

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1950, TO JUNE 30, 1951

IN THE MATTER OF

THE DILA-THERM CO., INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5491. Complaint, Apr. 18, 1947—Decision, July 12, 1950

Where a corporation and its three officers, engaged in the interstate sale and distribution of a device designated Dila-Therm, which operated on a household electric current, consisted of a heating unit, a vibratory or oscillating mechanism and an applicator, and produced heat varying from a very low intensity up to about 120 degrees and also afforded mild vibration and dilation of the rectal tissue; in advertisements thereof in periodicals, circulars, folders and otherwise—

Falsely represented, directly and by implication that the use of such a device by a layman, either alone or as a supplement to other treatment, constituted an effective treatment for prostatitis, and for the symptoms thereof, through stimulating blood circulation in the prostate gland, tending to reduce inflammation, restoring the nutritive flow of the blood to glandular tissue and promoting drainage of contaminated secretions therefrom;

The facts being that rectal dilation is wholly without value in relieving pelvic congestion and has no role in the management of prostatic infection; and said device with its long ray conductive heat as distinguished from conservative heating by diathermy, and its mild vibration of the internal rectal area as distinguished from the customary manual massage by physicians, would in no manner influence the underlying cause of said condition, or produce a generalized reflex vasodilation, or have significant value in relieving the muscular symptoms of pain and discomfort which may accompany prostatic disorders;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of said device:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects charges of the complaint pertaining to advertising statements relating to prostatism, in which connection it was alleged that respondents had represented, among other things, that Dila-Therm is a competent and effective treatment for prostatism and its symptoms, it appearing from the record that all reference in advertising to prostatism were discontinued sometime prior to the institution of the instant proceeding, and that respondents affirmed that they had no intention of renewing the use of the advertising statements relating thereto, no specific findings in respect to the import of such advertising were made; and the proceeding insofar as it related thereto was accordingly closed without prejudice to the right of the Commission to reopen the same, or to take such further or other action in the future as might be warranted by the then existing circumstances.

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Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. William L. Taggart for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondents.

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 the Dila-Therm Co., Inc., a corporation, W. P. Thielens, individually and as president of the Dila-Therm Co., Inc., J. R. Dorsey, individually and as vice president of the Dila-Therm Co., Inc., and Louis N. Rugee, individually and as secretary-treasurer of the Dila-Therm Co., Inc., hereinafter referred to as respondents, have violated the provisions of the 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, the Dila-Therm Co., Inc., is a corporation, chartered and existing under the laws of the State of Indiana, having its office and principal place of business at 322 East Colfax Avenue, South Bend, Ind. Respondent, W. P. Thielens, president of the Dila-Therm Co., Inc., is an individual whose address is 1600 Dearing Place, Tuscaloosa, Ala. J. R. Dorsey, vice president of the Dila-Therm Co., Inc., is an individual whose address is 201 Woodlands, Mobile, Ala. Louis N. Rugee, secretary-treasurer of the Dila-Therm Co., Inc., is an individual whose address is 1210 Portage Avenue, South Bend, Ind. These individual respondents control and have controlled the policies and practices of the corporate respondent in the performance of the acts and practices hereinafter alleged.

PAR. 2. Said respondents are now, and have been for several years last past, engaged in the business of selling and distributing a device designated Dila-Therm as "device" is defined in the Federal Trade Commission Act.

The said respondents cause said device, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said device by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not

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limited to circulars, and advertisements appearing in the April 1941 issue of the Eagle Magazine headed Prostatitis? Investigate Dila-Therm; the October 1942 issue of Argosy headed Prostatitis; and the July 1943 issue of Weird Tales headed Prostatitis?; and respondents have disseminated and caused the dissemination of advertisements concerning said device by various means, including but not limited to the advertisements referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said device in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

Prostatitis? Investigate Dila-Therm. Combines (1) vibratory massage (2) *controlled* infra-red heat, and (3) dilation. For easy and economical home use; both internal and external applicators. Precision built. Durable. **WRITE FOR DETAILS AND 30 DAY TRIAL OFFER.**

Prostatitis? Many are finding welcome relief through the gentle vibration, adjustable infra-red heat, and dilation provided by the DILA-THERM. A modern, *scientifically designed* instrument for easy, economical home use. *Liberal terms.* Write today for full details and 30-day trial offer. *Interesting booklet on Prostatitis.* **FREE.**

We assume that you have written to us as a person in need of relief, that you may be suffering some of the pains and discomforts so often associated with Prostate Gland Inflammation—aches and pains in the lower part of the back, in the pelvic region or the crotch, rising too frequently at night and having too many calls during the day to void urine. If your physician's diagnosis has indicated the direct application of infra-red heat, internal massage and dilation for you, it is entirely reasonable to expect that Dila-Therm will prove a welcome blessing to you.

From 45 on, a condition known as prostatism may develop—a chronic form of prostatitis, usually accompanied by disturbance of normal urinary processes. This may be caused by either a swollen, enlarged prostate or by one actually smaller than normal but inflamed.

We sincerely believe that any man who has evidence of chronic prostatitis or prostatism and competent diagnosis indicates the Dila-Therm therapies to be applicable in his case, will be truly grateful for the opportunity to prove to himself this instrument's merits.

Infra-red heat is one of nature's great and valuable gifts to mankind. The therapeutic value of infra-red heat has been known and used for centuries. Modern physicians and hospitals are recognizing its value and broadening its applications.

Infra-red heat penetrates the body tissue.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of

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respondents' device, respondents have represented, directly and by implication, that the use of said device Dila-Therm by a layman, applied externally or internally or both, by itself, and as supplementary to other treatment, constitutes a competent and effective treatment for prostatitis and prostaticism and the symptoms thereof.

PAR. 6. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of said device by the layman, applied either externally or internally, or both, by itself, or as supplementary to other treatments, has no therapeutic value in the treatment of prostatitis or prostaticism or any of the symptoms thereof.

PAR. 7. The use by respondents of the foregoing statements and representations disseminated as aforesaid has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said device.

PAR. 8. The aforesaid acts and practice of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 18, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' joint answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission, theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony and other evidence, the trial examiner's recommended decision, and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

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proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Dila-Therm Co., Inc., is a corporation, chartered and existing under the laws of the State of Indiana, having its office and principal place of business at 322 East Colfax Avenue, South Bend, Ind. Respondent, W. P. Thielens, president of the Dila-Therm Co., Inc., is an individual whose address is 1600 Dearing Place, Tuscaloosa, Ala. J. R. Dorsey, vice president of the Dila-Therm Co., Inc., is an individual whose address is 51 Williams Court, Mobile, Ala. Louis N. Rugee, secretary-treasurer of the Dila-Therm Co., Inc., is an individual whose address is 1203 East Bronson Street, South Bend, Ind. These individual respondents control and have controlled the policies and practices of the corporate respondent in the performance of the acts and practices hereinafter set forth.

PAR. 2. Said respondents are now, and have been for several years last past, engaged in the business of selling and distributing a device designated Dila-Therm, as "device" is defined in the Federal Trade Commission Act, causing the same, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of advertisements concerning said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including magazine advertisements; and respondents have disseminated and caused the dissemination of advertisements concerning said device by various means, including but not limited to circulars and folders, for the purpose of inducing, and which were likely to induce, directly or indirectly the purchase of said device in such commerce.

PAR. 4. Among the statements and representations contained in said advertisements thus disseminated are the following:

PROSTATITIS?

Many are finding welcome relief through the gentle vibration, adjustable soothing heat, and dilation provided by the DILA-THERM. A modern, scientifically designed instrument for easy, economical home use. Liberal terms. Write today for full details and 30-day trial offer. Interesting booklet on Prostatitis FREE.

* * * "An ounce of prevention is worth a pound of cure." That is why you are reading more and more about preventive therapy. * * *

WHAT TO DO TO ALLEVIATE PROSTATITIS

* * * If you have already seen your physician, and possibly taken treatment, it is probable that you are somewhat familiar with the therapies usually employed. We refer to the intra-rectal application of heat, rectal dilation, and the application of massage. * * *

HEAT

* * * The use of heat therapy has increased tremendously during the past few years and the encouraging results attained in modern physiotherapeutic practice have proven its alleviative and therapeutic value.

With specific reference to the swollen and congested prostate gland, heat applied in close proximity to the afflicted area, even though the temperature of the surrounding parts is increased only a little above the normal body temperature, tends to draw blood to the region of application * * *. Therefore, as a result of such heat application, blood circulation in the congested and inflamed prostate gland may be stimulated and its passage through the area may be facilitated, thus tending to reduce inflammation and congestion and help restore a more normal flow of nutrition bearing blood in the tissue.

INTRA-RECTAL INTERNAL MASSAGE

The therapeutic purpose of intra-rectal internal massage is to assist in relieving congestion and helping to promote drainage of accumulated pus and bacterially contaminated secretions from the ducts of a distended prostate gland. Professionally such massage, when necessary, is usually applied by means of the physician's finger inserted in the rectum. * * *

Gentle mechanical oscillation, while not a substitute in performing the function of the competent physician's digital massage, may readily and easily be applied by the individual at home for what aid it may afford in the stimulation of blood circulation, supplementing the physician's digital treatment. Many patients in the past have mistakenly avoided visiting their physicians because of the pain incident to finger massage. Application of gentle vibration, however, while only supplemental, is virtually painless. Its convenience helps prevent neglect and haphazard attention by the individual. * * *

RECTAL DILATION

Dilation of the anal sphincter muscles is important as a counteractive therapy. Where prostatitis exists, the anal sphincter muscles may become unduly tense and taut. Dilation may be supplied by a properly designed instrument. * * *

The immediate concern to readers to this treatise who are afflicted with prostatitis is what they may reasonably expect in the way of help by the application of these therapies. If you have had your case properly diagnosed and heat and intra-rectal massage are indicated, your chances of alleviation are good. The length of time required naturally depends on each individual case * * *. Many cases show marked alleviation of distress within the first 4 to 8 weeks. Others require more time. Some may require infinite patience and consistency of application. Where this cooperation is given, the chances are distinctly in your favor. * * *

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HEAT VIBRATION RECTAL DILATION

Originally designed in cooperation with physicians for more convenient, efficient, and centralized mechanical application of these therapies, where indicated, for the alleviation of the symptoms of chronic prostatitis.

* * * an ideal and natural supplement to the physician's office treatment.

Through home use of the Dila-Therm, neglect and haphazard attention by the individual may be avoided, whether this is due to business or personal demand; the necessity of travel; or financial reasons. We believe many men neglect proper cooperation with their physicians because they cannot shoulder the expense burden. As with most physical afflictions, alleviation of chronic prostatitis requires consistent application of recognized combative measures. Dila-Therm use at home may enable one to supplement his doctor's work with economy and convenience. * * *

We believe each Dila-Therm purchaser will value this instrument as a beneficial health investment where the therapies outlined herein are indicated.

We sincerely believe that any man who has evidence of chronic prostatitis and who has had a competent diagnosis which indicates the therapies of heat and massage to be applicable to his case—will be truly grateful for this opportunity to prove to himself the merits of Dila-Therm.

We have tried in our previous letters to give you some salient facts about chronic prostatitis and the symptomatic relief you might hope to receive from the simple therapies supplied by Dila-Therm. * * *

PAR. 5. The representations appearing in respondents' advertising that effective relief for inflammation of the prostate gland will be afforded by use of Dila-Therm as directed have as their bases other advertising statements which, among other things, represent directly or by implication that such device will have a therapeutic influence on prostatitis and its symptoms by stimulating blood circulation in the prostate gland, tending to reduce inflammation and restore the nutritive flow of the blood to glandular tissues, and promoting drainage of contaminated secretions from the prostate gland. Through use of the advertisements containing the statements and representations hereinbefore set forth, respondents have represented directly and by implication that the use of such device by a layman either by itself or as a supplementary treatment to other treatment constitutes an effective treatment for inflamed conditions of the prostate gland designated in the advertising as prostatitis, and for the symptoms of prostatitis.

PAR. 6. Respondents' device operates on a household electric current and consists of a heating unit, a vibratory or oscillating mechanism, and an applicator to be inserted into the rectum. Either vibration or

heat or both can be obtained by manipulation of a regulator for the heat and a switch attached to the handle adjacent to a cord leading to the electrical socket.

When used as directed, respondents' device produces heat varying from a very low intensity up to approximately 120 degrees Fahrenheit. It also affords mild vibration and dilation of the rectal tissues. The directions state that the treatment may be taken as frequently as desired but recommend that each treatment be limited to 20 or 25 minutes and that the use of vibration be restricted to 2 to 3 treatments per week.

