

Complaint

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IN THE MATTER OF

SPIEGEL BROTHERS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-673. Complaint, Dec. 31, 1963—Decision, Dec. 31, 1963*

Consent order requiring a corporate importer of tools and hardware and its wholly owned sales subsidiary, both in Long Island City, N.Y., to cease misrepresenting imported drill sets by falsely stating in catalogs and on cartons that they were high speed drills, made of an alloy especially formulated for high speed drills, fully guaranteed, and regularly sold for \$42.50 in the trade areas concerned; and to cease selling the drill sets with inadequate disclosure—such as the inconspicuous lettering employed—as to the foreign country of origin.

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 Spiegel Brothers Corporation, a corporation, Steelcraft Tool Corporation, a corporation, and Kurt J. Spiegel, individually and as an officer of each 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 Spiegel Brothers 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 located at 36-50 31st Street, Long Island City 6, New York.

Respondent Steelcraft Tool 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 located at 36-50 31st Street, Long Island City 6, New York.

Respondent Kurt J. Spiegel is an individual and officer of each of the aforementioned corporate respondents. He formulates, directs and controls the acts and practices of each of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the aforestated corporate respondents.

Respondents are engaged in a joint and common operation and business enterprise. Respondent Spiegel Brothers Corporation pur-

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chases and imports tools and hardware including those hereinafter described, which said tools and hardware are then sold and distributed by respondent Steelcraft Tool Corporation, it wholly owned subsidiary.

PAR. 2. Respondents are now, and for sometime last past have been engaged in importing, advertising, offering for sale, sale and distribution of steel drill sets, and indexes therefor and other articles of merchandise to distributors and retailers for resale to the purchasing public.

PAR. 3. In the course and conduct of their said business, respondents now cause, and for some time last past have caused, said drill sets and indexes and other articles of merchandise when sold to be transported 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 drill bits and indexes and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their products, respondents have made certain statements and representations with respect to the quality, composition, performance and price of their products in catalogs and on the cartons in which the products are packaged.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

229 P. — 29 Piece Supreme Drill set 1/16" to 1/2" by 64ths Complete with Sturdy Rustproof Cadmium Plated Drill Stand — \$42.50 Value — These Supreme High Quality Alloy Steel Twist Drills contain the Finest Combination of ● Chrome ● Silicone ● Carbon ETC. For Use On ● Steel, Wood, Plastic ● Copper, Brass, Aluminum ETC. For Speed Drilling With Electric Drills.

On the inner wrapper in which the drill sets are enclosed inside the carton, the phrases "Fully Guaranteed" and "Chrome Vanadium Twist Drills" are placed thereon in large, heavy black letters, along with the words "West-Germany" in small and inconspicuous letters.

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto but not specifically set out herein, respondents represent and have represented, that:

1. Said drills are not high speed drills;
2. Said drills are made of an alloy of chrome vanadium steel especially formulated for high speed drills;
3. Said drills are full guaranteed;
4. The usual and customary retail price of said drill set and index is \$42.50 in all of the trade areas in which it is offered for sale.

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PAR. 6. In truth and in fact:

1. Said drills are high speed drills;
2. Said drills are not made of an alloy of chrome vanadium steel especially formulated for high speed drills;
3. Said advertised guarantee fails to inform the purchasers of the said drill sets and indexes as to the nature and conditions of the advertised guarantee, the manner in which the guarantor will perform thereunder, and the identity of the guarantor;
4. The usual and customary retail price of said drill set and index is not \$42.50 in all of the trade areas in which it is offered for sale.

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

PAR. 7. Respondents said drill sets are imported. The country of origin is set forth in small and inconspicuous lettering on the box, the drill bits and on the wrapper in which said drill sets are enclosed. Purchasers of said drill sets who fail to see the said inconspicuous lettering on the box can determine the country of origin only by opening the box and carefully examining the minute lettering on each drill or the wrapper in which the drill sets are enclosed. Said disclosure is, therefore, inadequate to apprise prospective purchasers of the country of origin of said drill sets.

