

B. Failing to set forth the item number or mark assigned to a fur product.

It is further ordered, That the respondent herein 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 this order.

IN THE MATTER OF
HOUSEHOLD MFG. CO. ET AL.

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

Docket 8340. Complaint, Mar. 16, 1961—Decision, Apr. 19, 1962

Order requiring Los Angeles importers of household utensils and cutlery manufactured in Japan, some of which they assembled with parts made in the United States, to cease selling such products with the word "Japan" imprinted thereon in such small letters and so obscured in assembling or when affixed to display cards as to fail to reveal their Japanese origin to purchasers.

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 Household Mfg. Co., a corporation, and Melville Dorfman and Harry E. Eisenrod, 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 Household Mfg. Co. is a corporation organized and existing under the laws of the State of California with its office and principal place of business located at 1844 East 22d Street, Los Angeles, Calif.

Complaint

60 F.T.C.

Respondents Melville Dorfman and Harry E. Eisenrod are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their business address is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and sale of kitchen utensils, cutlery and other merchandise to wholesalers, jobbers, and retailers for resale to the public. Respondents also sell certain imported merchandise.

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 California to purchasers thereof located in various other states of the United States and maintain, and at all time 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. Certain stainless steel kitchen utensils and cutlery sold and distributed by respondents are manufactured in and imported from Japan. While certain of respondents' said products bear markings indicating manufacture in Japan, the markings are so small and indistinct that they do not constitute adequate notice to the public that such merchandise is not made in the United States. In other instances said merchandise is assembled or packaged so as to conceal or obscure the mark of foreign origin, in which case there is no clear and conspicuous disclosure to the public that such merchandise is not made in the United States.

PAR. 5. There is among the members of the purchasing public a decided preference for products of domestic manufacture, including stainless steel kitchen utensils and cutlery, and when merchandise, including stainless steel kitchen utensils and cutlery, is not marked so as to disclose foreign origin, or if marked and the markings are concealed, indistinct, or otherwise not clearly legible, the purchasing public understands and believes such products to be of domestic origin.

PAR. 6. Respondents, by placing in the hands of others imported products which do not bear clear and distinct marks of foreign origin, provide means and instrumentalities whereby the purchasing public is misled as to the place of origin of such products.

PAR. 7. Respondents were and are in substantial competition with corporations, firms, and individuals likewise engaged in the sale of kitchen utensils and cutlery in commerce.

PAR. 8. The use by respondents of the aforesaid misleading and deceptive practices and the failure to clearly and concisely disclose the foreign origin of their merchandise has had, and now has, the

capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such merchandise is of domestic origin and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade 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.

Mr. John J. McNally for the Commission.

Lyon and Lyon, by *Mr. Frederick W. Lyon*, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding has been brought under the Federal Trade Commission Act. It is charged that respondents have been, and now are, engaged, among other things, in the importation of certain household utensils and cutlery manufactured in Japan, which is so minutely or indistinctly marked as of Japanese origin, either on the articles themselves or on their packaging, that the American public is misled into believing that such articles are made in the United States, the decided preference of such public being for domestically manufactured products of that type.

The complaint herein issued March 16, 1961, and after service respondents filed their joint answer on May 26, 1961. On June 15, 1961, the case was assigned to the undersigned hearing examiner for trial and initial decision. The entire case was heard in Los Angeles, California, on June 26 and 27, and November 20 and 21, 1961. On said last date all parties rested, and counsel presented oral arguments. Satisfactory time was given to all parties in which to file their proposed findings, conclusions and order, and counsel supporting the complaint filed his on January 4, 1962, but respondents filed none within the time granted. The proposed findings and conclusions filed by counsel supporting the complaint are herein adopted, and an appropriate cease-and-desist order against all respondents is hereinafter issued.

