

IN THE MATTER OF
BELGARD & FRANK, INC., ET AL.

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

Docket C-750. Complaint, June 2, 1964—Decision, June 2, 1964

Consent order requiring New York City distributors of an imitation turquoise product to manufacturers of jewelry and others, to cease using such words as "Neo-Turquoise" and "Cultured Turquoise," for their said imitation or simulated product.

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 Belgard & Frank, Inc., a corporation, and Charles L. Frank, Frank C. Sinek and Herbert Van Dam, individually and as officers of said corporation, and Neptune Cultured Pearl Syndicate, Ltd., a corporation, and Fred Richter, individually and as an officer 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 Belgard & Frank, 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

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located at 17 East 37th Street, in the city of New York, State of New York.

Respondents Charles L. Frank, Frank C. Sinek and Herbert Van Dam are officers of corporate respondent Belgard & Frank, Inc. They formulate, direct and control the acts and practices of that corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of said corporate respondent.

Respondent Neptune Cultured Pearl Syndicate, Ltd., 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 604 Fifth Avenue, in the city of New York, State of New York.

Respondent Fred Richter is the president of corporate respondent Neptune Cultured Pearl Syndicate, Ltd. He formulates, directs and controls the acts and practices of that corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondent.

PAR. 2. Respondent Belgard & Frank, Inc., and its above-named officers are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of an imitation turquoise product which they designate as "Neo-Turquoise" to manufacturers and distributors of jewelry and to others who incorporate said product into finished articles of jewelry, for sale to retailers for resale to the public.

Respondent Neptune Cultured Pearl Syndicate, Ltd., and Fred Richter are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of the product designated by the aforesaid supplier as "Neo-Turquoise", to retailers and others under the name "Cultured Turquoise", for resale to the public.

PAR. 3. In the course and conduct of their business, as aforesaid, each of the corporate respondents now causes, and for some time last past have caused, their said product, when sold, to be shipped from their respective aforesaid places of business in the State of New York to purchasers 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 their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the business of respondent Belgard & Frank, Inc., and its above-named officers, said respondents engage in the practice of selling to others a product which they designate as "Neo-Turquoise", and which is described on sales invoices as follows:

PLEASE NOTE THAT NEO-TURQUOISE STONES ARE MAN-MADE AND CONTAIN CRUSHED MINERAL TURQUOISE TOGETHER WITH OTHER CHEMICAL ELEMENTS FOUND IN NATURAL TURQUOISE.

Said respondents also engage in the practice of supplying to certain of the purchasers of this product material containing the following statement:

Neo-turquoise contains genuine powdered turquoise, together with the other chemical elements found in mineral turquoise. It is the result of years of research and experimentation to duplicate nature's process in producing turquoise. In our process, all matrix or foreign substances have been avoided, with the exception of copper phosphate, and the result is the fine delicate sky-blue color so much sought after in scarce mineral turquoise.

This must not be confused with imitation turquoise which has the same chemical and physical properties as glass. Neo-turquoise has the same approximate hardness, color, chemical composition and appeal as the finest sky-blue gem.

PAR. 5. In the course and conduct of the business of respondents Neptune Cultured Pearl Syndicate, Ltd., and Fred Richter, they have engaged in the practice of advertising, offering for sale and selling as "Cultured Turquoise" the product designated as "Neo-Turquoise" by the aforesaid supplier. They have made statements and representations in advertisements, of which the following are typical and illustrative, but not all inclusive:

Announcing an event of unusual importance to the jewelry trade . . .

The Birth of Cultured Turquoise

After years of research and experimentation, Neptune is proud to report that it has succeeded in duplicating natural turquoise. We call this new stone cultured turquoise. Containing genuine turquoise, the Neptune process eliminates not only the undesirable green or grey color of American turquoise but all matrix and foreign substances with the exception of copper phosphate. The result is the fine, delicate, sky-blue color so much sought after in scarce mineral turquoise. Cultured turquoise is not a plastic nor is there any cement or other bonderizing substance used in congealing the powder. It is produced by controlled heat and extreme pressure. As a result, the finished stone contains almost the identical elements of natural turquoise (i.e., hydros aluminum phosphate copper 11.45%, aluminum 31.35% and phosphorus pentoxide (P2O5)).

