IN THE MATTER OF

DIALAND ELECTRIC SALES CORPORATION TRADING AS DIAMOND ELECTRIC COMPANY ET AL.

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

Docket 8195. Complaint, Nov. 29, 1960—Decision, Mar. 30, 1961

Consent order requiring two affiliated Rochester, N. Y., distributors of electric supplies and equipment to cease representing falsely that they manufactured products which were actually made in Japan, by such practices as advertising as an "Elkee Corp. Product" their "Evercel Plastic Electrical Tape", on the inside surface of the spool of which was a small sticker with the words "Made in Japan" in small print; advertising as ". . . Stock No. . . . S.B.C. 30 . . . Mfgr. . . . Elkee Corp." their "Solderless Service Connectors" which also carried the word "Japan" in obscurely printed and virtually indistinguishable letters; and by the indiscriminate mingling of domestic and foreign goods in their advertising catalogs.

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 Dialand Electric Sales Corporation, a corporation, trading as Diamond Electric Company, and Elliott Landsman and Morris Diamond, individually and as officers of said corporation, and Elkee Corporation, a 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 Dialand Electric Sales corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, said Dialand Electric Corporation trades and does business under the name of Diamond Electric Company. Its principal office and place of business is located at 1230 Lyell Avenue, in the City of Rochester, State of New York.

Respondent Elkee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is the same as that of the said Dialand Electric Sales Corporation.

Respondents Elliott Landsman and Morris Diamond are individuals and are officers of the said Dialand Electric Sales Corporation. Said individual respondents formulate, direct and control the acts and practices of each of the aforenamed corporate respondents. Their address is the same as that of the said Dialand Electric Sales Corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of electric supplies and equipment to distributors and jobbers and 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 products, 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their said electrical supplies and equipment, respondents have made certain statements and representations with respect to the origin and manufacture of said products. Typical and illustrative of such statements and representations are the following:

With respect to plastic electrical tape respondents' advertising states:

Evercel Plastic Electrical Tape . . . an Elkee Corp. Product, Rochester, New York.

The container in which said tape is offered for sale reads in part:

Evercel Plastic Electrical Tape . . . Elkee Corporation, Rochester, New York.

Each package contains one roll of tape. The tape is further wrapped with a clear cellophane-like material. On the inside surface of the spool on which said tape is wrapped is a small sticker with the words in small print, "Made in Japan".

In advertising "Solderless Service Connectors" for sale, the following representations are typical of those made:

Solderless Service Connectors . . . Stock No. . . . S.B.C. 30 . . . Mfgr. . . . Elkee Corp.

In the publication in which said connectors are advertised and offered for sale are the products of many domestic manufacturers of electrical equipment such as General Electric, Westinghouse, and

others. The listing in which said connectors are offered for sale contains the name of well-known domestic manufacturers such as the Burndy Corporation. Said service connectors are branded with a stock number such as "SBC 30" and the word "Elkee". Obscurely printed in small and virtually indistinguishable letters is the word "Japan".

PAR. 5. (1) Through the use of the expressions "An Elkee Corporation Product, Rochester, New York", and similar statements and representations in connection with said electrical tape and through the indiscriminate mingling of domestic and foreign goods in its advertising catalogs and the representation "Mfgr. Elkee Corp." in connection with said solderless service connectors, respondents have affirmatively represented that said products are manufactured in the United States.

(2) The obscure, indistinct markings which purport to reveal the country of origin of said products are wholly and completely inadequate to give to the public notice of the country of origin of said products.

When products of foreign origin are offered for sale to the public and are not marked so as to give notice of their foreign origin, the public understands and believes that they are of domestic origin.

(3) Through the use of the expression "An Elkee Corp. Product, Rochester, New York" in connection with said tape and through the use of the expression "Mfgr. Elkee Corp." in connection with said connectors, respondents represent that they are the manufacturers of said products.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(1) Said products are not manufactured in the United States. Said products are manufactured in Japan.

(2) Said markings are wholly and completely inadequate to advise or apprise purchasers of the fact that said products are manufactured in Japan and not in the United States.

(3) Respondents do not manufacture said products. Said Elkee Corporation is simply a convenient corporate device used by respondents to import foreign made goods which are then offered for sale and sold by respondents under the aforesaid trade name of Diamond Electric Company. Said tape is imported in bulk from Japan. It is wrapped and packaged by independent contractors in this country for respondents. Said solderless service connectors are wholly manufactured in Japan.

PAR. 7. By the aforesaid acts and practices, respondents place in the hands of retailers and dealers the means and instrumentalities

by and through which they may mislead the public as to the country or origin and the manufacturer of said products.

PAR. 8. A substantial portion of the purchasing public has a preference for articles of domestic manufacture or origin as distinguished from products of foreign origin, including the products sold and distributed by respondents.

PAR. 9. There is a preference on the part of purchasers to deal directly with the manufacturer of products in the belief that they receive, among other things, better prices and service.

PAR. 10. Respondents, in the course and conduct of their business, are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same kind and nature as those sold by respondents.

PAR. 11. 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 said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 12. The aforesaid acts and practices of rsepondents, 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. Terral A. Jordan, supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

On November 29, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that for the purpose of inducing the purchase of their electrical supplies and equipment, respondents had made certain false statements and misrepresentations with respect to the origin and manufacture of said products.

Counsel presented to the undersigned Hearing Examiner on January 27, 1961, an agreement dated January 17, 1961, between respond-

ents and counsel supporting the complaint providing for the entry without further notice of a cease and desist order. Said agreement has been duly approved by the Acting Director, the Associate Director and the Assistant Director of the Bureau of Litigation.

The Hearing Examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

2) Further procedural steps before the Hearing Examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of 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.

Having considered said agreement, including the proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding; the Hearing Examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent, Dialand Electric Sales Corporation, 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 1230 Lyell Avenue, in the City of Rochester, State of New York. Said Dialand Electric Sales Corporation also trades and does business under the name of Diamond Electric Company.

2. Respondent, Elkee Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is the same as that of the said Dialand Electric Sales Corporation.

3. Respondents, Elliott Landsman and Morris Diamond, are individuals and are officers of the said Dialand Electric Sales Corporation. Said individual respondents formulate, direct and control the acts and practices of each of the aforenamed corporate respondents. Their address is the same as that of the said Dialand Electric Sales Corporation.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents, Dialand Electric Sales Corporation, a corporation, trading and doing business under its own name or under the name of Diamond Electric Company, or under any other name, and its officers, and Elliott Landsman and Morris Diamond, individually and as officers of said Dialand Electric Sales Corporation, and Elkee Corporation, a corporation, and its officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of electrical tape or solderless service connectors or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or indirectly, in advertising or in labeling that products manufactured in Japan or any other foreign country are manufactured in the United States;

(2) Offering for sale or selling products which are, in whole or in substantially part, of foreign origin, without clearly and conspicuously disclosing on such products, and if the products are enclosed in a package or carton, on said package or carton, in such a manner that it will not be hidden or obliterated, the country of origin thereof;

(3) Representing, directly or indirectly, in any manner or by any means that respondents manufacture any product that is not manufactured in a factory owned, operated or controlled by them.

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 30th day