of the charges of geographical price discriminations together with such relevant rebuttal evidence as may be offered by counsel supporting the complaint.

LIFETIME CUTLERY CORP. ET AL.

Docket 7292. Order and Opinion, Oct. 30, 1959

Order remanding case for additional evidence on the merits of the charge challenging use of the expression "24 karat gold plated" to describe products surfaced with gold by the electrolytic process, and for a finding of violation of the Federal Trade Commission Act by failure of respondents to disclose the foreign origin of the carving fork heads of their cutlery.

OPINION OF THE COMMISSION

By KINTNER, *Chairman:*

Should the Commission's order to cease and desist include a prohibition against respondents' use of the term "gold-plated" to describe cutlery which has been surfaced with gold by an electrolytic rather than a mechanical process? The hearing examiner found that there was no evidence that respondents' use of this term was false or deceptive and refused, despite the urging of counsel supporting the complaint to the contrary, to include any reference to this matter in the order to cease and desist contained in his initial decision. We have concluded that the matter should be remanded for the receipt of further evidence, inasmuch as the Commission cannot, upon the present record, make an informed determination on the merits of the question raised by this appeal.

Paragraph 10 of the complaint alleged that respondents represented parts of their products as "24 karat gold plated." The complaint further alleged that "in truth and in fact, such parts are not 24 karat gold plated since the gold deposited thereon is not a substantial surface plating of gold alloy applied by a mechanical process but is an electrolytic application." There is now no dispute that respondents have referred to their products as "24-Karat Gold-Plated"; there is also now no dispute that these products were surfaced with gold by an electrolytic application; but the conclusion assumed in Paragraph Ten of the complaint that these products are not in truth and in fact 24 karat gold plated has not been shown.

As the Commission stated in *Silf Skin, Inc.*, Docket 6772, decided June 19, 1959, "The manufacturing process by machine methods is not a static but a growing and constantly changing art. To require a term or terms which give prestige to a product to be restricted in their use to products manufactured on a particular type of machine is a matter of serious concern. In all the circumstances, we are aware of the opinion that the allegations of the complaint

in this connection have not been supported by substantial evidence." The same reasoning is equally applicable here. Restriction of the use of the words "24 karat gold plated" to gold alloy applied by a mechanical process should only be adopted as a result of facts and evidence of record.

On the basis of this record, we cannot distinguish between mechanically plated and electrolytically plated products. One witness testified briefly and ambiguously on the subject. Although he stated that in the industry "gold plate or gold filled * * * typically * * * mean * * * rolled gold plate," (a mechanical process), he also stated that "gold electro-plated" and "gold-plated" are "synonymous," and "no one in the electro-plating industry will ever be misunderstood by saying 'plated,' in contrast to 'electro-plated.'"

Counsel supporting the complaint urges us to decide this question adversely to the respondents on the basis of trade practice rules adopted by the Commission for the jewelry, watchcase, and fountain pen and mechanical pencil industries. We believe that the hearing examiner correctly disposed of this contention when he stated that "* * * the Commission's trade practice rules were designed to be helpful guides to the various industries for which they have been promulgated, and were not intended to be regarded and recognized as substantive rules of law, or as factual conclusions which might be cited or accepted in an adjudicative proceeding as a substitute for evidence."

In view of the foregoing, the appeal of counsel supporting the complaint will be denied, but the matter will be remanded for the taking of further evidence on this point. We have noticed, also, that in one respect not mentioned in this appeal the initial decision is incomplete. One of the facts of which the hearing examiner in his order of February 19, 1959, took official notice, but of which no mention is made in the initial decision, is that a substantial portion of the purchasing public maintains a preference for products of domestic manufacture. This is a material fact in support of the finding that the respondents have violated the Federal Trade Commission Act by failing to disclose the foreign origin of the carving-fork heads of their cutlery. Since, as provided in Sec. 7(d) of the Administrative Procedure Act, respondents were afforded an opportunity to present evidence controverting this material fact but presented no such evidence and made no request to do so, paragraph 3 of the findings should be amended to make appropriate reference to this fact.

ORDER

This matter having come on to be heard upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner; and

The Commission having determined, for reasons stated in the accompanying opinion, that the record in this proceeding does not afford adequate basis for informed decision on the merits of the charge challenging respondents' use of the expression "24 karat gold plated" to designate and describe products surfaced with gold by the electrolytic process, and the Commission having further determined that the proceeding should be reopened for the reception of additional evidence with respect to such charge:

It is ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for the reception of such evidence as may be offered in support of and in opposition to such charge.

It is further ordered, That after receipt of such additional evidence, the hearing examiner indicate any changes he may wish to