

IN THE MATTER OF
HYPO SURGICAL SUPPLY CORP. ET AL.

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

Docket 8382. Complaint, May 4, 1961—Decision, Sept. 15, 1961

Consent order requiring New York City distributors to cease selling without clear disclosure of foreign origin, hypodermic needles manufactured in Japan which, when imported, bore the word "JAPAN" but in many cases in too small and indistinct letters to constitute adequate notice, and in others concealed or obscured in the packaging or assembling.

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 Hypo Surgical Supply Corp., a corporation, and Augustus Hament, Alfred E. Rosenhirsch, Max Zisson and Melvin Wallick, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Hypo Surgical Supply Corp. 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 11 Mercer Street, New York, New York.

Respondents, Augustus Hament, Alfred E. Rosenhirsch, Max Zisson and Melvin Wallick 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 offering for sale, sale and distribution, among other things of hypodermic needles, primarily to distributors, jobbers and 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 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. The hypodermic needles, sold and distributed by respondents, are manufactured in and imported from a foreign country, Japan. Certain of these foreign hypodermic needles are sold and distributed, as originally packaged in Japan; certain others of these foreign hypodermic needles are sterilized and packaged in the United States before their sale and distribution by respondents. While in all instances these needles have imprinted thereon in very small letters, the word "JAPAN", in some instances the markings are so small and indistinct that they do not constitute adequate notice to the public that such needles are not made in the United States. In other instances said foreign hypodermic needles are packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin in which case there is not adequate notice to the public that such hypodermic needles are made in Japan.

PAR. 5. When products, including hypodermic needles, are not marked so as to disclose foreign origin or, if marked and the markings are concealed or otherwise not clearly legible, the purchasing public understands and believes such products to be of domestic origin. There is a preference on the part of a substantial portion of the purchasing public for products made in the United States over products made in Japan, including hypodermic needles.

PAR. 6. Respondents, by placing in the hands of others imported products which do not bear clear and distinct marks of foreign origin or which are packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin, provide means and instrumentalities whereby the purchasing public is misled or deceived as to the place of origin of such products.

PAR. 7. Respondents were and are in substantial competition, in commerce, with corporations, firms and individuals in the sale of hypodermic needles.

PAR. 8. The use by respondents of the aforesaid misleading and deceptive practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that their said hypodermic needles are of domestic origin and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 9. 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, 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, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Hypo Surgical Supply Corp. 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 11 Mercer Street, in the City of New York, State of New York.

Respondents Augustus Hament, Alfred E. Rosenhirsch, Max Zisson, and Melvin Wallick are officers of the corporate respondent. Their address 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, and the proceeding is in the public interest.

Complaint

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ORDER

It is ordered, That respondents Hypo Surgical Supply Corp., a corporation, and its officers, and Augustus Hament, Alfred E. Rosenhirsch, Max Zisson and Melvin Wallick, individually and as officers of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the offering for sale, sale or distribution of hypodermic needles or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any product without affirmatively and clearly disclosing on the product itself the country of origin thereof and, if any product should be packaged in a manner which would cause the mark identifying the country of origin to be not readily visible, without clearly disclosing the country of origin on the package or container thereof.

2. Placing in the hands of others any means or instrumentalities by or through which they may mislead the public as to any of the matters and things set out in paragraph one above.

It is further ordered, That the 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 this order.