

Complaint

62 F.T.C.

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.

IN THE MATTER OF

HARKER CHINA COMPANY ET AL.

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

Docket C-506. Complaint, June 17, 1963—Decision, June 17, 1963

Consent order requiring East Liverpool, Ohio, distributors of dinnerware to jobbers and retailers for resale, to cease labeling and advertising their said products as "Harkerware STONE CHINA" and "STONE CHINA", when in fact the dinnerware was not vitreous and could not be accurately referred to as china.

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 Harker China Company, a corporation, and David G. Boyce, John M. Pinney, Francis H. Lang and Robert E. Boyce, 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 Harker China Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of East Liverpool, State of Ohio.

Respondents David G. Boyce, John M. Pinney, Francis H. Lang, and Robert E. Boyce 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 advertising, offering for sale, sale and distribution of dinnerware to 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 said products, when sold, to be shipped from their place of business in the State of Ohio 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. Respondents, in the course and conduct of their aforesaid business, and for the purpose of describing, and to induce the purchase of certain of their dinnerware products, have labeled said dinnerware as "Harkerware STONE CHINA" and have designated, referred to and represented their said dinnerware products as "Harkerware STONE CHINA" or "STONE CHINA" in magazine advertisements, brochures and illustrations, thereby representing, directly or by implication, by use of the word "china" that said dinnerware products are vitreous.

PAR. 5. In truth and in fact, respondents' "Harkerware STONE CHINA" or "STONE CHINA" products are not vitreous and cannot be accurately referred to as china. Therefore, the representations referred to in Paragraph 4 were and are false, misleading and deceptive.

PAR. 6. By the aforesaid practices, respondents place in the hands of others means and instrumentalities by and through which they may mislead the public as to the characteristics of their said dinnerware.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 8. 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.

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

62 F.T.C.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Harker China Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located in the city of East Liverpool, State of Ohio.

Respondents David G. Boyce, John M. Pinney, Francis H. Lang and Robert E. Boyce are officers of said corporation and their address is the same as that of said corporation.

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.

ORDER

It is ordered, That respondents Harker China Company, a corporation, and its officers, and David G. Boyce, John M. Pinney, Francis H. Lang and Robert E. Boyce, 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 ceramic dinnerware or of any other ceramic products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "china", or any other word of similar import or meaning, alone or in combination with any other word or

words, as a product name for any ceramic product which is not in fact vitreous or representing in any other manner that any product is china when such product is not vitreous.

2. Misrepresenting in any manner the vitrification of any of their products.

3. Furnishing or otherwise placing in the hands of others means and instrumentalities by and through which they may mislead the public as to any of the matters and things hereinabove prohibited.

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.