The answer of respondents admits the complaint's allegations as to corporate capacity and the control of the corporate respondent's

Initial Decision

60 F.T.C.

policies by its officers, and their operations in interstate commerce are admitted, which constitutes evidence; but all other allegations of the complaint are denied. The evidence in support of such disputed allegations consists of some of the testimony of respondent Melville Dorfman, the testimony of the Commission's investigator, attorney examiner John Ohanian, four clerks from the household-goods departments of Los Angeles department stores, and two Los Angeles area housewives, together with certain stipulations and admissions of record, and a number of exhibits received which were offered either by counsel supporting the complaint or by respondents, some of which are physical and some documentary. Among the stipulations is one that two other housewives who had been subpoenaed need not testify, and that their testimony, in substance, would be the same as that of the two housewives who did testify. It is unnecessary to recite the evidence in detail, but some reference to pertinent evidence is briefly made where deemed essential to clarity of decision.

In finding the facts in this proceeding upon the whole record, as required by law, the hearing examiner has given full, careful and impartial consideration to all the reliable, probative and substantial evidence, and to all the fair and reasonable inferences to be drawn therefrom. From such consideration of the whole record, and from his personal observation of the conduct and demeanor of the witnesses, the hearing examiner makes the following

FINDINGS OF FACT

Respondent Household Mfg. Co. is a corporation organized and existing under the laws of the State of California, with its office and principal place of business located at 1844 East 22nd Street, Los Angeles, Calif. Respondents Melville Dorfman and Harry E. Eisenrod are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

Respondents are now, and for some time last past have been, engaged in the manufacture and sale of kitchen utensils, cutlery and other merchandise to wholesalers, jobbers and retailers for resale to the public. Respondents also sell certain imported merchandise.

In the course and conduct of their business respondents now cause, and for some time last past have caused, their products, including those of Japanese manufacture, when sold, to be shipped from their place of business in the State of California to distributors thereof located in various other states of the United States, 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.

Respondents were and are in substantial competition with corporations, firms, and individuals likewise engaged in the sale of Kitchen utensils and cutlery in commerce.

Certain stainless steel kitchen utensils and cutlery sold and distributed by respondents have been and now are manufactured in and imported from Japan in substantial quantities. In some instances, parts of certain of such articles are manufactured in Japan and then assembled by respondents in the United States, which articles, when so assembled, may consist to some extent of parts made in this country, as clearly demonstrated by Commission's exhibit 17, a knife, the blade of which admittedly was made in Japan (but not so indicated thereon), attached to a wooden handle made in the United States, by a rivet also made in the United States. While certain of respondents' said products bear markings indicating their manufacture in Japan, such markings are so small and indistinct that they do not constitute adequate notice to the public that such merchandise is not made in the United States. In other instances, said merchandise is assembled or packaged so as to conceal or obscure the mark of foreign origin, in which case there is no clear and conspicuous disclosure to the public that such merchandise is not made in the United States.

A number of examples of such imported Japanese-made products were received in evidence as various Commission's exhibits, all of which have been carefully inspected, both during the trial and since, by the hearing examiner. They are:

No. 1, a can opener on a display card with the word "Japan" on the back of the card, and "Japan" so obscurely printed in small letters on the underlip as to be wholly unobservable when affixed to the card, and extremely difficult to read, even when removed from the card, the context of which reads "Household's Easy Roll Can Opener", etc., and presents no statement that the article is made in Japan;

No. 6, a grapefruit knife (the importing of which is now discontinued by respondents), so affixed to a display card as to conceal the practically illegible "Japan" on the covered side of the blade, but having "Household Stainless Steel" imprinted on the face-up side thereof, and attached to a display card which reads "Household Contoured Grape Fruit Knife", etc., and presents no statement or indication that the article is made in Japan, although "Japan" is lightly stamped on the back of said card;

No. 9, a paring knife, so affixed to a display card as to conceal entirely an obscure and very minute, practically illegible "Japan" on the covered side of the blade, the display card reading "Household Serrated Paring Knife", etc., but presenting no statement or indication that the article is made in Japan;

No. 11, a set of stainless steel measuring spoons, all so affixed to a display card, neither spoons nor card bearing any statement or indication adequate to disclose that the articles are made in Japan, although so indicated by "Japan" in very small letters on the back of the spoons, and so stamped in somewhat larger letters on the back of the card, where it does not show to the buying public;

No. 14, a "Perma Edge" utility knife, with a serrated cutting edge, sold either upon a case-like display card or loosely out of a basket, and bearing on the exposed blade, when affixed to such a card, the words "Household Surgical Stainless", with "Household's Perma Edge Utility Knife", etc., disclosed on the card, but no reference to Japanese manufacture, the only indication thereof being "Japan" in very small letters near the handle on the covered side of the blade;