PAR. 8. In the absence of an adequate disclosure that a product, including speed drill bits, 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. 9. The respondents by and through the use of the aforesaid acts and practices place the means and instrumentalities in the hands of retailers whereby said retailers may mislead and deceive the purchasing public in the manner herein alleged.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of drills and indexes of the same general kind and nature as those sold by respondents.

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PAR. 11. The use by respondents of the foresaid 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 the 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. 12. 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, 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. Respondents Spiegel Brothers Corporation and Steelcraft Tool Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 36-50 31st Street, Long Island City 6, New York.

Respondent Kurt J. Spiegel is an officer of each of said corporations, and his address is the same as that of said corporations.

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 Spiegel Brothers Corporation, a corporation, Steelcraft Tool Corporation, a corporation, and their respective officers, and Kurt J. Spiegel individually and as an officer of each of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of drills and indexes or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that their drill bits are speed drills or high speed drill bits: *Provided, however,* That it shall be a defense in any enforcement proceeding herein for the respondents to establish that said drill bits are composed of the materials and have the physical properties and performance characteristics generally required for and possessed by speed drill bits or high speed drill bits respectively;
2. Representing, directly or indirectly, that said drill bits are composed of an alloy of chrome vanadium steel or other materials: *Provided, however,* That it shall be a defense in any enforcement proceeding herein for the respondents to establish that said drill bits contain chrome vanadium steel or other materials in such amounts as to be significant to the durability, performance and other characteristics thereof;
3. Representing, directly or indirectly, that any amount is the retail price of the product in any trade area or areas in which it is offered for sale: *Provided, however,* That it shall be a defense in any enforcement proceeding herein for the respondents to establish that said price is the price at which the product has been usually and customarily sold at retail in the trade area or areas where the representation is made;
4. Offering for sale or selling any product which is in whole or in part of foreign origin, without clearly and conspicuously disclosing on such product or in immediate connection therewith, and, if such product is enclosed in a package or container on the front panel of the package or container, in such a manner that it will not be hidden or readily obliterated, the country of origin of the product or part thereof;
5. Representing, directly or by implication that their drills or other products, are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in

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which the guarantor will perform thereunder are clearly and conspicuously disclosed;

6. Furnishing or otherwise placing in the hands of retailers or dealers in such products the means or instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

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.

INTERLOCUTORY, VACATING, AND
MISCELLANEOUS ORDERS

TOPPS CHEWING GUM, INC.

Docket 8463. Order and Opinion, July 2, 1963

Order dismissing several appeals from hearing examiner's rulings as to subpoenas as being premature and remanding such appeals to hearing examiner for further consideration.

OPINION AND ORDER DISPOSING OF MOTIONS

The Commission now has before it the following applications for permission to file interlocutory appeals from rulings of the hearing examiner, pursuant to Section 4.18 of the Rules of Practice, and appeals from the hearing examiner's grant or denial of motions to issue, limit, or quash subpoenas, pursuant to Section 4.15(e) of the Rules:

1. Complaint counsel's request, filed March 6, 1963, for permission to file an interlocutory appeal from:

(a) The order of the hearing examiner of February 27, 1963, granting leave to respondent to take depositions of chewing gum manufacturers, and

(b) The order of the hearing examiner of February 28, 1963, denying complaint counsel's motion for reconsideration of his previous orders of January 18, granting leave to respondent to take depositions of bubble gum manufacturers, and of November 13, 1962, granting leave to respondent to take depositions of companies using baseball picture cards.

2. Respondent's appeal, filed March 8, 1963, from the examiner's denial of its motion for leave to take depositions of certain wholesalers and retailers. (This appeal was improperly filed under Section 4.15(e) of the Commission's Rules and will be treated as an application for permission to file an interlocutory appeal under Section 4.18.)

3. Respondent's appeal, filed March 12, 1963, from the hearing examiner's order of March 1, 1963, limiting certain subpoenas *duces tecum* addressed to bubble gum manufacturers to the production of documents necessary to refresh the recollection of the deponents and denying to respondent the right to inspect such documents.