PAR. 7. (a) Prostatitis is a condition of inflammation of the prostate gland usually due to an infective organism of which there are various types. Prostatitis may occur chronically also to older men as the result of injury in catheterization. Among the symptoms of prostatitis are abnormal frequency, difficulty and pain in the elimination of bladder wastes, and low backache. Such symptoms are not peculiar to prostatitis but may occur as a result of enlargement of the prostate gland or by reason of numerous other conditions of the prostate gland, referred to medically as prostatism. Some of such symptoms may occur also as a result of other ailments, and 155 different causes of pain in the lower back have been enumerated medically.

(b) The treatment of chronic prostatitis usually involves a matter of only several weeks' supervised treatment with two or three treatments weekly, followed by monthly examination over a period of several months' time. Prostatitis normally is treated by the urologist or general physician attending the patient through digital massage of the prostate gland. The pressure applied to the gland is for the purpose of expressing through the urethra the infected prostate secretions. Widely used also are penicillin and certain other drugs. In those instances where local application of heat for the relief of prostatitis is indicated, it is general practice to use the sitz bath which heats the entire lower body. The sitz bath is used primarily, however, to relieve muscular symptoms that may accompany chronic prostatitis. Another method of applying local heat for the relief of chronic prostatitis and its symptoms is short wave diathermy, which when properly applied produces deep heating within the gland itself through molecular vibration set up by a high frequency alternating electric field.

(c) On the basis of the greater weight of the evidence, the Commission finds that respondents' device does not constitute a competent or effective treatment for prostatitis or the symptoms thereof. Intra-rectal application of heat is now seldom used for prostatic conditions by urologists and practitioners of physical medicine. The heat pro-

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duced by respondents' device is long ray conductive heat, being that type of heat which is transferred from a hotter to a cooler surface and is distinguishable from conversive heating by diathermy in connection with which energy is converted into heat within the body tissues by molecular vibration. The heat furnished by Dila-Therm will not penetrate through the walls of the rectum to the prostate gland by conduction and it is rapidly dissipated in the separating tissues nearest to the rectum by the blood stream. No rise in temperature in the prostate urethra is produced by intrarectal conductive heating devices. The mild vibration of the internal rectal area afforded by respondent's device is not the type of massage produced by manual massage or the application of digital pressure customarily used in the treatment of prostatitis by physicians which causes the prostate to express congested or contaminated secretions. Such vibration will not significantly increase blood circulation or induce hyperemia. Rectal dilation is wholly without value in relieving pelvic congestion and has no role in the management of prostatic infection.

(d) The testimony of the four medical witnesses introduced by counsel supporting the complaint is to the effect, among other things, that respondents' device would afford no permanent relief or lasting benefits in the treatment of prostatitis or prostaticism. The testimony of the medical witness, which was introduced into the record by respondents, is a basis for respondents' contention in this proceeding that Dila-Therm has palliative value, however, in chronic prostatitis because of such psychic effects as it may have in improving the attitude of the user toward his symptoms and for the further reason that it produces beneficial effects on the sympathetic nervous system and vascular reflexes in tissues adjacent to the prostate gland which, among other things, may lessen or relieve pain. It plainly appearing from the greater weight of the evidence that the use of Dila-Therm as directed will in no manner influence the course of the underlying inflammatory process causative of the symptoms of prostatitis, the Commission also has carefully considered the evidence with a view to determining whether respondents' device will produce such effects on the vascular or nervous system as would serve temporarily to lessen or to relieve the muscular symptoms such as low backaches which may be associated with prostatitis.

(e) Heat has long been used for reducing and relieving pain connected with inflammatory conditions and muscular symptoms. One of the witnesses called by counsel supporting the complaint expressed the view that respondents' device will produce whatever effect the heat furnished by it may afford and was of the opinion that heat in

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some cases of prostatitis, though not in most cases, will have a tendency to dilate blood vessels and to thereby increase circulation. In addition, however, to the testimony referred to hereinbefore, there is other testimony submitted by scientific witnesses introduced by counsel supporting the complaint to the effect that the use of Dila-Therm will afford no form of relief for prostatic disorders. Although use of the sitz bath in instances may bring about a generalized reflex vasodilation and tend to thereby reduce muscular symptoms, it is moist heat rather than dry conductive heat, and this circumstance together with the larger area of application affords less opportunity for the body to lose or dispel heat through the blood stream. The use of Dila-Therm will not produce a generalized reflex vasodilation. Upon the basis of the greater weight of the evidence, the Commission is of the view that respondents' device will have no significant value in relieving the muscular symptoms consisting of pain and discomfort which may accompany prostatic disorders, and the contentions of respondents are, therefore, rejected.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of said device by the layman, either by itself or as supplementary to other treatment, has no therapeutic value in the treatment of prostatic conditions or the symptoms thereof.

PAR. 9. The use by respondents of the foregoing statements and representations disseminated as aforesaid has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said device.

CONCLUSION

The aforesaid acts and practices of the respondents as herein shown are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Other charges of the complaint pertain to advertising statements relating to prostatism, it being alleged in such connection that respondents have represented, among other things, that Dila-Therm is a competent and effective treatment for prostatism and its symptoms. In view of the fact that it appears from the record that all references

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in the advertising to prostatism were discontinued sometime prior to the institution of this proceeding and that respondents have affirmed that they have no intention of resuming the use of the advertising statements relating thereto, no specific findings in respect to the import of such advertising are being made and the proceeding insofar as it relates thereto is accordingly closed without prejudice to the right of the Commission to reopen this proceeding or to take such further or other action in the future as may be warranted by the then existing circumstances.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission, theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, the Dila-Therm Co., Inc., a corporation, its officers, representatives, agents, and employees, and W. P. Thielens, J. R. Dorsey, and Louis N. Rugee, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the device Dila-Therm, or any other device of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

(1) Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication—

That said device is an effective treatment for prostatitis or the symptoms thereof, or that when used alone or as a supplement to other treatment such device has any therapeutic value in the treatment of diseases of the prostate gland.

(2) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph (1) hereof.

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It is further ordered, That the respondents shall, within 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.

Syllabus

IN THE MATTER OF
INDEPENDENT DIRECTORY CORP. ET AL.

COMPLAINT, FINDINGS, AND ORDER, WITH SUPPORTING AND DISSENTING
OPINIONS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT
OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5486. Complaint, Feb. 26, 1948¹—Decision, July 19, 1950

The Commission was created by the Congress to protect the right of consumers—who rarely have the immediate services of lawyers, accountants, economists, and other experts—to an honest and fair market place, and it is the Commission's obligation to protect not only the discerning public against deceptive advertising, but also to protect the casual or negligible or ignorant, and to make certain, insofar as its authority extends, that that day, long past, when the consumer was required to submit to the dictum that "the buyer must beware," shall not return.

There can be no quibbling or hair splitting on the part of a Government agency such as the Commission, in the carrying out of its duties and responsibilities within its sphere of authority for the protection of fair competition and the public interest, and if good will can be restored to its rightful place in a free economy, as being the greatest asset any business can have, or should have, then there is no justification for tolerating contract forms and other methods which may well deceive the least literate of consumers.

Those who make use of artfully designed contracts, with their plethora of deceitful fine print, must assume the burden of proof that the fine print is not in fact a well designed and unlawful trap for the unwary, and the fact that deceit or other forms of misrepresentation may take place within the technical confines of a written instrument does not strip the act of its true character, whether it be honest or dishonest, it being, in essence, still a matter of intent and conscience, with logical moral and legal consequences, regardless of legal hair splitting.

Where two corporations, the principal offices of which were located in New York City and Chicago, respectively, and the two individuals who were directors and officers of both and managed their operation as a family affair, engaged in the publication of directories of manufacturers, wholesalers, jobbers, distributors and business services, which classified them under commercial headings as to product or service, listing address and telephone number, paid for or free, at respondents' option, and carrying advertisements paid for by the advertisers, and which, published by one or the other of said corporations for numerous eastern, southern, and mid-western states, and variously captioned as Classified Telephone Directory, Interstate Industrial Register, Manufacturers' Business and Industrial Buyers' Guide, Industrial Classified Telephone Directory and Classified Industrial Register, were distributed without charge to the advertisers and listees, and their prospective purchasers;

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In soliciting contracts for paid advertisements or listings by mail (as distinguished from personal contact by salesmen), through sending proposed mail order contract forms accompanied by return envelopes but no duplicate for the recipient's retention, to prospects, including those who had carried unique or distinctive advertisements in their local telephone directories for many years and in some cases in no other publication, who had never had any dealing with respondents or any association with their corporate name, and who had been queried, in a number of instances, by unidentified salesmen as to whether they wished to renew their telephone directory advertising or listing, and informed that a contract therefor would shortly come in the mail—

Pasted in the blank space provided by their said contract forms, immediately above the place for the prospect's signature and following a printed authorization to insert representations similar thereto in the next issue of the directory in question, the prospect's advertisement clipped from his local telephone directory or other publication;

With the result that prospects who received such forms by mail, signed and returned them in the belief that they were renewing their own prior advertisements or listings in their local telephone directories or other publications, and some thereby bought and paid for advertising space for which they had no use and which they did not desire; and

Continued said practice for a number of years after becoming aware of the results thereof, as above indicated, and insisted upon payment in those cases in which such advertisers claimed their signing was the result of a mistake, upon learning, as was usually the case, upon the receipt of their bills months later, just before the publication of the directory and too late for cancellation, that they were dealing with said corporations; and, while canceling contracts in those relatively few cases where the directory had not been set up in type and in which such a complaint was made, sued to enforce payment in the others:

Held, That such acts and practices, under the circumstances set forth, were to the actual and potential prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

In the aforesaid proceeding, while the contract forms eventually omitted the words "telephone" and "directory," and set forth along with advertising rates and other matter, and in legible type, that the attached copy appeared in another publication and that the contract was not a renewal or proof, but was an authorization to publish said matter in respondent's directory—from the covers of which said words were also ultimately removed—and contained the names, The Independent Directory, and The Independent Directory Corporation, and stated that the latter was not connected with any telephone company—statements and disclaimers which, if carefully read by the prospect, probably precluded any mistake as to the identity of the respondent publishers or the publication in which the advertisement attached to the form would appear—their practice of attaching to their said forms advertisements from other publications nevertheless did actually deceive many of the prospects to whom the forms were sent; and it was the Commission's opinion in view of all the circumstances above indicated, that said practice in that respect carried the definite potentiality of deceiving

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others in similar fashion, regardless of such cautions, disclaimers, and explanations, and that the appropriated advertisements might so arrest a prospect's eye, and so insulate him with such familiarity and certainty that even a cursory examination of the form appeared useless and time wasting; and that, therefore, such statements, explanations and disclaimers did not effectively remove the likelihood of deception.

While a number of the individuals and firms that signed said mail order contracts under the circumstances set out were engaged in businesses which were local, either by nature or by choice, and did not knowingly advertise in any publication of interstate circulation, there was no substantial evidence in the record to sustain the allegations made in the complaint that most of respondents' advertisers did only a local business or a business confined to an area much less than that covered by respondents' publication, or that the majority of respondents' advertisements were of little or no value to local advertisers.

The Commission was also of the further opinion, as respects the charge in the complaint that respondents' salesmen secured advertising contracts from prospects by representing directly or by implication that such advertisers were merely renewing their advertisements for another year in the publication from which respondents had taken the advertisements displayed by the salesmen, that the record contained no substantial evidence to sustain said charge, it appearing, among other things, that it was the salesmen's practice, following agreement with the prospect, to sign the contract along with the prospect and return the same to respondents, and that thereafter a duplicate was immediately returned to the prospect by registered mail, together with a statement of the cost.

Before *Mr. Webster Ballinger* and *Mr. Frank Hier*, trial examiners.
Mr. DeWitt T. Puckett for the Commission.

Hays, St. John, Abraham & Schulman and *Mr. Jacob Steinfeld*, of New York City, for respondents.

AMENDED 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 Independent Directory Corp., an Illinois corporation, Independent Directory Corp., a New York corporation, New Jersey Directory Corp., a corporation, William Oleck Advertising Corp., a corporation, and William Oleck, David Oleck, and Maury Oleck, individually and as officers of aforesaid 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 amended complaint, stating its charges in that respect as follows:

Complaint

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PARAGRAPH 1. Respondent, Independent Directory Corp., of Illinois, is an Illinois corporation with its principal office at 608 South Dearborn Street, Chicago, Ill.