No. 17, a large knife with a smooth-edged blade, set forth in a case-like display card similar to that used for *No. 14*, and having the same legend on the two sides of the blade, the word "Japan", in small letters, not being visible, such knives being assembled in the United States, as already stated;

No. 20, an eggbeater with a small, obscurely-lettered word "Japan", on the underside or inner surface of two of the revolving blades where only the most careful search can reveal its presence, although the word "Household" is clearly imprinted on the gripping handle;

No. 22, a contoured grapefruit knife bearing "Household Stainless Steel" on the exposed side of the blade as attached and displayed in a card container similar to that used for *Nos. 6 and 9*, *No. 22* having "Japan" in almost indecipherable, very tiny letters on the hidden side of the blade; and

No. 23, a joined wooden block in which several kitchen knives may be sheathed, and evidently are displayed to the public, with the words "Block Only Japan" so small and so lightly imprinted upon one end of the block as to be unreadable except in bright light when the block is held at certain angles.

These facts, as found by the hearing examiner upon his own inspection, are confirmed by others. Inspection of these said exhibits by some of the lay witness during their testimony reveals that the packaging and obscure or concealed labeling of such items would not reveal to the ordinarily careful buyer the Japanese origin of the articles. Even

respondents' counsel, during oral argument, definitely conceded that the markings on such articles, or their display-card placements, were unclear to or concealed from the buying public, although urging that respondents were currently attaching tags to or otherwise changing some articles to remove any doubts as to their foreign origin.

The evidence clearly and substantially establishes that the use by respondents of the aforesaid misleading and deceptive practices and the failure to clearly and concisely disclose the foreign origin of their merchandise has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such merchandise is of domestic origin, and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors, and substantial injury has thereby been done to competition in commerce.

The testimony of the four salesladies from the household goods departments of several Los Angeles department stores was to the effect that a large segment of the buying public which they encountered preferred American-made products of that character over those made in Japan, and that many of their customers refuse to buy Japanese-made products, probably due to prejudices arising from World War II, or for other reasons. Some are likewise opposed to products coming from other lands. All four of these witnesses testified that they waited upon substantial numbers of customers each trading day, ranging among the four, from a low of thirty to a high of one hundred customers each day; that numerous customers discuss the origin of goods and preferences for American-made goods over Japanese-made goods, and of those customers discussing such subjects, anywhere from a majority up to all of them have preference for American or other national household articles over those made in Japan. It was also testified by at least one witness that in the absence of clear disclosure of the country of origin, buyers naturally assume that the articles are made in the United States. Similar testimony as to their own preference for domestically-manufactured goods, and their own assumption that such goods are made in this country unless clearly indicated otherwise, was given by the two witnesses who were housewives.

It is therefore found that there is among the members of the purchasing public a decided preference for products of domestic manufacture, including stainless steel and other kitchen utensils and cutlery, and when such merchandise is not marked at all so as to disclose foreign

origin, or if marked and the markings are concealed, indistinct, or otherwise not clearly legible, the purchasing public understands and believes such products to be of domestic origin.

In this case the evidence discloses that respondents not only import Japanese-made goods, but also assemble in the United States some articles which contain parts made in Japan and other parts made domestically. Such articles are not sold directly to the public by respondents, but are distributed by them to various manufacturers' agents throughout the United States, who in turn sell such articles to retail stores for sale to the public. Therefore respondents, by such distribution to others of such imported products which do not bear clear and distinct marks of foreign origin, provide means and instrumentalities whereby the purchasing public is misled as to the place of origin of such products.

