVEN AND PORTIONS OF PARAGRAPHS
ELEVEN AND TWELVE OF THE COMPLAINT

On September 30, 1959, an Initial Decision as to Certain Allegations of the Complaint based on an agreement for a consent order to cease and desist was issued by the hearing examiner in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the

Commission. That decision disposed of all the proceedings as to all parties except with respect to the allegations set forth in paragraphs 4, 5, 6 and 7 of the complaint and paragraphs 11 and 12 insofar as they pertain to paragraphs 4, 5, 6 and 7, which are disposed of in this decision. In that decision the complaint was dismissed as to respondents Walter Joseph Matt, H. Robert Agne and W. H. Van Vliet, individually. The Commission, on November 17, 1959, affirmed the foregoing Initial Decision.

A hearing was held in this proceeding in New York City on November 18, 1959, at which time both oral testimony and physical exhibits were received in evidence. Counsel supporting the complaint rested his case and counsel for the respondent indicated that he had no evidence to offer in opposition to the allegations of the complaint. Proposed findings were filed by counsel supporting the complaint on January 4, 1960, and by counsel for the respondents on January 11, 1960.

This proceeding having now come on for final consideration upon the allegations of the complaint set forth in paragraphs 4, 5, 6 7 and paragraphs 11 and 12 insofar as they pertain to paragraphs 4, 5, 6 and 7, the testimony taken and the proposed findings submitted by respective counsel, and said hearing 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, Conclusions drawn therefrom and Order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Corporate respondent Utica Cutlery Company is a corporation 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 820 Noyes Street in the City of Utica, State of New York.

Respondent Albert Edward Allen is an officer of respondent Utica Cutlery Company. He formulates, directs and controls the acts and practices of said corporate respondent, including those set out in the complaint. Respondents Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet are officers of said corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and sale of kitchen utensils, cutlery, stainless steel tableware, advertising specialties, and other merchandise to wholesalers, jobbers, and retailers.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State

Conclusions

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of New York to purchasers thereof located in various other states of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents package for retail sale certain stainless steel tableware items imported from Japan. Such individual items are stamped or mark in a manner which discloses their Japanese origin, but when packaged by the respondents such markings are difficult if not impossible to discern.

No markings are placed upon the packages of tableware which identify the contents as being of foreign origin.

PAR. 5. Respondents, by their failure to affirmatively disclose that the packages of tableware contain items which are made in and imported from Japan, represent that such merchandise is manufactured in the United States of America.

The aforesaid representation is false, misleading and deceptive. In truth and in fact, as herein found, some of the said tableware is of Japanese origin.

PAR. 6. A substantial portion of the purchasing public maintains a decided preference for products of domestic manufacture and when the country of origin of merchandise is not marked on the packages containing said tableware, or if the markings are concealed, the purchasing public understands and believes such products to be wholly of domestic origin.

PAR. 7. The failure of the respondents to disclose the foreign origin of their tableware on the packages as aforesaid has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such merchandise was and is of domestic origin and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

CONCLUSIONS

The aforesaid acts and practices of the respondents, as herein found, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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.

ORDER

It is ordered, That respondents, Utica Cutlery Company, a corporation, and its officers, and Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cutlery, stainless steel tableware, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from offering for sale or selling packaged merchandise made in Japan, or in any other foreign country without (a) as to merchandise marked as to the country or countries of origin, indicating upon the package thereof that some of the contents originated in a stated foreign country or countries and that such items are marked as to the country or countries of origin, and (b) as to merchandise not marked as to the country or countries of origin, indicating upon the package thereof the country or countries of origin.

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 2nd day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, Utica Cutlery Company, a corporation, and Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, 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.

IN THE MATTER OF

KITTY LEFIN TRADING AS KITTY LEFIN FUR HOUSE

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE FUR PRODUCTS LABELING ACTS