Respondent, Independent Directory Corp., of New York, is a New York corporation with its principal office at 152 West Forty-second Street, New York, N. Y.

Respondents New Jersey Directory Corp. and William Oleck Advertising Corp. are New York corporations with offices at 152 West Forty-second Street, New York, N. Y.

Respondents William Oleck, David Oleck, and Maury Oleck, are officers of the aforesaid corporations and have their principal offices at the above-stated New York address.

In performing the acts and practices hereinafter complained of, the aforesaid corporations have been under the management, control and direction of the above-named individual respondents.

PAR. 2. The aforesaid respondents are now and for several years last past have been engaged in publishing a Classified Telephone Directory and Buyers' Guide. The publication contains a free classified listing of manufacturing, industrial, and other business concerns with their addresses and telephone numbers, and also paid advertisements of such concerns.

Respondents cause their said publication to be transported through the United States mails, and otherwise, from the points of publication thereof, or from one or more of the above-stated addresses, to the subscribers to or purchasers of said publication at their respective points of location in various States of the United States, including States other than the States of Illinois and New York, and in the District of Columbia. Respondents maintain and during all the time mentioned herein have maintained a course of trade in said publications in commerce between and among various States of the United States.

PAR. 3. Respondents' method in securing names, addresses, and telephone numbers for use in their said publications, and also the classified advertisements to be inserted therein, is to clip advertisements from various local telephone and other directories and to paste or otherwise attach said advertisements to their own contracts or order forms. Said contracts are then mailed to the persons or firms whose advertisements are attached thereto with a request that if any corrections are to be made or additional listings desired, to make the necessary notation on said contracts and return the documents to the respondents. In some instances respondents' salesmen present the aforesaid documents to the advertisers in person and secure the advertisers' signa-

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tures thereon by representing, by implication or otherwise, that the advertisers are merely renewing their advertisements for another year in the same publication from which the attached advertisement was clipped. In many instances advertising space is sold to persons and firms located in States other than the State in which respondents' offices are located and from which said publication is shipped to subscribers thereof.

PAR. 4. AS a rule, the advertisement attached to the respondents' contract is clipped from the telephone directory of the locality in which the advertisers' business is located. Each such advertiser recognizes the advertisements submitted to him as being one previously placed by him with the local telephone or other directory. Without scrutinizing the proffered contract closely and ascertaining that it is not a renewal of an advertisement in the local directory, but is a new contract for an advertisement to be inserted in respondents' directory, the advertiser signs respondents' contract. Said contract features in large print the words "telephone directory" and the explanation as to what the contract really is appears in much smaller and less conspicuous type, not in immediate conjunction or connection with, but on the contrary substantially removed from, the words "telephone directory." It is usually weeks or months before said advertiser receives a bill or request from respondents for payment for the aforesaid advertisement that such advertiser is apprised of the true facts in the case. If the advertiser raises any question about the matter, respondents furnish him with a photostat copy of the contract which said advertiser has signed. If the advertiser then fails or refuses to pay the bill, respondents threaten to sue and in some instances do sue for collection of the amount specified in the contract. In some instances the amount of the bill or charge for the advertisement is not stated in the contract at the time it is signed by the advertiser.

PAR. 5. Respondents' said Directory and Buyers' Guide is published in New York, Chicago, and Los Angeles, and each publication thereof circulates over wide areas, usually in many States. Most of respondents' advertisers do only a local business or a business confined to an area much less than that covered by respondents' publication. Hence, the majority of respondents' advertisements are of little or no value to the local advertisers using them.

PAR. 6. By and through the aforesaid acts and practices, the respondents falsely represent and have represented directly and by implication, to business firms and individuals that respondents are soliciting advertising space from, and giving telephone listings to, such firms and individuals, to be placed in the telephone directory used

in the community in which such firms are doing business, when such is not the fact.

PAR. 7. As a result of the aforesaid deceptive acts and practices on the part of respondents and the false and misleading statements and representations employed by them in connection with the use of said acts and practices, and in many instances as a result of suits for collection or threats of such suits, many firms have bought and paid for and are now buying and paying for advertising space in respondents' aforesaid publication, such purchases having been made and now being made in the erroneous and mistaken belief that space in their local telephone directory was or is being purchased.

PAR. 8. The aforesaid acts, practices, and methods of respondents as alleged herein are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 11, 1947, issued and subsequently served upon the respondents named in the caption hereof, except the respondent Independent Directory Corp., a New York corporation, its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondents named in said complaint filed their separate answers thereto on March 31, 1947. Certain testimony and other evidence in support of and in opposition to the allegations of the complaint were thereafter introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission.

Acting upon a motion filed December 9, 1947, by counsel in support of the complaint and assented to by the counsel for the respondents, the Commission, by order dated February 25, 1948, directed that the complaint be amended to include as a party respondent the Independent Directory Corp., a New York corporation, and on February 26, 1948, it issued and thereafter served upon the respondents, including said Independent Directory Corp., a New York corporation, its amended complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the aforesaid act. The Commission, in its order of February 25, 1948, further directed that the testimony and other evidence

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theretofore introduced be adopted and treated as having been taken under said amended complaint. After the filing of the respondents' answers to said amended complaint, further testimony and other evidence were introduced before the original trial examiner and a substitute trial examiner of the Commission designated by the Commission's order of April 29, 1949, and such testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondents' answers thereto, the testimony and other evidence, the trial examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its orders disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Independent Directory Corp., of Illinois, is a corporation organized in 1935 under the laws of the State of Illinois, having its principal office located at 608 South Dearborn Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent Independent Directory Corp., of New York, is a corporation organized in 1939 under the laws of the State of New York, having its principal office located at 152 West Forty-second Street, in the city of New York, State of New York.

PAR. 3. Respondent New Jersey Directory Corp. is a corporation organized under the laws of the State of New York. From the date of its incorporation in November 1924 until sometime between 1936 and 1940 this corporation published classified telephone directories for various areas in New Jersey, but has not engaged in publication since that time. It maintains offices at 152 West Forty-second Street, in the city of New York, State of New York, from which it manages two pieces of property in the Borough of Brooklyn, State of New York, and at which it employs from one to a dozen employees at different times who engage in compiling, circularizing, checking, and addressing for the general public, and also, when needed, for respondents independent directory corporations. At times it mails out order or contract forms for the independent directory corporations and clips advertisements from other directories for them, but it does not take

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orders for listings or other advertising in the directories published by the independent directory corporations. It has no other connection with, and performs no other functions for, the other respondents herein.

PAR. 4. Respondent William Oleck Advertising Corp. was incorporated under the laws of the State of New York in 1921, was solely a newspaper advertising agency, and was not connected in any way with the publications of the other respondents in this proceeding. It was dissolved December 15, 1944.

PAR. 5. Respondent William Oleck has been and is the president and a director of each of the corporate respondents.

PAR. 6. Respondent Maury Oleck has been and is the secretary and treasurer and a director in each of the corporate respondents.

PAR. 7. Respondent David Oleck is assistant secretary of Independent Directory Corp., of New York, and assistant treasurer of Independent Directory Corp., of Illinois. He is not a director in any of the corporate respondents.

PAR. 8. Respondents William Oleck and Maury Oleck are brothers, and they, together with Blanche Oleck, constitute the board of directors of Independent Directory Corp., of New York, and Independent Directory Corp., of Illinois, and New Jersey Directory Corp. These corporations are operated as a family affair, and the management, control, and direction thereof are by the respondents William Oleck and Maury Oleck. Respondent David Oleck exercises no control over their policies or management. None of the individual respondents have, since 1941, published or distributed any directories individually.

PAR. 9. Respondent William Oleck began the publishing and distribution of directories in 1921 with William Oleck's Green Book for Hudson County, N. J. This consisted of listings and advertisements of the names, addresses, and telephone numbers of various business, commercial, and professional persons and concerns in that area, together with some listings and advertisements from the New York metropolitan area. The advertisements and some of the listings were paid for and the distribution of the books was free to all industrial and professional telephone subscribers in the area. This was the first such book issued in that area and was issued after a survey thereof.

PAR. 10. Thereafter books of similar character were published and distributed by William Oleck and various corporations under his direction, including respondents Independent Directory Corp., of New York, and Independent Directory Corp., of Illinois, some of which covered local areas and others which covered areas of several States.

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PAR. 11. Respondents described in paragraphs 1, 2, 5, and 6 above are now, and for several years last past have been, engaged in publishing directories of manufacturers, wholesalers, jobbers, distributors, and business services classified under commercial headings as to product or service, listing address and telephone number and carrying advertisements of products or services for sale by the advertisers. These directories are variously captioned as Classified Telephone Directory, Interstate Industrial Register, Manufacturers' Business and Industrial Buyers' Guide, Industrial Classified Telephone Directory, and Classified Industrial Register. The listings therein consist mainly of an address and telephone number placed under a product or service category; some are paid for, some are free at the option of respondents. The advertisements are paid for by the advertisers. Circulation of at least 50,000 is guaranteed for each directory and is free to each advertiser and listee therein. A few directories are sold for \$10 each.

PAR. 12. Independent Directory Corp., of Illinois, compiles, edits, and publishes a directory for the States of Illinois, Indiana, Wisconsin, Iowa, Minnesota, Michigan, Ohio, western Pennsylvania, West Virginia, Kentucky, Missouri, Tennessee, Mississippi, Arkansas, and Louisiana. Independent Directory Corp., of New York, compiles, edits, and publishes a directory for the States of New York, New Jersey, eastern Pennsylvania, Delaware, Maryland, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, Virginia, North and South Carolina, Georgia, Florida, and Alabama.

PAR. 13. These directories, when published, are transported by the publishers thereof through the United States mails and otherwise from the points of publication thereof, namely, New York City and Chicago, Ill., to individuals, institutions, and others interested in purchasing from the advertisers therein at their respective points of locations in the various States of the United States and in the District of Columbia. Respondents Independent Directory Corp., of Illinois, and Independent Directory Corp., of New York, have maintained and do maintain a course of trade in said publications in commerce between and among the various States of the United States.

PAR. 14. Advertisements and listings for respondents' directories were solicited prior to 1938 almost entirely by salesmen, but since that time solicitation has been by mail and also by salesmen. Respondents employ one salesman in the Chicago area and seven salesmen in the New York area for this purpose. Mail solicitation has increased since 1938 until for the past 5 years it accounts for approximately 26 to 30 percent of respondents' revenue.

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PAR. 15. When respondents' salesmen solicit advertising they clip out a prospect's advertisement from any publication in which they can find one, paste it on a copy sheet and present this, together with a contract to advertise in the next edition of respondents' directory, to the prospect. Appointment for this call may or may not have been previously made by telephone. If no advertisement of the prospect can be found, respondents sometimes will sketch a suggested advertisement on the copy sheet. In other instances, the salesman simply takes a blank copy sheet along with the contract, and works out an advertisement thereon with the prospect, if the latter is interested. If the prospect agrees to subscribe, both he and the salesman sign the contract, which is returned to respondents by the salesman. Respondents immediately send a duplicate of the contract to the prospect by registered mail, together with a statement of the cost.

PAR. 16. In soliciting by mail, respondents Independent Directory Corp., of Illinois, and Independent Directory Corp., of New York, send to various prospects proposed contracts for paid advertisements or paid listings. Each such contract, as printed, has a large blank space immediately above the place for signature. On this blank space is pasted by respondents an advertisement which the prospect has carried in his local telephone directory or some other publication, which advertisement respondents have cut out from the publication in which it appeared for the purpose of attaching it to their own contract.

PAR. 17. These proposed mail order contracts state on their face, immediately above the attached advertisement so appropriated, that the attached copy appears in another publication and that the contract is not a renewal or proof, but if signed and returned is an authorization to publish an advertisement in respondents' directory. Such contract forms also contain the name The Independent Directory and Independent Directory Corp. and state that the latter is not connected with any telephone company. Such contract forms contain a detailed statement of the States in which respondents' directory is to be distributed, a printed statement of advertising space rates, in the case of advertising contract forms, and the price of listings in the case of listing forms. Each such contract form also carries the statement immediately preceding the line printed for the signature of the prospective advertiser, that the latter authorizes the respective respondents, Independent Directory Corporations, to insert representations similar to the attached advertisement in the next issue of respondents' Industrial Classified Telephone Directory or Classified Industrial

Directory or Classified Industrial Register. Some forms also carry pictures of respondents' directories.

