

Complaint

59 F.T.C.

IN THE MATTER OF

COMPTONE COMPANY, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(d) OF THE CLAYTON ACT

Docket 8377. Complaint, Apr. 25, 1961—Decision, Oct., 24, 1961

Consent order requiring New York City manufacturers and distributors of sunglasses to cease violating Sec. 5 of the Federal Trade Commission Act by advertising falsely in sales brochures, counter display cards, and other promotional material supplied to jobbers and retailers, that their lenses were "formed to 6 base convex shape", "Precision made to high optical standards", and "Guaranteed Safe Lenses"; and by failing to disclose clearly when lenses manufactured in Japan were contained in their sunglasses; and to cease violating Sec. 2(d) of the Clayton Act by paying certain of their customers, but not the latter's competitors, for services or facilities, such as an allowance of \$5,000 for advertising furnished by United Whelan Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that Comptone Company, Ltd., a corporation and Manuel R. Nadel and George Jacques, individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission Act and subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), 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 with respect thereto as follows:

COUNT I

Charging a violation of Section 5 of the aforesaid Federal Trade Commission Act:

PARAGRAPH 1. Respondent Comptone Company, Ltd., is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 1239 Broadway, New York, New York. Respondents Manuel R. Nadel and George Jacques are officers of the corporate respondent. These individuals formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set out. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for some time, engaged in the manufacture, assembling, sale and distribution of sunglasses.

In the course and conduct of their business, as aforesaid, respondents now cause, and for the last several years have caused, said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof, many of whom are located in various other states of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said sunglasses, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have made, and are making, deceptive and misleading statements with respect to their products. These statements are, and have been, made in sales brochures, counter display cards, and other promotional material supplied to jobbers, retailers and dealers and on labels affixed by respondents to such sunglasses prior to their sale and distribution, as aforesaid.

Among and typical, but not all inclusive, of such statements are the following:

Lenses formed to 6 base convex shape
Precision made to high optical standards
Guaranteed Safe Lenses

PAR. 4. Through the use of the foregoing statements and others similar thereto but not specifically set forth herein, respondents have represented and now represent, directly or by implication:

(a) That the lenses in their sunglasses designated as "6 base convex shape" have a 6 base curve. A "six base" lens is also known and described as one having a diopter curve of 6.

(b) That their sunglasses have been manufactured according to strict tolerances to have particular qualities which would be recognized or considered desirable in optical instruments by opticians or optometrists.

(c) That their sunglass lenses are unconditionally guaranteed.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(a) The sunglass lenses designated by respondents as having a "6 base convex shape" do not have a 6 base curve or a diopter curve of 6.

(b) The sunglasses described by respondents as "precision made to high optical standards" have not been manufactured according to strict tolerances to have particular qualities which would be recognized or considered desirable in optical instruments by opticians or optometrists.

(c) The sunglass lenses described by respondents as "guaranteed safe lenses" are not unconditionally guaranteed; the terms, conditions and extent to which said guarantee applies, and the manner in which

the guarantor will perform thereunder are not disclosed in respondents' advertising matter.

PAR. 6. Respondents also purchase sunglass lenses manufactured in Japan, which they insert into frames. In connection with the sale of said sunglasses having lenses of Japanese origin, respondents do not clearly and conspicuously disclose by markings or labels on the products that said sunglasses contain parts manufactured in Japan.

PAR. 7. Members of the American purchasing public believe that products which have a foreign origin are marked so as to disclose that fact. As a result the aforesaid practice of the respondents, as described in Paragraph Six, of failing to clearly and conspicuously disclose that said sunglass lenses are manufactured in Japan, has the capacity and tendency to create the mistaken and erroneous belief among purchasers and prospective purchasers that said sunglass lenses are of domestic origin. There is a preference on the part of a substantial number of the purchasing public for products manufactured in the United States over those manufactured in Japan, including sunglasses.

PAR. 8. Respondents by engaging in the acts and practices set out in Paragraphs Three and Six thereby provide means and instrumentalities to others whereby the purchasing public may be misled as to the matters set out in said Paragraphs.

PAR. 9. In the course and conduct of their business, respondents are in direct and substantial competition with corporations, firms and individuals engaged in the manufacture, sale and distribution of sunglasses in commerce.

PAR. 10. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and that all of their sunglasses are of domestic origin, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 11. The aforesaid acts and practices of the 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.

COUNT II

Charging a violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended, the Federal Trade Commission alleges:

PAR. 12. The allegations set forth in Paragraph One of Count I of this complaint are hereby incorporated by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 13. Respondents are now, and have been for some time, engaged in the assembling, sale and distribution of sunglasses.

