

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 21st day of September 1961, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF
20TH CENTURY VARIETIES, INC., ET AL.

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

Docket 8437. Complaint, June 21, 1961—Decision, Sept. 21, 1961

Consent order requiring a toy distributor in Bronx, N.Y., to cease such practices as selling toy handcuffs and goggles manufactured in Japan on cards stating "Made in U.S.A.", etc., and concealing the marking "Japan" on the articles by the method of packaging; and to disclose clearly the foreign origin of other toys such as plastic binoculars and whistles, which bore the names "Hong Kong" and "Japan", but in very small, raised letters of the same color as the items so as to be almost completely indistinguishable.

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 20th Century Varieties, Inc., a corporation, and Benjamin Rothberg and Samuel Lambert, 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 20th Century Varieties, Inc., 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 located at 511 East 164th Street, Bronx, New York.

Respondents Benjamin Rothberg and Samuel Lambert are individuals and are officers of said 20th Century Varieties, Inc. Said individual respondents formulate, direct and control the acts and practices of the said corporate respondent. Their address is the same as that of the aforementioned 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 toys 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 toys, respondents have made certain statements and representations with respect to the origin of said toys. Typical and illustrative of such statements and representations are the following:

With respect to toy handcuffs the packaging reads:

Frontier Marshall Western Set 20th Century Novelty Casting Co., Inc., N.Y.
The Deputy Starring Henry Fonda as Marshall Simon Fry, 20th Century Made and Printed in U.S.A.

Said handcuffs are stapled to the card and the card is enclosed in a clear plasticlike wrapping which prevents the inspection of the handcuffs without destruction of the wrapping. On the underneath side of the handcuffs completely hidden from the view of the purchaser is the word "Japan" which is imprinted in letters so small and faint as to be virtually unreadable.

With respect to goggles, the card on which the goggles are mounted reads:

Jet Pilot 20th Century Novelty Casting Co., Inc., N.Y. Made in U.S.A.

The word "Japan" is imprinted on the reverse side of the goggles and can be read only by removing the goggles from the card to which they are attached.

With respect to other toys such as plastic binoculars and whistles, the names indicating the origin of the product such as "Hong Kong" or "Japan" are set forth in very small, raised plastic letters of the

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same color as the material from which the article is made so as to be almost completely indistinguishable and unreadable.

PAR. 5. (1) Through the use of the above quoted representations and others similar thereto but not specifically set out herein, 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, including those attached to various pieces of cardboard and packaged as hereinabove described as well as those which are not so packaged, are wholly and completely inadequate to give 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.

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 or Hong Kong or various other foreign countries.

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

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 of origin 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. 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. 10. 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 the 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. 11. 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. Terral A. Jordan for the Commission.

Gruber, Maurer & Gruber, by Mr. Irving M. Gruber, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated June 21, 1961, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On July 24, 1961, the respondents and their counsel entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and that the complaint may be used to construe the terms of the order. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that 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. The following jurisdictional findings are made and the following order issued.

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1. Respondent 20th Century Varieties, Inc., 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 511 East 164th Street, in the City of Bronx, State of New York.

Respondents Benjamin Rothberg and Samuel Lambert are individuals and are officers of said 20th Century Varieties, Inc. Said individual respondents formulate, direct and control the acts and practices of the said corporate respondent. Their address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents, 20th Century Varieties, Inc., a corporation, and its officers, and Benjamin Rothberg and Samuel Lambert, individually and as officers of said corporation, 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 toys 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 substantial 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 21st day of September 1961, 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.

Complaint

IN THE MATTER OF

WINKELMAN BROS. APPAREL, INC.

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

Docket 8439. Complaint, June 28, 1961—Decision, Sept. 21, 1961

Consent order requiring a Detroit furrier to cease violating the Fur Products Labeling Act by failing, on labels and invoices and in newspaper advertising, to show the true animal name of the fur in a fur product and to disclose when fur was dyed; failing, in labeling and advertising, to disclose the country of origin of imported furs; failing to show a qualified name or registered identification number on labels; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Winkelman Bros. Apparel, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Winkelman Bros. Apparel, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its office and principal place of business located at 25 Parsons Street, Detroit, Mich.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.