PAR. 18. Respondents' forms used in 1941, 1942, 1943, and 1944 had the words "telephone directory" or "phone directory" in the largest and most conspicuous type on the form with the above-described disclaimers and cautions in smaller, less conspicuous but nevertheless plain type, substantially removed in some instances from the larger type. Since 1944 or thereabout, however, the words "telephone" and "phone" have been omitted from the heavy type heading and do not appear except in the authorization immediately above the signature line. For the past several years the words "telephone" and "directory" have been entirely removed from these forms by respondents. Respondents have recently removed from their directory covers the words "telephone" and "directory."

PAR. 19. The proposed mail-order contract form is accompanied by a return envelope bearing the printed name and address of the respective Independent Directory Corporation, but no duplicate of a proposed mail order contract form is enclosed for retention by the prospect. Respondents Independent Directory Corporations, of Illinois and New York, occasionally send with such proposed contract forms to prospective advertisers a mimeographed sales letter or reproductions of appreciative correspondence from users of the directory.

PAR. 20. The record in this proceeding shows that because of the presence of their advertisements on respondents' contract forms a representative number of prospects receiving such forms by mail have signed and returned the same to respondents without reading, or without reading thoroughly, in the belief that they were renewing their advertisements or listings carried by them in their local telephone directories or other publications.

PAR. 21. Most of these prospects who have so signed under such misapprehensions had never had any dealing with respondents and the name "Independent Directory Corporation" meant nothing to them. They had advertised in their local telephone directory for many years, ranging up to 35 years, and a number of them advertised in no other publication. In a number of such instances the clipped advertisement was unique or distinctive to the prospect or to the telephone directory in which it appeared because of drawings, type of print, make-up, and the distinctive yellow paper used in most classified advertising sections of telephone directories. In other instances the advertisement was distinctive because of branded merchandise handled, or handled exclusively, by the prospect or because of trade-marks of the prospect.

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PAR. 22. In a number of instances the prospect had, shortly before receiving respondents' mail order contract form with his telephone directory advertisement pasted thereon, been visited by or telephoned by unidentified salesmen inquiring whether the prospect wished to renew his telephone directory advertising or listing and informing him that the contract therefor would shortly come in the mail. In other instances the blanks on respondents' contract forms for classification, amount of space, and cost of advertising, were still blank when the prospects signed them.

PAR. 23. When respondents solicit advertising by salesmen a copy of the contract secured, together with the amount called for therein, is always sent by respondent to the prospect immediately after the contract is turned in by the salesman. When respondents solicit by mail only one copy of the contract to be signed is sent to the prospect and he is not thereafter furnished with a copy unless he, after receipt of a bill therefor, raises a question of his liability therefor.

PAR. 24. Respondents do not send out bills for listings or advertisements in their directories to those who sign their mail order contract forms until just before publication of the directory. This may be extended as long as 8 months after the contracts have been signed. Usually by the time the advertiser has been sent his bill it is too late for him to cancel his advertisement because the directory has gone to press, and this is usually the first time those who have signed, in the belief that they were renewing their advertising or listing in their local telephone directory, become aware that they were, in fact, dealing with respondents.

PAR. 25. For a number of years respondents have been aware of the fact that their practice of pasting onto their mail order contracts appropriated telephone directory advertisements of the prospects has caused a number of those prospects to sign their contracts in the mistaken belief that they were renewing the appropriated advertisement in their local telephone directory, but the respondents have nevertheless continued this practice.

PAR. 26. In cases in which advertisers who have signed respondents' contracts claim that their signing was the result of a mistake, it is respondents' practice, where the directory has not been set up in type, to cancel the contracts. In all other cases it is the respondents' practice to insist upon payment and if it is not made to sue for enforcement thereof.

PAR. 27. A number of the individuals and firms that have signed respondents' mail order contracts under the circumstances set out above have been engaged in businesses which are local, either by na-

ture or by choice, and such individuals and firms would not knowingly advertise in any publication of interstate circulation. There is no substantial evidence in the record, however, to sustain the allegation made in the complaint that most of respondents' advertisers do only a local business or a business confined to an area much less than that covered by respondents' publication, or that the majority of respondents' advertisements are of little or no value to local advertisers.

PAR. 28. The Commission is of the further opinion that the record contains no substantial evidence to sustain the charge in the complaint that respondents' salesmen secure advertising contracts from prospects by representing directly or by implication that such advertisers are merely renewing their advertisements for another year in the publication from which respondents have taken the advertisements displayed by the salesmen.

PAR 29. As the Commission has found, the contract forms used by respondents in soliciting advertising by mail for their publications contain a number of statements and disclaimers which, if carefully read by a prospect to whom the forms are sent, would probably preclude any misunderstanding on the part of such prospect as to the identity of the publisher from whom the contracts were received or the publication in which the advertisement attached to the forms would appear. The record shows, however, that respondents' practice of attaching to their contract forms advertisements appropriated from local telephone directories and other publications has actually deceived many of the prospects to whom such forms have been sent into the mistaken belief that they were simply renewing their advertisements in the publications from which the advertisements were taken, and it is the Commission's opinion, in view of all the circumstances, as herein set forth, that respondents' practice in this respect carries the definite potentiality of deceiving others in similar fashion, regardless of the cautions, disclaimers, and explanations printed on the forms. In such circumstances, the appropriated advertisement may so arrest a prospect's eye and so insulate him with such familiarity and certainty that to him even cursory examination of the form appears useless and time wasting. The Commission is of the opinion, therefore, and finds, that the statements, explanations, and disclaimers on the forms used by respondents are not effective to remove the likelihood of deception which may result from respondents' practice of attaching to such forms advertisements from other publications.

PAR. 30. As a result of respondents' acts and practices, some individuals and firms have bought and paid for advertising space for

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which they had no use and which they did not desire, to their damage and injury. Such damage and injury is likely to reoccur and to continue.

CONCLUSION

The acts and practices of the respondents named in paragraphs 1, 2, 5, and 6 hereof, as herein found, are to the actual and potential prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Commissioner Mason dissenting.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before trial examiners of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel, and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents, Independent Directory Corp., of New York, Independent Directory Corp., of Illinois, William Oleck and Maury Oleck, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Independent Directory Corp., a New York corporation, and Independent Directory Corp., an Illinois corporation, and their officers, and the respondents, William Oleck and Maury Oleck, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of advertising in telephone, industrial, commercial, or other directories or registers, or in any other publication, do forthwith cease and desist from using in the solicitation of such advertising by mail, advertisements which have been physically clipped or removed by or for the respondents from any publication issued by others than the respondents.

It is further ordered, for reasons appearing in the Commission's findings as to the facts in this proceeding, That the complaint herein be, and it hereby is, dismissed as to the respondents, New Jersey Directory Corp., William Oleck Advertising Corp., and David Oleck,

said dismissal being without prejudice, however, to the right of the Commission to institute a new proceeding against these respondents or to take such further or other action against them at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the respondents, Independent Directory Corp., a New York corporation, Independent Directory Corp., an Illinois corporation, William Oleck and Maury Oleck, shall within 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.

Commissioner Mason dissenting.

OPINION OF THE COMMISSION

CARSON, *Commissioner*:

The Independent Directory Corp. et al., is before us in this case, docket No. 5486, to answer to a complaint that it violated section 5 of the Federal Trade Commission Act. The charges in the complaint can be made very simple for the benefit of the layman or consumer for whom the law was written. Consumers are rarely organized. They rarely have the immediate services of lawyers and accountants and economists and other experts. But this Commission was created by the Congress to protect their right to an honest and fair market place. Upon the Commission is placed the obligation to protect not only the discerning public against deceptive advertising, but also to protect the casual, or negligent, or ignorant.

The facts in this case are as follows:

The Independent Directory Corp. published books in which were listed the names and advertisements of various business organizations. It offered to sell that service to such organizations. It made its offers through direct solicitation by salesmen, and also through use of the postal service. In making its offers, it often made it a practice to clip an advertisement from the publication of another company, pasting that advertisement on a contract form and then submitting the form to a prospective customer.

The complaint was made that prospective customers thought they were merely signing a contract for renewal of their obligation to advertise in the publications of the organizations from which the advertisements were appropriated. The original contract forms were so designed that the unwary prospective buyer could have been deceived, and the evidence discloses that various purchasers were deceived into believing they were only executing a contract for renewal of prior agreements to advertise. The contract forms were, in fact,

entirely capable of causing the prospective customer to commit error, so much so that it is difficult to believe there was any marked concern on the part of the company to protect some, at least, of its prospective customers against being deceived.

It is true that the contract forms were modified to remove some of the more flagrant traps to which the unwary customer was exposed. But modification of the contract forms was not sufficient, especially in view of the disregard by the company of its original obligation to protect the consumer. The day when the consumer must submit to any dictum that "the buyer must beware" is long passed, and it is the duty of this Commission to make certain, insofar as its authority extends, that that day shall not return. Those who make use of artfully designed contracts, with their plethora of deceitful fine print, must assume the burden of proof that the fine print is not in fact a well-designed and unlawful trap for the unwary. If "good will" can be restored to its rightful place in a free economy, as being the greatest asset any business can have, or should have, then there is no justification for tolerating contract forms and other methods which may well deceive the least literate of consumers.

The Commission, in fairness to the respondents, has held that there was no evidence to the effect that anyone was deceived when the practice was used in connection with personal visits by salesmen, and the Commission's prohibitions have been limited, therefore, to the practice of attaching to respondents' contract forms advertisements which have been physically removed from publications issued by others than the respondents in the use of such advertisements in the respondents' solicitation of advertising by mail. Thus, this limitation by the Commission leaves untouched the respondents' personal solicitation business. The Commission's findings as to the facts and conclusion, together with its order, tells the full and complete story of the facts and circumstances upon which the majority of the Commission members reached their conclusion.

The sole issue herein is the character of circumstances surrounding the solicitation of business by respondents by mail, expressly excluding the nondeceptive character of personal and salesmen's solicitation of respondents' business. It should be noted, further, that customers often received no copy of respondents' contract for their files, received no bill, received no information to put them on notice as to solicitation by a new and different advertising medium than the one they had used. Some prospective customers, before receiving respondents' contract forms, already had been contracted by unidentified salesmen, creating the impression that such salesmen were tele-

phone company representatives inquiring about the renewal of such advertisements in the telephone directories. There can be no doubt, from careful reading of the record, that many such customers were misled and deceived by reason of the respondents' method of soliciting business.

Truth, Honesty, and the Law

There can be no quibbling or hair-splitting on the part of a government agency such as this, in the carrying out of its duties and responsibilities within its sphere of authority for the protection of fair competition and the public interest. The legal authorities are overwhelmingly in support of such an obvious truism, and one would have to seek assiduously to establish a legal exception to the general rule. To do so, one would have to argue speciously that a thing or practice is partly legal because it is partly good and only partly bad.

To cite only briefly from the long list of legal authorities supporting the Commission's conclusion and order, the courts repeatedly have held that the law is not made for experts but to protect the public—that vast multitude, which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze but who are often governed by appearances and general impressions, *Florence Manufacturing Co. v. Dowd*, 178 F. 73. Advertisements are not intended to be carefully dissected with a dictionary at hand, but rather, to induce an impression upon prospective purchasers (*Newton Tea and Spice Co. v. United States*, 288 F. 475). Impressions are the primary target of the ad writers (*Stanley Laboratories, Inc., et al. v. Federal Trade Commission*, 138 F. (2d) 388) [37 F. T. C. 801; 3 S. & D. 596].

Even the exact truth may not save a respondent from the consequences of his act where there is a duty to do more than to maintain mere silence, a duty to put the purchaser on notice of the true character of the transaction. Although the printed text of an advertisement may be literally true, its form, color, or print may be designed to mislead the casual reader. In such case, the advertiser attempts to appeal to the eye of the reader and direct his attention to an offer or advertisement which, under ordinary circumstances, he might not have noticed (*United States v. 95 Barrels of Vinegar*, 265 U. S. 438; *Bockenstette v. Federal Trade Commission*, 134 F. (2d) 369) [36 F. T. C. 1106; 3 S. & D. 539].

