

hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents named in the order to cease and desist shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

By the Commission, Commissioner Anderson not participating.

IN THE MATTER OF
WINDSOR PEN CORPORATION ET AL.

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

Docket 8521. Complaint, July 20, 1962—Decision, Jan. 28, 1964

Order requiring a Brooklyn, N. Y., distributor of pen and desk sets to jobbers and distributors, to cease misrepresenting its products as domestic when they contain parts made in Japan, by such phrase as "Made in U.S.A.," and conspicuously disclose the country of foreign origin on the product, package or display card.

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 Windsor Pen Corporation, a corporation, and Morris Fink, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Windsor Pen Corporation 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 at 88-3rd Avenue, Brooklyn, New York. Respondent Morris Fink is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respond-

ent, including the acts and practices hereinafter set forth. His 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 and sale of pen and desk sets, consisting of pens, staplers, staples and telephone indexes, attached to paper cards, to jobbers and retailers.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers located in other States of the United States, and maintain and, at all times mentioned herein, have maintained, a substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The pen and desk sets sold by respondents consist of two principal items, one being known as "Pen and Stapler Set" and one as a "5-Piece Desk Set and Telephone Index". The first named set consists of a small metal stapler, a box of staples and three pens, attached to a paper card by individual cellophane covers. The stapler and staples are imported from Japan, the pens being of domestic origin. The word "Japan" is contained in small letters on one side of the stapler but, as packaged, this mark is not readily apparent to a casual purchaser. The box of staples bears no visible mark of foreign origin. The card itself contains the words "Windsor Pen Corp., Made in U.S.A." The second named set consists of a penholder, four pens and a telephone index. The penholder and pens are of domestic manufacture but the telephone index is made in Japan. This index bears the word "Japan" on the bottom but is attached to the card in such a manner that this mark is hidden from view. The card itself contains the words "Windsor Pen Corp., Printed in U.S.A.".

PAR. 5. The practice of respondents in placing the words "Made in U.S.A." and "Printed in U.S.A." on the cards, as aforesaid, has had and now has the tendency and capacity to mislead and deceive purchasers, including members of the consuming public, into the false and erroneous belief that said pen and desk sets are wholly of domestic origin.

PAR. 6. In truth and in fact, the said pen and desk sets are not wholly of domestic origin but in fact contain substantial items made in Japan. The aforesaid representations are therefore false, misleading and deceptive.

PAR. 7. In the absence of an adequate disclosure that a product, including pen and desk sets, 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. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, including the failure to disclose the foreign origin of substantial parts of said merchandise, as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

PAR. 9. In the conduct of its business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by the respondents.

PAR. 10. 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(a)(1) of the Federal Trade Commission Act.

Mr. Anthony J. Kennedy, Jr., and Mr. James A. Ryan for the Commission.

Mr. Martin J. Forgang, New York, N.Y., for the respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

APRIL 10, 1963

By complaint issued July 20, 1962, the Federal Trade Commission charged Windsor Pen Corporation, a New York corporation, and Morris Fink, individually and as an officer of said corporation, with violation of the Federal Trade Commission Act resulting from their sale and distribution of pen and desk sets, consisting of pens, staplers, staples, and telephone indexes, attached to paper cards, in commerce without disclosing that said pen and desk sets are not wholly of domestic origin but in fact contain substantial items made in Japan.

On November 30, 1962, a stipulation¹ was executed by the respondents and counsel for all parties, setting forth certain facts and waiving hearing. Argument was reserved on the scope of the cease and desist order to be entered. Proposed findings and order were submitted by both parties and on January 22, 1963, oral argument was allowed thereon.

The hearing examiner has considered the proposed findings of fact and conclusions submitted by counsel representing the parties, and all findings of fact and conclusions of law not hereinafter specifically found or concluded are herewith rejected. The hearing examiner having considered the entire record makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS OF FACT

1. Respondent Windsor Pen Corporation 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 at 88-3rd Avenue, Brooklyn, New York. Respondent Morris Fink is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the offering for sale and sale of pen and desk sets, consisting of pens, staplers, staples, and telephone indexes, attached to paper cards, to jobbers and retailers.

3. In the course and conduct of their business, respondents now cause and for some time last past have caused said merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers located in other States of the United States, and maintain and, at all times mentioned herein, have maintained a substantial course of trade in said merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act.

4. The pen and desk sets sold by respondents consist of two principal items, one being known as "Pen and Stapler Set" and one as a "5-Piece Desk Set and Telephone Index." The first-named set consists of a small metal stapler, a box of staples, and three pens attached to a paper card by individual cellophane covers. The stapler and staples are imported from Japan, the pens being of domestic origin. The word "Japan" is contained in small letters on one side of the stapler but, as packaged, this mark is not readily

¹ CX 3.

