

and form in which they have complied with this order.

IN THE MATTER OF
QUALITONE INDUSTRIES, INC., ET AL.

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

Docket C-571. Complaint, Sept. 4, 1963—Decision, Sept. 4, 1963

Consent order requiring New York City distributors of phonograph needles,
record brushes and phonograph accessories to wholesalers and jobbers,
to cease selling phonograph needles with Japanese and Swiss components

780-018-69—36

Complaint

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with no disclosure of such foreign origin and with the words "Printed in U.S.A.", etc., on the individual packages and on counter display cards; packaging imported clip-on record brushes in such manner that the word "Japan" stamped into the metal was hidden until the brush was removed and attaching them for sale to counter display cards bearing the words "Printed and Made in U.S.A."; and using such false statements as "Karns 'Eternal' Diamond Stylus", guaranteed forever", etc., on containers of styli and in advertising, and the words "sapphire" or "jewel" to describe synthetic tips of phonograph needles on containers and on counter display cards.

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 Qualitone Industries, Inc., a corporation, and Saul J. Karns, Samuel Karns and Dorothy Karns, 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 Qualitone Industries, Inc., 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 102 Columbus Avenue in the city of Tuckahoe, State of New York.

Respondents Saul J. Karns, Samuel Karns and Dorothy Karns 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 of phonograph needles, record brushes and phonograph accessories to wholesalers, distributors and jobbers for ultimate resale to the purchasing 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, respondents sell to said wholesalers, distributors and jobbers phonograph needles which consist in whole or in substantial part, of components which were manufactured in and imported from Japan or Switzerland. When offered for sale or sold by respondents, said phonograph needles do not bear disclosure showing they are in whole or in substantial part of foreign origin. Respondents individually package the said phonograph needles and on said packages there appear the words "Qualitone Industries Inc., Tuckahoe, N. Y." and "Printed in the U.S.A." In addition to the packages enclosing said needles, respondents furnish counter display cards on which appear the words "Printed and Made in U.S.A." or "Printed in U.S.A."

PAR. 5. In the course and conduct of their business respondents sell to wholesalers, distributors and jobbers clip-on record brushes which are manufactured in and imported from Japan. Each said brush has the word "Japan" stamped into the metal on the back of the brush arm, but respondents individually package said brushes and mount them on a counter display card in such a manner that the word "Japan" is hidden and is not readily apparent unless the brush is removed from its package or unless the package is disassembled by the purchaser. The counter display cards to which the clip-on record brush packages are attached have the words "Printed and Made in U.S.A." imprinted thereon.

PAR. 6. The use of the aforesaid quoted words, statements and representations of origin appearing on respondents' packaging and counter display cards, hereinabove described in Paragraphs 4 and 5, tends to lead the public to believe that the said merchandise is of domestic origin.

PAR. 7. In the absence of an adequate disclosure that a product, including phonograph needles and clip-on record brushes, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country of origin of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 8. Through the use of such statements as "Karns 'Eternal' Diamond Stylus", "guaranteed forever" and "Guaranteed FOREVER Even Against Wear" in or on the containers in which said styli are offered for sale to the purchasing public and in advertising,

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respondents have represented that the said diamond styli are of such superior quality and durability that they will last and continue to reproduce with the same degree of fidelity and brilliance forever, without the necessity of repair, adjustment or replacement.

PAR. 9. In truth and in fact, respondents' said diamond styli are not of such superior quality and durability that they will last or continue to reproduce with the same degree of fidelity and brilliance forever, without the necessity of repair, adjustment or replacement. Therefore, the statements and representations referred to in Paragraph 8 are false, misleading and deceptive.

PAR. 10. In the course and conduct of their business as aforesaid, respondents have used the words "sapphire" or "jewel" to describe the points or tips of certain of their phonograph needles. These representations were made in catalogs, on counter display cards, on the packages and containers in which said needles are offered for sale to the public, and used in connection with the sale of respondents' products. Respondents have thereby represented that said phonograph needles have tips or points made of natural sapphires or jewels.

PAR. 11. In truth and in fact, the said needles do not have points or tips made of natural sapphires or jewels; but said needles have points or tips made of synthetic materials. Therefore, the statements and representations referred to in Paragraph 10 are false, misleading and deceptive.

PAR. 12. By the aforesaid acts and practices, respondents place in the hands of jobbers, retailers and dealers, the means and instrumentalities by and through which they may mislead the public as to the country of origin of the said products and as to the composition, durability and other qualities of their phonograph needles.

PAR. 13. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of phonograph needles, record brushes and other phonograph accessories of the same kind and nature as those sold by respondents.

PAR. 14. The use by the 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 products are of domestic origin and 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. 15. 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 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

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 Qualitone Industries, Inc., is a corporation organized, 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 102 Columbus Avenue, in the city of Tuckahoe, State of New York.

Respondents Saul J. Karns, Samuel Karns and Dorothy Karns 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

I.

It is ordered, That respondents Qualitone Industries, Inc., a corporation, and its officers, and Saul J. Karns, Samuel Karns and Dor-

othy Karns, 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 phonograph needles, record brushes, phonograph accessories or other related products 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 or by any other means that products manufactured in Japan, Switzerland or any other foreign country are manufactured in the United States.

2. Offering for sale or selling the aforesaid products which are substantially, or which contain a substantial part or parts, of foreign origin or fabrication without affirmatively disclosing the country of origin or fabrication thereof on the products themselves, by marking or stamping on an exposed surface, or on a label or tag affixed thereto, of such degree of permanency as to remain thereon until consummation of consumer sales of the products, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the products.

3. Offering for sale, selling or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

4. Using the words "Eternal" or "guaranteed forever" or "guaranteed forever even against wear", or any other word or words of similar import, alone or in conjunction with any other word or words to designate, describe or refer to respondents' diamond stylus; or misrepresenting in any manner the useful life of said product.

5. Placing in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out in Section I herein.

II.

It is further ordered, That respondents Qualitone Industries, Inc., a corporation, and its officers, and Samuel Karns and Dorothy Karns, 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 phonograph needles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "sapphire" or "jewel" or any other word or words denoting precious stones, in designating or describing the points or tips of phonograph needles made of synthetic material of the kind so designated, without clearly stating in immediate connection with such word or words, that such points or tips are synthetic.

2. Placing in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out in Section II herein.

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.

By the Commission, Commissioner Elman not participating.