Advertisers, like other purchasers, may be compelled by circumstances to trust to the integrity, capacity, and diligence of others, and

laws are made to protect the trusting as well as the suspicious (*Federal Trade Commission v. Standard Education Society*, 302 U. S. 112) [25 F. T. C. 1715; 2 S. & D. 429]. Such consumers have a right to assume that fraudulent advertising traps will not be laid to ensnare them (*Donaldson v. Read Magazine*, 333 U. S. 179). It is the Commission's function, in protecting the public against deceptive advertising, to protect the casual, even the negligent, reader, as well as the vigilant and more intelligent and discerning public (*Parker Pen Co. v. Federal Trade Commission*, 159 F. (2d) 509 [43 F. T. C. 1190]; *Belmont Laboratories, Inc. v. Federal Trade Commission*, 103 F. (2d) 538 [28 F. T. C. 1941; 3 S. & D. 97]). A fair test may be reasonably made by the ultimate impression upon the mind of the reader resulting from the sum total of what he reads and what is reasonably implied (*Aronberg v. Federal Trade Commission*, 132 F. (2d) 165) [35 F. T. C. 979; 3 S. & D. 647]. Advertisements must be considered in their entirety as they would be read by those to whom they appear (*Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175) [33 F. T. C. 1781; 3 S. & D. 378].

On the question of securing signatures to contracts by misrepresentation, it has been held consistently that securing signatures in haste or by other trickery to contracts, of whose terms, nature, and effect the signer is ignorant, is prohibited by the laws administered by the Commission. Appropriating values created by a competitor's ingenuity, labor, or expense is prohibited (*Orient Music Roll Co.*, 2 F. T. C. 176, (1919) D. 304). False, unfair, or deceptive acts defined in the Federal Trade Commission need not be such as would constitute fraud as that term is ordinarily understood in law (*D. D. D. Corp. v. Federal Trade Commission*, 125 F. (2d) 679 (CCS-7) 1942) [34 F. T. C. 1821; 3 S. & D. 455]. It is unlawful under the Federal Trade Commission Act for a respondent to fail affirmatively to disclose the material fact where appearances may be deceptive (*Haskelite Mfg. Corp. v. Federal Trade Commission*, 127 F. (2d) 765 (CCA-7) 1942) [34 F. T. C. 1855; 3 S. & D. 485]. Where a respondent has used confusing order blanks and has taken advantage of customers who did not understand them, the Commission may require the preparation of orders in a manner so clear as readily to be understood even by the ignorant, the unthinking and the credulous (*Dorfman v. Federal Trade Commission*, 144 F. (2d) 737, 739 (CCA-8) 1944) [39 F. T. C. 700].

The fact that deceit or other forms of misrepresentation may take place within the technical confines of a written instrument does not strip the act of its true character, whether it be honest or dishonest. It is, in essence, still a matter of intent and conscience, with logical moral and legal consequences, regardless of legal hair-splitting.

The findings and order, as herewith presented for Commission action, should be approved and entered.

DISSENTING OPINION OF COMMISSIONER LOWELL B. MASON

In this matter I join with my colleagues in the findings. These clearly set forth the facts surrounding the instant controversy.

I am not only in agreement with their findings and their views regarding the law on false and misleading advertising but am also in complete accord in their effort to rely on case law as established by the courts when deciding issues before us. It is this adherence to the accumulated wisdom of centuries of judicial trial and error that keeps our law merchant from slipping back into the law of the jungle. The day of caveat emptor is past.

With this brief but earnest salute to the high ideals expressed in the majority opinion, I must still say that in my opinion the order in this case is no good.

I believe we are not here dealing with false and misleading advertisements such as the cases cited by the majority refer to. We are dealing with contracts which it is alleged deceived the customers who signed the contracts in question but didn't read them. This latter sentence is intended to sound as incongruous as it does. For how can one be deceived by what one does not observe.

I do not think we should tell the merchant, the businessman, or the public, that no matter how explicit a written contract is and no matter if the same is properly executed by the customer appending his name to the document, the written terms of the contract are of no moment; that it is impressions and not the written words that count. If this be so, I sense a feeling that nothing people do is to be stamped with the importance of self-responsibility. Shall a contract be void if my mood is at variance with its words? Shall we invalidate the highest form of business obligation (written instruments) by finding the nuances and overtones surrounding it are not in accord with what is actually nominated in the bond? Will we have to psychoanalyze the complexes of all parties as they affix their signatures to make a debenture or other written instrument legal?

The Federal Trade Commission is the protector of the public interest, but we are not guardians ad litem to the Mortimer Snerds who can read but won't, who don't have to sign contracts but do, nor do I believe we forward the public interest by clouding the validity of contracts no court would condemn.

The respondents are told in the cease and desist order that they must no longer clip out others' advertisements and paste them in their own contractual proposals if the offer is to be made by mail.

I could think of a lot nicer ways of earning a living than clipping and pasting someone else's ads. There is something about the process that is distasteful to me, but matters of good taste are not yet on our agenda. The law, not *Emily Post*, still must guide our actions.

The majority appear to agree with me that clipping and pasting is not per se illegal or deceptive because under the order respondents are allowed to clip and paste if a salesman carries the written contract to a purchaser but not if it is mailed. If the prohibition were imposed the other way around, it might have some justification for I can imagine a salesman bludgeoning a prospect into signing a contract under such circumstances as would amount to fraud, but when a purchaser bludgeons himself with no one else around I can see no way for us to protect him against his own unwillingness to be protected.

A written contract is a bilateral transaction which the respective parties ratify by their signatures. Their subscribed names are certification to the world that the terms of the contract insofar as they are explicit are understood and agreed to. Respondents' contracts fully disclose all the terms and conditions of the transaction. There was no fine print such as banks and insurance companies often use. (See findings of fact issued by the majority to which I also concur.) Those who misapprehended the terms of the contract were people who did not read what they signed. (Also see above findings.)

The law has been settled as far back as *Touchstone* (1648): "If a party that is to seal the deed can read himself and doth not, or being illiterate or blind, doth not require to hear the deed read or the contents thereof declared, in these cases albeit the deed is contrary to his mind, yet it is good and unavoidable." In language not quite so quaint, we repeated this principle * * * adding that one who so signs a document 'is guilty of supine negligence, which * * * is not the subject of protection, either in equity or at law.' We have never deviated from this ruling * * *." *Reed et al. v. Kellerman* (U. S. Dist. Court, E. D. Pa., June 30, 1941). 40 F. Supp. 46.

Can we protect a man against buying a pig in a poke? I doubt if the standards, basis, and reasons supporting our authority to ban false and misleading advertising justify the condemnation of written sales contracts which clearly advise the purchaser in detail of the commodity he is buying, just because the purchaser did not read what he signed. Here we are dealing with written instruments, in the instant case, voluntarily signed, executed, and mailed by prospective purchasers to the respondents.

The law is well stated by Mr. Justice Hunt in *Upton, Assignee v. Tribilcock*: "That the defendant did not read * * * was his own fault. It will not do for a man to enter into a contract, and when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written. But such is not the law. A contractor must stand by the words of his contract; and, if he will not read what he signs, he alone is responsible for his omission." 91 U. S. 45, 23 L. Ed. 203.

In *Poe v. Illinois Central R. Co.*, 99 S. W. 2d 82, the Supreme Court of Missouri said: "While the law affords every one reasonable protection against fraud, it does not go to the romantic length of establishing the relation of parent and child or guardian and ward between courts and adults managing their affairs, in full possession of their faculties and unrestrained in action, and indemnify them when dealing at arm's length against the consequences of their own indolence, listless inattention, or unwarranted credulity in the transaction of business affairs."

In a recent opinion, *Vargas v. Esquire, Inc.*, Circuit Judge Kerner reaffirmed this age-old rule of law in this language: "It is a rule universally recognized that a written contract is the highest evidence of the terms of an agreement between the parties to it, and it is the duty of every contracting party to learn and know its contents before he signs it. And in the absence of fraud, which must be proved by clear and convincing evidence a man in possession of all his faculties who signs a contract, cannot relieve himself from the obligations of the contract by saying he did not read it when he signed it, or did not know or understand what it contained." (C. C. A. 7th, Feb. 27, 1948) 166 F. (2d) 651. Cert. Den. 335 U. S. 813, 93 L. Ed. 18, 69 S. C. 29. See also: *Hickman v. Sawyer et al.* (C. C. A. 4th, May 26, 1914) 216 F. 281, 132 C. C. A. 425, *Ford Motor Co. v. Pearson* (C. C. A. 9th, May 5, 1930) 40 F. (2d) 858, *G. L. Webster Co. Inc. v. Trinidad Bean & Elevator Co.* (C. C. A. 4th, Sept. 27, 1937) 92 F. (2d) 177, *Hayes v. Travelers Insurance Co.* (C. C. A. 10th, Nov. 24, 1937) 93 F. (2d) 568, 12 Am. Jur. 628, # 137.

While the Commission is the businessman's court and a mere citation is lacking in the enlightenment that a direct quotation gives, it is interesting to note that literally hundreds of opinions from every State and Federal court of record in this country that has passed on this question affirm this principle, basic in the law, and I have found none to the contrary.

I am against the order in this case.

IN THE MATTER OF
L. HELLER & SON, INC. AND THE HELLER DELTAH CO.,
INC.

COMPLAINT, FINDINGS, ORDER, AND OPINION IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5358. Complaint, July 25, 1945—Decision, Aug. 25, 1950

The protection of the public interest, as respects the duty of the Commission under the statute, is a practical and flexible conception which must be adapted to fit the various needs of the public interest as they may appear in particular circumstances, since the necessary corollary of the statutory direction to the Commission to issue its complaint where it has reason to believe that an unfair or deceptive act or practice is being used in commerce if it appears to it that a proceeding by it in respect thereof would be to the interest of the public, is that the Commission should terminate a practice after proceeding against it only where it appears that such action would be to the interest of the public—a corollary which requires the Commission to apply its judgment and experience realistically in determining what, if any, remedy is needed to protect the public interest in the particular circumstances of a case presented to it for decision.

As respects a remedy sought by counsel supporting the complaint and recommended by the trial examiner in the instant matter, namely, the required disclosure of foreign origin of cultured pearls contained in necklaces and other articles of jewelry, which would establish a principle of the widest application, as to which it would be highly uncertain where a line of reasonable distinction could be drawn; the Commission was of the opinion that if so broad a principle was to be applied, it should be done in an atmosphere in which the showing of public interest rested upon a broader base than was found in the proceeding in question; and in so deciding the Commission exercised a broad discretion in withholding a remedy which, in its opinion—even though it was also of the opinion that the record would support such a remedy if it were imposed—would afford little protection to the public interest, and would place unnecessary burdens upon normal business practices.

With regard to the question as to whether or not disclosure of foreign origin of certain products is necessary to avoid deception of the public, and the contention that certain imported products become commingled with like domestic products and are thereafter indistinguishable so that it would be prohibitively burdensome to keep them separate—though no such difficulty appeared in the case of a comparable more expensive product—difficulties which may be involved in keeping imported products separate from domestic products, for purposes of identification, must be met by businessmen when necessary to avoid deception of the public.

As respects the question as to whether or not failure to disclose foreign origin of ingredients in products constitutes misrepresentation and an unfair and deceptive practice, it is to be recalled that, as stated in *Segal v. Federal Trade*

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Commission, 142 F. (2d) 255, 38 F. T. C. 867, "there comes a point where marking becomes impossible," and that "the identity of a foreign-made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective."

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain, and understands that articles offered for sale in this country and not so marked as to disclose foreign origin, are products of American manufacture.

Where two corporations, under common ownership and control, engaged in the offer and interstate sale and distribution, respectively, to wholesale jewelers, and to department, specialty, and costume jewelry stores (but not to retail jewelers direct), of necklaces and other jewelry made in whole or in part from imitation pearls which, imported by them in large quantities from Spain, Czechoslovakia, and prior to December 1941, from Japan, were, when received in the United States, either on strings or in bulk, so marked with tags or labels, as to disclose the name of the country of origin; and were thereafter, with only incidental use of domestic materials, strung into graduated and ungraduated necklaces to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing the foreign origin of said imported imitation pearls, which are not generally distinguishable in quality or in appearance from the domestic product, and from which, during the handling and processing thereof as above set out, they had caused to be removed all tags, labels, or other indications of foreign origin, offered, sold, and distributed said jewelry products which, composed in whole or in substantial part of said imported imitation pearls, were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers means by which members of the public might be misled into such false belief, and thereby into purchase of such products:

Held, That said acts and practices, under the circumstances set forth, were to the injury and prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

When imitation pearls which have been fully manufactured in foreign countries are used in necklaces—which requires only proper assembling after being brought into this country, without disturbing their essential characteristics as products of foreign manufacture—they represent the principal component and the part which makes the necklaces valuable to the consumer, who purchases such a necklace, not because of the string which holds the pearls together or the clasp which joins its ends, but because of the imitation pearls which are thus assembled and made useful as ornaments, their only utility. And just as the spectacle frames in the matter involved in *Segal v. Federal Trade Commission*, 142 F. (2d) 255, 38 F. T. C. 867, served merely as the carrier of the imported lenses there concerned, so in the instant situation

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the string and clasp in the necklace, or the incidental parts of other articles of jewelry, are merely the carriers of the imitation pearls, which constitute the only element of importance and which do not lose their identity either in appearance or in function.