Cultured turquoise is not to be confused with imitation turquoise. It is hand cut and has the same approximate hardness, color, chemical composition and appeal as the finest sky-blue gem turquoise. It is also creating a sales sensation in its first bow at retail counters in The Northeast. Inquiries are invited.

NEPTUNE CULTURED PEARL SYNDICATE LIMITED
604 Fifth Ave., N.Y. 20 PL 7-0768

NEPTUNE exclusive distributor of . . .

Cultured Turquoise

After years of research and experimentation, Neptune is proud to report that it has succeeded in duplicating natural turquoise. We call this new stone cultured

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turquoise. Cultured turquoise contains genuine turquoise together with the other chemical elements found in mineral turquoise. It is hand cut and has the same approximate hardness, color, chemical composition and appeal as the finest sky-blue gem turquoise. Inquiries are invited. 7 to 11 mm. uniform necklaces to retail from \$50 to \$75.

PAR. 6. By and through the use of the names "Neo-Turquoise" and "Cultured Turquoise" in conjunction with the statements and representations as set forth in Paragraphs Four and Five hereof, respondents have represented, directly or by implication, that the product so described and referred to is composed of natural turquoise which has been crushed and powdered and reformed under heat and pressure into a turquoise product which has substantially the same chemical composition as natural turquoise.

PAR. 7. In truth and in fact the product so described and referred to is not composed of and does not contain natural turquoise or the synthetic equivalent of that mineral. The product is a compressed imitation material composed of mineral gibbsite mixed with a small amount of copper phosphate. Gibbsite, an aluminum hydroxide, is a different chemical species from turquoise and is not related to or derived from turquoise, which is a hydrous copper, aluminum phosphate.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 8. By and through the use of the aforesaid practices, respondents place in the hands of others the means and instrumentalities whereby they may mislead the purchasing public as to the nature and composition of the aforesaid product.

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

PAR. 10. 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' product by reason of said erroneous and mistaken belief.

PAR. 11. 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

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 Belgard & Frank, 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 17 East 37th Street, in the city of New York, State of New York.

Respondents Charles L. Frank, Frank C. Sinek and Herbert Van Dam are officers of said corporation and their address is the same as that of said corporation.

Respondent Neptune Cultured Pearl Syndicate, Ltd., 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 604 Fifth Avenue, in the city of New York, State of New York.

Respondent Fred Richter is an officer of said corporation and his 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 Belgard & Frank, Inc., a corporation, and its officers, and Charles L. Frank, Frank C. Sinek and Herbert Van Dam, 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 imitation turquoise or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Neo-Turquoise", or any other word or term of similar import or meaning, as a name for, or to describe or refer to, imitation turquoise, unless such word is immediately preceded, with equal conspicuousness, by the word "Imitation" or "Simulated".

2. Using the word "Turquoise", or any other word of similar import or meaning, as a name for, or to describe or refer to, imitation turquoise, unless such word is immediately preceded, with equal conspicuousness, by the word "Imitation" or "Simulated".

3. Advertising, offering for sale or selling an imitation turquoise product in any form, unless it is clearly disclosed to the purchaser that the product is imitation turquoise.

4. Misrepresenting, in any manner, or placing in the hands of others means and instrumentalities of misrepresenting, the composition, nature or identity of ingredients or elements, method of manufacture, or the characteristics or qualities of imitation turquoise, natural or synthetic turquoise, or of any other precious or semi-precious stone.

It is further ordered, That respondents Neptune Cultured Pearl Syndicate, Ltd., a corporation, and its officers, and Fred Richter, 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 imitation turquoise, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cultured", or any other word or term of similar import or meaning, as a name for, or to describe or refer to, imitation turquoise.

2. Using the word "Turquoise", or any other word or term of similar import or meaning, as a name for, or to describe or refer to, imitation turquoise, unless such word is immediately preceded,

with equal conspicuousness, by the word "Imitation" or "Simulated".

3. Advertising, offering for sale or selling an imitation turquoise product in any form, unless it is clearly disclosed to the purchaser that the product is imitation turquoise.

4. Misrepresenting, in any manner, or placing in the hands of others means and instrumentalities of misrepresenting, the composition, nature or identity of ingredients or elements, method of manufacture, or the characteristics or qualities of imitation turquoise, natural or synthetic turquoise, or of any other precious or semi-precious stone.

It is further ordered That the respondents herein shall, within sixty