

*It is ordered,* That respondent Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing business as Chicago Gold Smelting & Refining Company, 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 the order to cease and desist.

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IN THE MATTER OF  
BERNARD INDUSTRIES, INC., ET AL.

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

*Docket 7822. Complaint, Mar. 11, 1960—Decision, July 15, 1960*

Consent order requiring a New York City distributor of men's ties falsely as "Imported from Switzerland" or "Made in Switzerland", and ties composed of material weighted with metal and blended with synthetics as "All Silk."

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 Bernard Industries, Inc., a corporation, and Bernard Bernard and Lotte Bernard, 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 Bernard Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 112 Madison Avenue, in the City of New York, State of New York.

Respondents Bernard Bernard and Lotte Bernard are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of men's neckties to retailers for resale to the public.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past 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 and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said merchandise, respondents falsely represent by labels, that their said merchandise is "All Silk", "Imported from Switzerland" and "Made in Switzerland".

Certain of respondents' merchandise represented to be "All Silk" is composed of material which is weighted with metal, blended with synthetic and other material and is not "All Silk", as represented by the label.

Certain of respondents' merchandise represented as "Imported from Switzerland" and "Made in Switzerland", is manufactured in the United States.

PAR. 5. By the aforesaid practices respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the character of the material in the merchandise and the country of origin thereof.

PAR. 6. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of men's silk ties of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of the said erroneous and mistaken belief, and as a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents and their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, 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.

*Mr. Harry E. Middleton, Jr., for the Commission.*

*Spar, Schlem & Burroughs, of New York, N.Y., by Mr. Charles Spar, for respondents.*

## INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued March 11, 1960, charges the respondents Bernard Industries, Inc., a New York corporation, located at 112 Madison Avenue, New York, N.Y., and Bernard Bernard and Lotte Bernard, individually and as officers of said corporation and located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of men's neckties.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

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 respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the 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.

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 an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, 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, that this proceeding is in the interest of the public, and issues the following order:

## ORDER

*It is ordered*, That respondents Bernard Industries, Inc., a corporation, and its officers, and Bernard Bernard and Lotte Bernard, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of men's ties or other similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that their products are of foreign origin, when, in fact, such products are manufactured in whole or in substantial part in the United States; or misrepresenting in any manner the country of origin of their products;

2. Misrepresenting in any manner the materials of which their products are made;

3. Putting into operation or participating in any plan or practice whereby retailers or others may misrepresent the origin of their products or the materials of which they are made.

## 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 15th day of July 1960, become the decision of the Commission; and, accordingly:

*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.

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IN THE MATTER OF

AMERICAN INTERNATIONAL INDUSTRIES, INC., ET AL.