As respects the charge in the complaint that respondent's practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of imitation pearls made from imported alabaster or glass beads, without any label or marking to indicate to purchasers the foreign origin of said beads, constituted an unfair and deceptive act and practice, the same reasoning and conclusion do not apply, it appearing that the beads are not resold in the form in which they are imported; have no utility except as the core of imitation pearls; are transformed from glass beads into imitation pearls by processing and are of value in necklaces and other articles of jewelry only in said form; and are only one of the raw materials used in the production of imitation pearls by American manufacture, and that their identity is so lost in manufacture that any marking would be positively misleading unless so qualified as to be ineffective. As to such beads, the Commission, therefore, was of the opinion and found that the allegations of the complaint with respect thereto had not been adequately sustained, and that respondents should not be required to disclose their foreign origin when used in the domestic manufacture of imitation pearls for necklaces and other articles of jewelry.

In considering the needs of the public interest with respect to imitation pearls and cultured pearls, as respects the question of requiring disclosure of their foreign origin in the instant proceeding, there are certain distinctions. No cultured pearls are produced commercially in this country, hence the Commission is not concerned with the protection of domestic sources of supply against unfair competitive practices in connection with foreign products. Furthermore, since cultured pearls sell at much higher prices than imitation pearls, it seems only reasonable to believe that consumers are likely to ask the reason for their higher price, and to obtain information concerning their nature, character, and foreign origin.

In considering further the question of requiring the disclosure of the foreign origin of cultured pearls which, like the imported imitation pearls, are undoubtedly products of foreign origin, and which differ little from natural pearls, are found commercially in the same general area, and are produced by the same processes following the introduction into the oyster of some foreign irritating matter, whether by man or by accident, it is apparent that to require such disclosure in the case of necklaces and other jewelry containing cultured pearls would establish a principle of the widest application, since apparently the Commission could not logically fail to require similar disclosure with respect to natural pearls. The same reasons would apply to articles of jewelry containing diamonds and probably other precious stones which come primarily from foreign sources, and the principle could doubtlessly be extended to other types of products, with great attendant uncertainty as to where a line of reasonable distinction could be drawn, and the Commission, accordingly, was of the opinion, under all the circumstances, including the failure of the present record to supply a broader basis to justify such an order, that the public interest did not require such disclosure.

Before *Mr. John W. Addison*, trial examiner.
Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.
Davies, Richberg, Beebe, Landa & Richardson, of Washington, D. C.,
for respondents.

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 L. Heller & Son, Inc., a corporation, and The Heller Deltah Co., Inc., a 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 L. Heller & Son, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 411 Fifth Avenue, city of New York, State of New York.

Respondent The Heller Deltah Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 411 Fifth Avenue, city of New York, State of New York. The respondent The Heller Deltah Co., Inc., acts as a sales agency for the respondent L. Heller & Son, Inc.

PAR. 2. Respondent L. Heller & Son, Inc., is now and for several years last past has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls, alabaster bead bases for the manufacture of imitation pearls, and cultured pearls, made into necklaces and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

The respondents, acting concertedly and in cooperation each with the other, cause and have caused their said merchandise, when sold, to be shipped from their said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

Complaint

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PAR. 3. In the course and conduct of its business, respondent L. Heller & Son, Inc., in connection with the sale and distribution of its said products, imports from Japan, Spain and other foreign countries large quantities of imitation pearls, alabaster bead bases for the manufacture of imitation pearls, and cultured pearls. Respondent controls the output of a factory for the manufacture of imitation pearls. Respondent also sells and ships its alabaster bead bases from its place of business aforesaid to other manufacturers, who thereupon dip said alabaster bead bases in a solution, which process completes their manufacture into imitation pearls. The finished imitation pearls are then returned by the said manufacturers to the respondent L. Heller & Son, Inc., who thereafter, through its sales agency, The Heller Deltah Co., Inc., sells and distributes its said imitation pearls and cultured pearls in commerce, together with other merchandise.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the respondent L. Heller & Son, Inc., receives said products of foreign origin, such products have been, and are, all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom, and thereafter sell and distribute the said products in commerce as above set forth, without any words or marks thereon indicating their foreign origin, and cause the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearls. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be, products wholly of

domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of articles made from imitation pearls, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of respondents as aforesaid of offering for sale, selling, and distributing their products made from said imitation pearls, manufactured as aforesaid, and cultured pearls of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearls, or parts thereof, and cultured pearls, has had, and now has, the capacity and tendency to and has and does mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearls and cultured pearls, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' products made from said imitation pearls and cultured pearls a means and instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearls and cultured pearls, and all the parts thereof, are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 25, 1945, issued and subsequently served its complaint in this proceeding upon the respondents,

L. Heller & Son, Inc., and The Heller Deltah Co., Inc., both corporations, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondents filed their answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto, and briefs, oral argument, and reargument in support of and in opposition to the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, L. Heller & Son, Inc., and The Heller Deltah Co., Inc., are both corporations organized and existing under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 411 Fifth Avenue, New York, N. Y. The same persons own and control both corporations and direct the policies and practices of both. Said respondents are now, and for more than 10 years last past have been, engaged in the offering for sale, sale, and distribution of jewelry, including necklaces and other articles of jewelry made in whole or in part from imported imitation pearls. All sales of said jewelry are made at wholesale. Respondent L. Heller & Son, Inc., sells such jewelry products exclusively to wholesale jewelers, while respondent The Heller Deltah Co., Inc., sells them to department, specialty, and costume-jewelry stores. No sales are made direct to retail jewelers. Both respondents employ traveling salesmen and do considerable advertising. In 1944 their total volume of sales was approximately 2½ million dollars.

PAR. 2. In the course and conduct of their aforesaid business respondents cause, and have caused, their said jewelry products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof at their respective points of location 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 course of trade in said jewelry products in commerce among and

between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent L. Heller & Son, Inc., imports large quantities of imitation pearls from Spain, Czechoslovakia, and, prior to December 1941, from Japan. Such imported imitation pearls are received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When so received they are marked with tags or labels, either on the strings or the containers, so as to disclose the name of the country in which they originated. After being received in the United States, a minor portion of such imitation pearls are processed by the application of additional coats of pearling solution. Respondents ordinarily, however, do nothing more than grade and sort such pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces to which clasps of domestic manufacture are attached, or use them in other articles of jewelry. The necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of said imported imitation pearls, are therefore substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 4. During the handling and processing of imitation pearls as described in paragraph 3, respondents cause to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, et cetera, are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain. A substantial portion of the purchasing public also understands and believes that necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imitation pearls, offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

Order

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PAR. 6. The complaint herein also alleges that the respondents' practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of cultured pearls and of imitation pearls made from imported alabaster or glass beads without any label or marking to indicate to purchasers the foreign origin of the cultured pearls and of the alabaster or glass beads constitutes unfair and deceptive acts and practices. For the reasons stated in the opinion accompanying these findings as to the facts, the Commission is of the opinion, and finds, that the allegations with respect to imitation pearls made from imported alabaster or glass beads have not been adequately sustained. Also, for the reasons stated in said opinion, the Commission has determined that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

PAR. 7. Respondents' aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

The acts and practices of respondents as herein found are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended

decision of the trial examiner and exceptions thereto, and briefs, oral argument, and reargument in support of and in opposition to the complaint; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, L. Heller & Son, Inc., and The Heller Deltah Co., Inc., corporations, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

It is further ordered, That the respondents shall, within 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.

OPINION OF THE COMMISSION

AYRES, *Commissioner.*

The respondents are two corporations engaged in the sale and distribution of jewelry at wholesale. The same persons own and control both corporations, and direct their policies. Respondents are charged with unfair and deceptive acts and practices in violation of the Federal Trade Commission Act by failing to mark necklaces and other articles of jewelry so as to disclose to consumers the foreign origin of cultured pearls, imported imitation pearls, or imported alabaster or glass beads contained in such articles of jewelry. Substantially the same charges are made with respect to all three of these products, but they present materially different considerations.

The alabaster or glass beads have been imported into this country from Spain, Czechoslovakia, and Japan. After importation, they are washed in an acid solution, sized with a base coat to hold lacquer, attached to dipping boards, and submerged in a prepared lacquer or pearling solution from 3 to 10 times, depending upon the quality of the finished product desired. Sometimes the imitation pearls manufactured in this way are hand-polished during the processing. This processing of the beads to transform them into imitation pearls requires several days.

Respondents have also imported imitation pearls from Spain, Czechoslovakia, and Japan. The imitation pearls are sometimes further processed by adding coats of pearling solution, but ordinarily are used by respondents without such further processing. It appears that there is no distinguishable difference in the quality or appearance of imported imitation pearls and domestic imitation pearls.

Cultured pearls are grown in commercial quantities only in waters which, prior to the last war, were under Japanese control. Cultured pearls are grown in oysters by the same physiological processes which produce natural pearls, and develop from the natural reaction of the oyster to the intrusion of some foreign, irritating matter. In cultured pearls, however, the irritant, which forms the core of the pearl, is inserted by man, and in natural pearls it intrudes by accident. After the insertion of the irritant, the formation of the material around it which produces the natural pearl or cultured pearl, as the case may be, follows the same process. There is no charge here that the respondents fail to identify cultured pearls in necklaces and other articles of jewelry which they sell. The only charge is that in connection with such articles they fail to disclose the foreign origin of cultured pearls.

When all three of the foregoing products are imported into this country they are marked on their envelopes or containers or by tags on their strings so as to disclose their respective countries of origin. In the handling of the products in this country, however, the marks of origin are removed. After the operations referred to above in connection with each of these products have been performed, such products are graded and sorted and, using incidental domestic materials, are strung into necklaces or used in other articles of jewelry, such as pins, clips, earrings, and bracelets. These articles of jewelry are not marked by respondents in any manner to disclose the foreign origin of the beads, imitation pearls, or cultured pearls contained in them.

The record discloses that a substantial portion of the purchasing public has a general preference for domestic products over foreign products, other considerations such as style, quality, etc., being equal, and that a substantial portion of the purchasing public has a prejudice against products from certain countries, including Japan and Spain. The record also discloses that a substantial portion of the purchasing public understands that articles offered for sale in this country not so marked as to disclose foreign origin, are products of American manufacture.

One of the general and practical considerations urged by respondents is the contention that the imported beads and imitation pearls become

commingled with domestic beads and imitation pearls and are thereafter indistinguishable; and that it would be prohibitively burdensome to keep them separate. No such contention is made, however, with respect to cultured pearls. There are no cultured pearls of domestic origin, and the value of cultured pearls is substantially greater than the value of imitation pearls. Respondents, therefore, have a real incentive for keeping them segregated from imitation pearls, and find no unreasonable burden in doing so. Without laboring the point, it is readily apparent that any difficulties which may be involved in keeping imported products separate from domestic products for purposes of identification must be met by businessmen when appropriate identification is necessary to avoid deception of the public.

As indicated above, imitation pearls which have been fully manufactured in foreign countries are imported by respondents and incorporated in necklaces and other articles of jewelry, which are then resold without marks to disclose the foreign origin of the imitation pearls. When such imitation pearls are used in necklaces they represent the principal component and the part which makes the necklaces valuable to the consumer. The consumer purchases an imitation pearl necklace not because of the string which holds the pearls together or the clasp which joins its ends, but because of the imitation pearls which are thus assembled and made useful as ornaments. The same is true of other articles of jewelry composed in substantial part of imitation pearls. Their only utility is for ornamentation and for that purpose imported imitation pearls require only proper assembling after being brought into this country. After such assembling, however, they still retain their essential characteristics as products of foreign manufacture.