In the course and conduct of its business, as aforesaid, respondents now cause, and for the last several years have caused said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof, many of whom are located in various other states of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said sunglasses, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

Said sunglasses are and were sold for use, consumption, or resale within the United States.

PAR. 14. In the course and conduct of its business in commerce, as aforesaid, respondents, during the period from on or about October 1, 1959, have paid or authorized payment of money, goods or other things of value to or for the benefit of one or more of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, offering for sale or sale of respondents' sunglasses and respondents have not made or offered to make such payments, allowances or consideration available on proportionally equal terms to all of its other customers competing with the customers so favored in the sale or distribution of said products.

PAR. 15. Illustrative of and included among the conduct alleged in Paragraph Fourteen, above, are the following acts and practices of the respondents:

During the year 1960 respondents contracted to pay and did pay United Whelan Corporation, Brooklyn, New York, \$5,000 as compensation or as an allowance for advertising or other services or facilities furnished by or through United Whelan Corporation in connection with its offering for sale or sale of products sold to it by respondents. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with United Whelan Corporation in the sale and distribution of respondents' products.

PAR. 16. The acts and practices of respondents, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. Charles D. Gerlinger for the Commission.

Mr. James Perkins Parker, of Washington, D.C., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The respondents in this case are Comptone Company, Ltd., a corporation organized and existing under the laws of the State of New York, and its officers, Manuel R. Nadel and George Jacques, all conducting their business at 1239 Broadway, in New York, New York. They were charged with deceptive practices involving the qualities and place of origin of the lenses of sunglasses sold and distributed by them in commerce contrary to the provisions of the Federal Trade Commission Act and with making preferential payments contrary to Section 2(d) of the Clayton Act, as amended, to some of the customers to whom they sold sunglasses.

The complaint was issued April 25, 1961, and, by order dated August 7, 1961, was amended to include within the allegation of non-disclosure of foreign origin the fact that such nondisclosure affected sales material as well as the actual commodity involved.

By and with the advice and consent of their attorney, respondents have entered into an agreement with counsel supporting the complaint, which agreement contains a proposed consent order to cease and desist, and disposes of all the issues involved in this proceeding.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as in the complaint, as amended, alleged.

By the terms of the agreement, the respondents admit all the jurisdictional facts alleged in the complaint, as amended, and agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By the agreement, the respondents expressly waive any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondents further agree that the order to cease and desist, to be issued in accordance with the agreement, shall have the same force and effect as if made after a full hearing.

It is further provided in said agreement that the same, together with the complaint, as amended, shall constitute the entire record herein; that the complaint, as amended, herein may be used in construing the

terms of the order to be issued pursuant to said agreement; and that such 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 the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Comptone Company, Ltd., a corporation, and its officers, and Manuel R. Nadel and George Jacques, 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 offering for sale, sale or distribution of sunglasses or any other 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 lenses have a given diopter curve unless such is the fact, provided, however, that in the case of ground and polished sunglass lenses a tolerance not to exceed minus or plus $\frac{1}{16}$ th diopters in any meridian and a difference in power between any two meridians not to exceed $\frac{1}{16}$ th diopter and a prismatic effect not to exceed $\frac{1}{8}$ th diopter shall be allowed;

2. Representing, directly or by implication, that any product sold by respondents is precision made or made to meet high optical standards or is otherwise manufactured in such a way as to have particular qualities which would be recognized or considered desirable in optical instruments by opticians or optometrists, except when such is a fact;

3. Representing, directly or by implication, that any product sold by respondents is guaranteed unless the terms and conditions of such guarantee and the manner and form in which the guarantor will perform are clearly and conspicuously set forth;

4. Offering for sale or selling any product the whole or any substantial part of which was made in Japan, or any other foreign country, without clearly and conspicuously disclosing on such product or on sales or display cards in immediate connection therewith and if such product is enclosed in a package or container, on the package or

container in such a manner that it will not be hidden or readily obliterated, the country of origin of the product or part thereof.

5. Placing in the hands of others the means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning the merchandise in the respects set out in Paragraph 4 above.

It is further ordered, That respondent Comptone Company, Ltd., a corporation, and its officers, and Manuel R. Nadel and George Jacques, 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 offering for sale, sale or distribution of sunglasses or any other product, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from paying, or contracting to pay to or for the benefit of any customer, an advertising allowance, display allowance or anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of respondents' products unless such payment or consideration is offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

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 24th day of October, 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.

IN THE MATTER OF CENTRAL CONSTRUCTION COMPANY ET AL.

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