In oral argument respondents' counsel urged several defensive matters which have been duly considered. While certain lines have been discontinued due to business exigencies, all of respondents' imported lines certainly have not been discontinued, and the unlawful practices charged and established have been continued by respondents, and still continue. There is no absolute promise by respondents to abate all such practices in the future, and all inferences definitely are to the contrary. There is in no sense any defense of abandonment established, and while respondents presented certain allegedly imported products of Japanese origin, of other importers and competitors, which were defectively marked, this likewise constitutes no defense. Even the alleged approval by United States Customs of the markings on the articles in question, which were deemed by it adequate to warrant their import into the United States under the Custom Laws, is no bar to this proceeding, as decided in *L. Heller & Sons, Inc. v. FTC* (C.A. 7, 1951), 191 F. 2d 954, 956. Of course it is the continuing duty of the Commission to protect the ignorant, careless or unsuspecting members of the public from misrepresentations; hence, counsel's argument, in substance, that it is the buyer's duty to inspect the goods carefully before purchasing, is not apt or controlling. This principle of public protection is particularly true when goods, sold on display cards which themselves mislead, are so fastened that even the reasonably careful buyer cannot in any event see the concealed, indistinct markings indicating the article's foreign origin until after he has made his purchase, torn away the display card or wrapper, and made a minute, detailed examination of the article.

While counsel supporting the complaint now proposes an order differing slightly from that proposed by him during the oral argument,

respondents' objections thereto, it is inferred, would be substantially the same. Respondents contend that any such order would be unfair, unwarranted, burdensome, and utterly impossible for respondents to comply with in the conduct of their business. While similar orders have been issued by the Commission in recent cases, there seems to have been some variance in the forms adopted. The one now tendered by counsel supporting the complaint is substantially in the form of that drafted by the Commission itself in Docket 8382, *Hypo Surgical Supply Corp., etc., et al.*, and issued September 15, 1961. It does not appear that respondents are unable to comply with it by controlling their foreign manufacturers' methods of indicating the source of the goods, and in the packaging of such goods respondents can certainly make plain the foreign origin of the goods so that even "he who runs may read." The said proposed order, which is hereinafter issued, is appropriate to protect the public interest.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, and there is specific and substantial public interest in this proceeding.

2. The aforesaid acts and practices of respondents, as herein found, 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.

It is ordered, That respondents Household Mfg. Co., a corporation, and its officers, and Melville Dorfman and Harry E. Eisenrod, individually and as officers of the 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 kitchen utensils, cutlery 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 manufactured or assembled in whole or in part in Japan or in any other foreign country 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;

Decision and Order

60 F.T.C.

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 1, above.

ORDER DENYING PETITION FOR REVIEW, DECISION OF THE COMMISSION AND
ORDER TO FILE REPORT OF COMPLIANCE

The initial decision of the hearing examiner having been filed in this matter on February 16, 1962, and respondents, on March 15, 1962, having filed a petition for review of said initial decision pursuant to § 4.20 of the Commission's Rules of Practice; and

The Commission having examined the petition and the entire record and being of the opinion that a determination of the questions presented is not necessary nor appropriate under the law to insure a just and proper disposition of the proceeding and to protect the rights of the parties; and

The Commission having determined that in order to conform more clearly to the hearing examiner's findings of fact, paragraph 1 of the order to cease and desist contained in the initial decision should be modified by inserting the words "front or face of the" immediately preceding the word "package" in the eighth line of said paragraph; and

The Commission having also determined that as so modified, said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That said petition for review, filed March 15, 1962, be, and it hereby is, denied.

It is further ordered, That paragraph 1 of the order to cease and desist contained in the initial decision be, and it hereby is, modified by inserting the words "front or face of the" immediately preceding the word "package" in said paragraph.

It is further ordered, That the initial decision of the hearing examiner, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Household Mfg. Co., Melville Dorfman and Harry E. Eisenrod, 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 contained in the initial decision as modified herein.

Complaint

IN THE MATTER OF

IRVING KAUFMAN TRADING AS STYLE SCARF CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-122. Complaint, Apr. 19, 1962—Decision, Apr. 19, 1962

Consent order requiring an importer in New York City to cease violating the Flammable Fabrics Act by importing and selling in commerce silk scarves and fabric which were so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Irving Kaufman, an individual, trading under his own name and as Style Scarf Co., hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics 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 Irving Kaufman, whose address is 44-55 Kisenia Boulevard, Flushing, N.Y., is an individual trading under his own name and as Style Scarf Co. Respondent's former office and principal place of business was located at 145 West 40th Street, New York, N.Y.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, in commerce; has imported into the United States; and has introduced, delivered for introduction, transported and caused to be transported, in commerce; and has transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were silk scarfs.

PAR. 3. Respondent, subsequent to July 1 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, articles