Failure to disclose foreign origin, under previous decisions of the Commission, constitutes misrepresentation and an unfair and deceptive practice. It is sufficient to refer to *Segal v. Federal Trade Commission*, 142 F. (2d) 255. [38 F. T. C. 867]. In that case, respondent imported lenses for cheap spectacles and sun glasses from Japan and cut, edged, beveled, and bored them and fitted them into frames. Through these operations, the respondent assembled them into spectacles and sold them without any mark to show their foreign origin. The *per curiam* opinion of the court in that case, affirming the order of the Commission, read in part as follows:

* * * If it is true that a substantial number of buyers suppose that unmarked goods are home made goods and have a preference for such goods, the

sale of unmarked foreign goods is a misrepresentation, which the Commission was authorized to stop. * * *

* * * It is of course true, as the petitioner argues, that there comes a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective. That is not the case with lenses used in spectacles; the frame is merely the carrier of the lens, which is the only element of importance, and which does not lose its identity either in appearance or in function.

And in the present situation the string and clasp in a necklace, or the incidental parts of other articles of jewelry, are merely the carriers of the imitation pearls, which constitute the only element of importance, and which do not lose their identity either in appearance or in function.

It is the opinion of the Commission, therefore, that respondents should be required to cease and desist from offering for sale or selling necklaces or other articles of jewelry composed in substantial part of imported imitation pearls without disclosing the foreign origin of the imitation pearls.

The same reasoning and conclusion, however, do not apply to the alabaster or glass beads imported by respondents and used in the manufacture in this country of imitation pearls. The beads are not resold in the form in which they are imported and, so far as this record discloses, they have no utility except as the core of imitation pearls. The processing to which they are subjected in this country transforms them from glass beads into imitation pearls, and they are of value in necklaces and other articles of jewelry only in the form of imitation pearls. The beads are only one of the raw materials or ingredients used in the manufacture of imitation pearls, and the imitation pearls are products of American manufacture.

Numerous products of American manufacture contain ingredients obtained from various parts of the world, but it could not be seriously urged that the origin of each of the foreign ingredients must be disclosed in selling the finished product. The difficulties of such a requirement become readily apparent when we consider the problem of so marking an automobile, for instance, to show the foreign origin of each of its parts or component materials which may have been imported. As stated in the *Segal* case, *supra*:

* * * there comes a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective.

In the present situation it appears that the identity of the glass beads as foreign products is so lost in manufacture that any marking would be positively misleading unless it was so qualified as to be ineffective. Under the circumstances involved here, therefore, the Commission is of the opinion that the respondents should not be required to disclose the foreign origin of imported glass beads used in the domestic manufacture of imitation pearls when selling necklaces and other articles of jewelry containing such imitation pearls.

The cultured pearls imported by respondents and used by them in necklaces and other articles of jewelry are undoubtedly products of foreign origin. It would seem that the same line of reasoning should apply to imported cultured pearls as to imported imitation pearls. If this were so, we would readily conclude that necklaces and other articles of jewelry composed in substantial part of cultured pearls should be so marked as to disclose the foreign origin of the cultured pearls contained in them. There are, however, special considerations in connection with cultured pearls which we cannot ignore.

We approach these special considerations with the thought that the protection of the public interest is a practical and flexible conception which must be adapted to fit the various needs of the public interest as they may appear in particular circumstances. Section 5 (b) of the Federal Trade Commission Act provides that where it has reason to believe that an unfair or deceptive act or practice is being used in commerce, the Commission shall issue its complaint if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public. As a necessary corollary, the Commission should terminate a practice after proceeding against it only where it appears that such action would be to the interest of the public. This requires the Commission, we believe, to apply its judgment and experience realistically in determining what, if any, remedy is needed to protect the public interest in the particular circumstances of a case presented to it for decision.

We must recognize that there are certain distinctions in the needs of the public interest with respect to imitation pearls and cultured pearls. For instance, no cultured pearls are produced commercially in this country. For that reason we are not concerned here with the protection of domestic sources of supply of cultured pearls against unfair competitive practices in connection with foreign products. It should also be considered that cultured pearls sell at a much higher price than imitation pearls. It seems only reasonable to believe that in buying necklaces and other articles of jewelry composed in substan-

tial part of cultured pearls, consumers are likely to ask the reason for their higher price and to obtain information concerning the nature, character, and foreign origin of cultured pearls.

There is, however, a somewhat different consideration of substantial practical importance. In outward appearance there is little appreciable difference between natural pearls and cultured pearls and they are found commercially in the same general areas. It is apparent that a requirement for the disclosure of foreign origin of cultured pearls contained in necklaces and other articles of jewelry would establish a principle of the widest application. It does not appear that we could logically fail to require similar disclosure with respect to natural pearls. The same requirement for the same reasons would apply to articles of jewelry containing diamonds and probably other precious stones which come primarily from foreign sources. The principle could doubtless be extended to other types of products and it is highly uncertain where a line of reasonable distinction could be drawn.

The record does not contain a showing so full and complete as to convince the Commission that in the circumstances of this case the public interest requires the adoption of a principle so broad in its scope. If this principle is to be applied, we believe that it should be done in an atmosphere in which the showing of public interest rests upon a broader base than we find here. In short, the showing here does not convince us that the public interest requires the remedy sought by counsel supporting the complaint and recommended by the trial examiner, even though it is our opinion that the record would support such a remedy if it were imposed.

Under all these circumstances the Commission is of the opinion that the public interest does not require disclosure of the foreign origin of cultured pearls contained in necklaces and other articles of jewelry. In reaching this decision the Commission is exercising a broad discretion in withholding a remedy which, in its opinion, would afford little protection to the public interest and would place unnecessary burdens upon normal business practices.

The Commission has accordingly issued an order to cease and desist which, in effect, requires appropriate disclosure of the foreign origin of imported imitation pearls contained in substantial part in necklaces and other articles of jewelry but which does not require such disclosure with respect to imported glass beads or cultured pearls.

Syllabus

IN THE MATTER OF
 JOSEPH H. MEYER BROS.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
 SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5346. Complaint, June 30, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public, including purchasers of imitation pearls, has a general preference for products produced in the United States and containing domestic materials, and during recent years has had a decided and overwhelming preference for products of American manufacture and origin as distinguished from those wholly or partly of Japanese manufacture and origin; and in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated understands and believes that imitation pearl necklaces offered for sale and sold in the United States are domestic products.

Where a corporation engaged at wholesale in the interstate sale and distribution, among other articles of jewelry, of necklaces of imitation pearls, made from glass beads coated with preparation to simulate genuine pearls; in advertising in newspapers, periodicals, and other advertising literature of general circulation—

(a) Falsely represented and implied that its said imitation pearls were genuine through the statement "Richelieu Pearls—they're beautiful", and through displaying the words "Richelieu Pearls" in very large and conspicuous type, with the word "simulated", in much smaller type at some other place, in no wise connected with or in close proximity thereto;

With tendency and capacity, through such use of words "Richelieu Pearls", to mislead and deceive purchasers and prospective purchasers into the false belief that its imitation pearls were genuine, and thereby into the purchase thereof; and

Where said corporation, engaged in importing and in purchasing from importers, large quantities of imitation pearls from Spain and other foreign countries, including Japan prior to December 1941, and in stringing or restringing said pearls, affixing clasps thereto, and offering them for sale—

(b) Falsely represented and implied, through marking and labeling said necklaces "Made in U. S. A.," that they were composed entirely of domestic materials, when in fact composed in substantial part of imported imitation pearls as aforesaid, whereby many members of the purchasing public were misled; and,

(c) Offered, sold, and distributed said imitation pearl necklaces, and caused them to be offered and sold to members of the consuming public, without disclosing the foreign origin of said imported imitation pearls, from which during the process above described it had caused to be removed the labels or markings indicating the country of origin, such as "Made in Japan" or "Made in Spain," with which said pearls were marked at time of importation;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that such imitation pearl necklaces were wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such belief;

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and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into the aforesaid erroneous belief, and thereby into the purchase thereof:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects charges in the complaint that the practice of offering, selling and distributing necklaces of imitation pearls made in the United States from imported base beads, and necklaces of imported cultured pearls, without any label or marking to indicate to purchasers foreign origin, constituted unfair and deceptive acts and practices, the Commission considered similar charges in the matter of *L. Heller & Son, Inc., et al.*, D. 5358, hereinbefore reported at page 34 *et seq.*, and for reasons set forth in its opinion in that matter, which are controlling in the instant case, found that the allegations with respect to imitation pearls made from imported base beads were not adequately sustained, and also that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls should be labeled or marked so as to disclose the foreign origin of such pearls.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.
Weil, Gotschal & Manges, of New York City, for respondent.

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 Joseph H. Meyer Bros., a corporation, hereinafter referred to as respondent, has 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 Joseph H. Meyer Bros., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 389 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent Joseph H. Meyer Bros., is now, and for several years last past has been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls, bead bases for the manufacture of imitation pearls, and cultured pearls made into necklaces and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

The respondent causes, and has caused, its said merchandise, when sold, to be shipped from its said place of business located in the

State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said products, respondent represents and represented to purchasers and prospective purchasers in newspapers, magazines, and other advertising matter having a general circulation in various States of the United States and in the District of Columbia, that its products designated "Richelieu Pearls" are genuine pearls, when in truth and in fact said products are nothing more than glass beads treated with several coatings of a preparation or solution to simulate genuine pearls. Said products are not genuine pearls, but only imitation pearls, which are strung and made into the completed necklaces.

In some advertisements, respondent displays the words "Richelieu Pearls" in very large and conspicuous type and the word "simulated" appears in much smaller type at some other place in the advertisement, and in no wise connected or in close proximity to the words "Richelieu Pearls."

Through the use of the words "Richelieu Pearls" respondent represents and implies, and the purchasing public is led to believe, that said products so designated are in fact genuine pearls, and as a result thereof many members of the public have purchased respondent's said products as aforesaid.

PAR. 4. In connection with the sale and distribution of its said products, respondent has imported from Japan, Spain, and other foreign countries, large quantities of imitation pearls, bead bases for the manufacture of imitation pearls and cultured pearls. During the last several years, respondent has also purchased large quantities of imitation pearls, bead bases, and cultured pearls of foreign origin from importers engaged in the sale of said products in the United States. Respondent operates a factory in Brooklyn, N. Y., where it causes domestic bead bases, as well as bead bases of foreign origin, to be finished by dipping or spraying said products in a solution, thereby completing the said bead bases into imitation pearls. After said processing as aforesaid, the respondent sells and distributes its imitation pearl necklaces and cultured pearl necklaces in commerce, together with other merchandise.

PAR. 5. Respondents' imitation pearl necklaces when offered for sale and sold in commerce as aforesaid are all marked or labeled with the words and letters "Made In U. S. A." Respondent thereby represents and implies, and the purchasing public is led to believe, that said products so marked or labeled are composed entirely of domestic materials. In truth and in fact said products are made in whole or in part from imported materials as aforesaid. As a result thereof many members of the public have purchased respondents' said products in commerce as aforesaid.

PAR. 6. At the time of the importation into the United States of the above enumerated products, and at the time the said respondent received said products of foreign origin, such products have been and are all labeled or marked with the word "Japan" or the words "Made In Japan," or the word "Spain" or the words "Made In Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondent causes the words or marks indicating their foreign origin to be removed therefrom, and thereafter sells and distributes the said products in commerce as above set forth without any words or marks thereon indicating their foreign origin and causes the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition without informing the purchasers thereof that the said products are of foreign origin.

PAR. 7. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearls. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin and unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 8. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of imitation pearls, a substantial preference for products which are wholly of domestic manufacture or origin, as

distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 9. The practice of the respondent as aforesaid of offering for sale, selling and distributing its imitation pearl necklaces and cultured pearl necklaces of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces and cultured pearl necklaces has had, and now has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondent's said practice places in the hands of retailers of respondent's imitation pearl necklaces and cultured pearl necklaces a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Joseph H. Meyer Bros., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts, dated December 18, 1946, was entered into by, and between, Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and the respondent, which provided, among other things, that subject

to the approval of the Federal Trade Commission the statement of facts contained therein may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said complaint, the answer of the respondent, and said statement of facts to make its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding, without the presentation of argument or the filing of briefs. Respondents specifically waived the filing of a trial examiner's report upon the evidence. Thereafter this proceeding came on for final consideration by the Commission on the complaint, answer, and stipulation as to the facts (said stipulation having been approved by the Commission); and the Commission, having duly considered same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph H. Meyer Bros., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 389 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent, Joseph H. Meyer Bros., is now, and for several years last past has been, engaged in the wholesale distribution and sale of merchandise of various kinds, including necklaces of imitation pearls and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

The respondent causes, and has caused, its said merchandise, when sold, to be shipped from its said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In connection with the sale of its imitation pearl articles of jewelry in commerce and as an inducement for the purchase thereof by members of the purchasing public, the respondent has advertised its products, in newspapers, magazines, and other advertising literature having a general circulation in the various States of the United States and in the District of Columbia, as follows:

Findings

"Richelieu Pearls
They're Beautiful"

In some advertisements respondent displays the words "Richelieu Pearls" in very large and conspicuous type, and the word "simulated" appears in much smaller type at some other place in the advertisement and in no wise connected or in close proximity with the words "Richelieu Pearls."

