

Complaint

76 F.T.C.

IN THE MATTER OF

FINGERHUT MANUFACTURING COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1642. Complaint, Dec. 4, 1969—Decision, Dec. 4, 1969*

Consent order requiring a Minneapolis, Minn., distributor of miscellaneous merchandise to cease misrepresenting foreign made goods as domestic, making deceptive free offers, and shipping substitute articles without prior notice.

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 Fingerhut Manufacturing Company and Fingerhut Products Company, corporations, and Manny Fingerhut, Herman Schwartz, Stanley H. Nemer, and Meyer Nemer, individually and as officers of said corporations, 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. Respondents Fingerhut Manufacturing Company and Fingerhut Products Company, are corporations organized, existing and doing business under and by virtue of the laws of the State of Minnesota with their principal office and place of business located at 3104 West Lake Street, in the city of Minneapolis, State of Minnesota.

Respondents Manny Fingerhut, Herman Schwartz, Stanley H. Nemer and Meyer Nemer are individuals and are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of wearing apparel, tableware, dinnerware, tools and other merchandise to the public.

PAR 3. In the course and conduct of their business as aforesaid, 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 Minnesota 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 said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, respondents have made, and are now making, numerous statements and representations in circulars, brochures, form letters and other promotional material disseminated through the United States Mails with respect to the origin, source, free trial offers, type and kind of their merchandise and to offers of free merchandise.

PAR. 5. By and through the use of the statements and representations and by depictions in their advertisements, the respondents have represented, and are now representing, directly or by implication, that:

1. All of the merchandise depicted and described as "All American Made" and "Made in U.S.A." was manufactured in the United States of America.

2. The merchandise being offered on a free trial basis may be simply and unconditionally returned to the respondents at the election of the purchaser within the free trial time.

3. The merchandise ordered in response to respondents' advertisements would in all respects conform to the merchandise depicted and described therein.

4. When certain featured merchandise was ordered by prospective purchasers, the respondents would send a free gift of other described and depicted merchandise.

PAR. 6. In truth and in fact:

1. The merchandise depicted, described and offered for sale by respondents as being manufactured in the United States of America in some instances consisted in whole or in part of pieces that were of a foreign origin.

2. The merchandise being offered on a free trial basis may not be simply and unconditionally returned to respondents within the free trial time. Only after receipt of the merchandise were purchasers notified and by a wholly inadequate disclosure that within the trial period they must systematically write and secure from the respondents special labels to facilitate the return of the merchandise.

3. In some instances respondents substituted other and different merchandise from that ordered by purchasers. In such cases the merchandise did not conform to the depiction and description of the respondents' advertisements in all respects, but was of a different pattern, design, style, manufacture, origin or source.

4. In some instances purchasers have not received the free bonus or gift of merchandise as represented.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of wearing apparel, tableware, dinnerware, tools and other merchandise, of the same general kind and nature as that sold by the 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' merchandise 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

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the above caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 (b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters its orders:

1. Respondents Fingerhut Manufacturing Company and Fingerhut Products Company are corporations organized, existing and doing business under by virtue of the laws of the State of Minnesota, with their offices and principal place of business located at 3104 West Lake Street, Minneapolis, Minnesota.

Respondents Manny Fingerhut, Herman Schwartz, Stanley H. Nemer and Meyer Nemer are officers of said corporation and their principal offices and place of business are located at the above stated address.

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 Fingerhut Manufacturing Company and Fingerhut Products Company, corporations, and their respective officers, and Manny Fingerhut, Herman Schwartz, Stanley H. Nemer and Meyer Nemer, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of wearing apparel, tableware, dinnerware, tools 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 terms "All American Made" or "Made In U.S.A." or any other word, terms or phrases of similar import or meaning to describe or refer to products not made in the United States.

2. Misrepresenting, in any manner, the country of origin of any products offered for sale or sold by respondents.

3. Representing, directly or by implication, that merchandise is being offered on a free trial basis or a conditional trial basis, unless all conditions or obligations imposed for and the procedures or prerequisites necessary for the return of the merchandise on the represented basis are clearly and conspicuously disclosed at the time of and in immediate connection with such offer.

4. Delivering or shipping, without prior notice which affords the prospective purchaser the right of acceptance or rejection, substitute merchandise that is different in design, style, pattern, manufacture or source, or in any other manner, than the merchandise depicted or described in any advertisements, mailings, literature or other media that offer for sale or solicit the purchase or respondents' merchandise.

5. Representing, directly or by implication that prospective purchasers will receive a free bonus, gift or anything of value, upon ordering or purchasing other merchandise unless such gift or bonus is shipped free of any additional cost to each person qualifying therefor; and in any instance in which the customer informs respondents that such free gift has not been received, respondents make immediate delivery of the represented free gift or bonus.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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 the order.

Order Withdrawing Complaint

IN THE MATTER OF

KNOLL ASSOCIATES, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF
THE CLAYTON ACT

Docket 8549. Complaint, Dec. 27, 1962—Decision, Dec. 8, 1969

Order withdrawing the complaint issued Dec. 27, 1962, 70 F.T.C. 311, which charged a New York City furniture company with discriminating in price in violation of Sec. 2(a) of the Clayton Act. This matter was settled by consent order Docket No. C-1643, p. 847 herein, order withdrawing proceeding from adjudication dated July 25, 1969, p. 1060 herein.

ORDER WITHDRAWING COMPLAINT

The Commission having accepted an agreement containing a consent order in Docket No. C-1643 [p. 847 herein] which provided that, upon acceptance of such agreement, the complaint against Knoll Associates, Inc., in Docket No. 8549, issued December 27, 1962 [70 F.T.C. 311], would be withdrawn. Accordingly,

It is ordered, That the complaint issued against Knoll Associates, Inc., on December 27, 1962, be, and it hereby is, withdrawn.

By the Commission, with Commissioner Elman not participating.

IN THE MATTER OF

JENS RISOM DESIGN, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF
THE CLAYTON ACT

Docket 8740. Complaint, July 21, 1967—Decision, Dec. 8, 1969

Order setting date of compliance of modified cease and desist order of March 20, 1968, 73 F.T.C. 120, 123.

ORDER SETTING DATE OF COMPLIANCE
WITH CEASE AND DESIST ORDER

By order dated March 20, 1968 [73 F.T.C. 123], the Commission ruled that its cease and desist order herein shall become final within the meaning of the Clayton Act, as amended, upon the dis-