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apparent to a casual purchaser. The box of staples bears no visible mark of foreign origin. The card itself contains the words "Windsor Pen Corp., Made in U.S.A." The second-named set consists of a penholder, four pens and a telephone index. The penholder and pens are of domestic manufacture but the telephone index is made in Japan. This index bears the word "Japan" on the bottom but is attached to the card in such a manner that this mark is hidden from view. The card itself contains the words "Windsor Pen Corp., Printed in U.S.A."

5. The practice of respondents in placing the words "Made in U.S.A." and "Printed in U.S.A." on the cards, as aforesaid, has had and now has the tendency and capacity to mislead and deceive purchasers, including members of the consuming public, into the false and erroneous belief that said pen and desk sets are wholly of domestic origin.

6. In truth and in fact, the said pen and desk sets are not wholly of domestic origin but in fact contain substantial items made in Japan. The aforesaid representations are therefore false, misleading, and deceptive.

7. In the absence of an adequate disclosure that a product, including pen and desk sets, 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.

8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, including the failure to disclose the foreign origin of substantial parts of said merchandise, as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

9. In the conduct of respondents' business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms, and individuals in the sale of merchandise of the same general kind and nature as that sold by the respondents.

CONCLUSIONS

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(a)(1) of the Federal Trade Commission Act.

The only matter to be determined by the examiner is the scope of the order to be issued. Counsel supporting the complaint recommends an order tailored to the scope of the order in the matter of *Manco Watch Strap Co., Inc., et al.*, Docket No. 7785, as amended July 26, 1962 [61 F.T.C. 298]. However, counsel for the respondents argues that an order such as that issued in *Manco* would be unnecessarily broad, and under the circumstances of their business, punitive in nature. The primary argument is premised upon the fact that respondents might have to dispose of a large number of display cards that have already been printed with the words "Windsor Pen Corp., Made in U.S.A." and "Windsor Pen Corp., Printed in U.S.A." It is the contention of the respondents that to dispose of these display cards would be a great loss to the company, and that if they had the country of origin stamped on the side of the stapler and on the lever of the telephone index, or the foreign origin of any other product stamped on the product so that it could be seen clearly, this would be sufficient notice to the purchasing public of the fact that these items were of foreign origin and that, therefore, they would not be deceiving the public even though the above-quoted words were printed on the display card to which the items were affixed.

The examiner is not impressed by the argument of the respondents because, in effect, the respondents on the one hand admit a violation of the act and now merely seek to use a scheme or device which would, in effect, still be a deception of the purchasing public. The most impressive part, of what respondents' counsel admits is a "merchandising gimmick," is the display card to which the items are affixed, and this respondents seek to continue using, while attempting in an evasive manner to comply with the law as it has been interpreted by the Commission. The words "Windsor Pen Corp., Made in U.S.A." and "Windsor Pen Corp., Printed in U.S.A." have been used by the respondents for but one purpose and that is to deceive the purchasing public, and this practice must be stopped.

Considering the conclusions reached by the Commission in the matters of *Manco Watch Strap Co., Inc., et al.*, Docket No. 7785 [61 F.T.C. 298], *Baldwin Bracelet Corp. et al.*, Docket No. 8316

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[61 F.T.C. 1345], and *Rieser Company, Inc., et al.*, Docket No. 8471 [61 F.T.C. 1378], the examiner is of the opinion that the order recommended by counsel supporting the complaint should be issued in this proceeding.

ORDER

It is ordered, That respondents, Windsor Pen Corporation, a corporation, and its officers, and Morris Fink, individually and as an officer 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 pen and desk sets, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Made in U.S.A." or "Printed in U.S.A." or any other word or words of similar import or meaning, in connection with any such set or product which contains a substantial item or part made in Japan or in any other foreign country.
2. Representing in any other manner that any such set or product which contains a substantial item or part made in Japan or any other foreign country, is made in the United States.
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 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.

FINAL ORDER

Upon consideration of respondents' appeal from the initial decision of the hearing examiner, and it appearing that the order contained in the initial decision would be both in the public interest and acceptable to respondents if it were so modified as to permit the required disclosure of foreign origin to be made on the product itself and not necessarily on the package, container or display card, provided that such disclosure is of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers

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making casual inspection of the product as so packaged and mounted,

It is ordered, That paragraph 3 of the order contained in the initial decision be, and it hereby is, modified to read as follows:

“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 thereof, on the front or face of such packaging, container, or display card, or on the product itself, 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 and mounted, without opening the package, container or display card, as the case may be.”

It is further ordered, That the initial decision, as modified herein, be, and it hereby is, adopted as the final decision and order of the Commission.

It is further ordered, That respondents shall, within sixty (60) days of the service of this order upon them, file with the Commission a written report setting forth the manner and form of their compliance with this order.