PAR. 4. Through the use of the words "Richelieu Pearls" as aforesaid, respondent has falsely represented and implied to purchasers and prospective purchasers that its said products are genuine pearls. In truth and in fact, respondent's said products are not genuine pearls but are only imitation pearls made from glass beads treated with several coatings of a preparation or solution to simulate genuine pearls.

The aforesaid practice of the respondent has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that respondent's imitation pearls are genuine pearls and into the purchase thereof in reliance upon such erroneous belief.

PAR. 5. In the course and conduct of its aforesaid business respondent prior to December 1941, imported large quantities of imitation pearls from Japan. Both prior to and since December 1941, respondent has imported large quantities of imitation pearls from Spain and other foreign countries and has also purchased large quantities of imitation pearls from importers engaged in the sale of such products in the United States. Such imported imitation pearls were received in the United States in boxes or in graduated strings. After stringing or restringing and affixing clasps, the respondent has offered for sale and sold such imported imitation pearls in the same State in which they were imported.

PAR. 6. Respondent's necklaces of imported imitation pearls when offered for sale and sold in commerce as aforesaid have all been marked and labeled with the words and letters "Made in U. S. A." Respondent has by such marking and labeling falsely represented and implied, and many members of the purchasing public have been led to believe, that said necklaces of imported imitation pearls were composed entirely of domestic materials. In truth and in fact, said products were composed in substantial part of imported imitation pearls as aforesaid.

PAR. 7. At the time of importation into the United States and when received by the respondent said imitation pearls were all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or with other word or words so as to indicate the country of origin.

The respondent caused the labels or markings indicating the country of origin to be removed from said imported imitation pearls and, after restringing and attaching clasps as hereinabove set forth, offered for sale, sold, and distributed imitation pearl necklaces without disclosing by any mark or label, or otherwise, that such imitation pearls were of foreign origin, and caused said products to be offered for sale and sold to members of the consuming public in that condition without informing the purchasers thereof that the imitation pearls were of foreign origin.

PAR. 8. A substantial portion of the purchasing public, including purchasers and users of imitation pearls, has a general preference for products produced in the United States and containing domestic materials. During recent years there has been a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces offered for sale and sold in the United States are products of domestic manufacture and origin in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 9. The complaint herein also alleges that the practice of offering for sale, selling, and distributing necklaces of imitation pearls manufactured in the United States from imported base beads, and necklaces of cultured pearls, without any label or marking to indicate to purchasers the foreign origin of the base beads and of the cultured pearls constitutes unfair and deceptive acts and practices. Charges similar to these were contained in the complaint against L. Heller & Son, Inc., et al., docket No. 5358. Testimony and other evidence in support of and in opposition to such charges in that case were taken before a trial examiner of the Commission and the case was fully briefed and argued before the Commission. The Commission found that the allegations with respect to imitation pearls made from imported base beads were not adequately sustained. The Commission also determined that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls. The opinion of the Commission accompanying its findings as to the facts and order to cease and desist in that proceeding sets forth the reasons for such determinations. The reasons therein set forth are controlling in this matter.¹

¹ See *ante*, at p. 43.

PAR. 10. Respondent's aforesaid acts and practices of offering for sale, selling and distributing necklaces of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of the imitation pearls composing such necklaces have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such imitation pearl necklaces are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondent's said acts and practices also place in the hands of retailers of such products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such imitation pearl necklaces are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and the respondent, in which stipulation the respondent waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Joseph H. Meyer Bros., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of imitation pearls, whether offered for sale and sold as necklaces or in other articles of jewelry, do forthwith cease and desist from:

(1) Representing by the use of the word "pearls" or any other word or words of similar import or meaning, or in any other manner, that said imitation pearls are genuine pearls: *Provided, however*, That

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the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, wherever used, the word "pearls" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated," or other word of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

It is further ordered, That the respondent, Joseph H. Meyer Bros., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

(1) Representing by the use of the words and letters "Made in U. S. A.," or otherwise, that said products are composed entirely of domestic materials.

(2) Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
DAVID GENSER ET AL. TRADING AS GENSER
MANUFACTURING CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5347. Complaint, June 30, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations, such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan and Spain, and also understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where six partners engaged in the interstate sale and distribution at wholesale of domestic and imported merchandise, including necklaces and other jewelry composed of imitation pearls, which, imported in quantity by them from Japan, Spain, and other foreign countries, were, when received by them, on strings or in bulk, so marked with tags or labels, either on the strings or on the containers, as to disclose the name of the country of origin; and were ordinarily thereafter, with only incidental use of domestic materials, graded, sorted, and strung into graduated or ungraduated necklaces, to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing by any mark, label or otherwise the foreign origin of said imported imitation pearls, which are not generally distinguishable from the domestic product, and from which, during the handling and processing as above set out, they caused to be removed all tags, labels, or other means of identification indicative of said origin, offered, sold, and distributed said jewelry products which, composed in whole or in substantial part of said imported imitation pearls, were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into such false belief, and thereby into their purchase:

Held, That said acts and practices, under the circumstances set forth, were to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge in the complaint that the practice of offering, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads, without any label or marking to indicate to purchasers the foreign origin of such base beads, constituted an unfair and deceptive act and practice:

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the Commission was of the opinion and found, for the reasons stated in its opinion accompanying its findings and desist order in *L. Heller & Son, Inc, et al.*, docket 5358, hereinbefore reported at page 34 *et seq.*, that such charge was inadequately sustained.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

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 David Genser, Max Genser, Ida Genser, Ada Genser, Wallace Genser, and Shirley R. Cohen, copartners trading as Genser Manufacturing Co., 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 David Genser, Max Genser, Ida Genser, Ada Genser, Wallace Genser, and Shirley R. Cohen are copartners trading as Genser Manufacturing Co., with their office and principal place of business located at 45 Waldo Street, Providence, R. I.

PAR. 2. Respondents David Genser, Max Genser, Ida Genser, Ada Genser, Wallace Genser, and Shirley R. Cohen are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and base beads for the manufacture of imitation pearls made into necklaces, and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

Respondents cause and have caused their said merchandise, when sold, to be shipped from their said place of business located in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, in connection with the sale and distribution of said necklaces and other articles of jewelry, respondents have purchased large quantities of imitation

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pearls and base beads used for the manufacture of imitation pearls of foreign origin from importers engaged in the sale and distribution of said products in the United States. Respondents manufacture necklaces and other articles of jewelry from said imported imitation pearls and sell and distribute said products in said commerce, as aforesaid.

Respondents operate a factory where they cause domestic base beads and base beads of foreign origin to be finished into imitation pearls through a process of spraying or dipping in a solution. After said processing as aforesaid, respondents manufacture necklaces and other jewelry products from said imitation pearls made on imported bases and sell and distribute such products in commerce, as aforesaid.

PAR. 4. At the time of the importation into the United States of said base beads and imitation pearls, and at the time the said respondents receive said products of foreign origin from importers, such products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan", or the word "Spain" or the words "Made in Spain", or marked with other word or words indicating the country of origin.

After said products are received by them the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the said products made into necklaces and other articles of jewelry in commerce as above set forth, without any words or marks thereon indicating their foreign origin, and cause said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearl necklaces. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin unless the same are labeled, marked, or imprinted in a manner which

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informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now and for several years last past has been among members of the buying and consuming public, including purchasers and users of imitation pearl necklaces, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of the respondents, as aforesaid, of offering for sale, selling, and distributing their imitation pearl necklaces and other articles of jewelry of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces, has had and now has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and other articles of jewelry, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' imitation pearl necklaces and other articles of jewelry a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1945, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use

of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on September 4, 1945. On March 8, 1946, October 6, 1947, and May 25, 1949, respectively, certain stipulations were entered into by and between counsel, and in said stipulations it was provided, among other things, that, subject to the approval of the Commission, (1) the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, should be made a part of the record in this proceeding to the same extent as if the testimony taken in said *Heller* case were initially taken in this proceeding, (2) that the statement of facts contained in said stipulations, together with the transcript of all hearings in said *Heller* case, may be made a part of the record in this proceeding and considered together with the complaint and answer thereto, and (3) that the briefs and oral arguments of counsel in the aforesaid *Heller* case should be considered as the briefs and arguments in this proceeding.¹

Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondents' answer thereto, the stipulations between counsel (said stipulations having been approved by the Commission), the testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, the recommended decision of the trial examiner and exceptions thereto (which exceptions have been separately disposed of), and the briefs and oral arguments of counsel in the aforesaid *Heller* case; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents David Genser, Max Genser, Ida Genser, Ada Genser, Wallace Genser, and Shirley R. Cohen are co-partners trading as Genser Manufacturing Co., with their office and principal place of business located at 45 Waldo Street, in the city of Providence, State of Rhode Island.

PAR. 2. Respondents are now, and for several years last past they have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and other articles of jewelry, in commerce among and

¹ See, for findings and order in said case, *ante*, at p. 34.

between the various States of the United States and in the District of Columbia.

Respondents cause and have caused their said merchandise, when sold, to be shipped from their place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents have imported from Japan, Spain, and other foreign countries quantities of imitation pearls. Such imported imitation pearls are received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When imported and when received by the respondents said imitation pearls are marked with tags or labels, either on the strings or on the containers, so as to disclose the name of the country in which they originated. After being received in the United States a minor portion of such imported imitation pearls are processed by the application of additional coats of pearling solution. Respondents ordinarily, however, do nothing more than grade and sort such pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces to which clasps of domestic manufacture are attached, or use them in other articles of jewelry. The necklaces of such imported imitation pearls and other articles of jewelry composed in substantial part of said imported imitation pearls are, therefore, substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 4. During the handling and processing of imported imitation pearls as described in paragraph 3 respondents cause to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls and other articles of jewelry composed in substantial part of imported imitation pearls without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials where other consideration, such as style, quality, et cetera, are equal, and has a prejudice against some imported products, particularly those originating in

Japan and Spain. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces and other articles of jewelry composed in substantial part of imitation pearls offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 6. The complaint herein also alleges that the practice of offering for sale, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads without any label or marking to indicate to purchasers the foreign origin of the base beads constitutes unfair and deceptive acts and practices. For the reasons stated in its opinion¹ accompanying its findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, the Commission is of the opinion, and finds, that such charge has not been adequately sustained.

PAR. 7. Respondents' aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

The acts and practices of respondents as herein found are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer

¹ See *ante*, p. 43.

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thereto, certain stipulations entered into by and between counsel, the testimony and other evidence introduced before a trial examiner of the Commission in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, the recommended decision of the trial examiner herein and exceptions thereto, and briefs and oral arguments of counsel in the aforesaid *Heller* case, and the Commission having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, David Genser, Max Genser, Ida Genser, Ada Genser, Wallace Genser, and Shirley R. Cohen, individually and as copartners trading as Genser Manufacturing Co., or trading under any other name or trade designation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls or other articles of jewelry composed in substantial part of imported imitation pearls do forthwith cease and desist from:

Offering for sale or selling said products without affirmatively and clearly disclosing hereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

It is further ordered, That the respondents shall, within 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.

Syllabus

IN THE MATTER OF
D. LISNER & CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5349. Complaint, June 30, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations, such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan and Spain, and also understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where a corporation engaged in the interstate sale and distribution in commerce of domestic and imported merchandise, including necklaces and other jewelry of imitation pearls, which, imported by it in large quantities from Japan, were, when received by it, on strings or in bulk, so marked with tags or labels, either on the strings or on the containers, as to disclose the name of the country of origin; and were ordinarily thereafter, with only incidental use of domestic materials, graded, sorted, and strung into graduated or ungraduated necklaces, to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing by any mark, label, or otherwise the foreign origin of said imported imitation pearls, which are not generally distinguishable from the domestic product, and from which, during the handling and processing as above set out, they caused to be removed all tags, labels, or other means of identification indicative of said origin, offered, sold, and distributed said jewelry products which, composed in whole or in substantial part of said imported imitation pearls, were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into such false belief, and thereby into their purchase:

Held, That said acts and practices, under the circumstances set forth, were to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge in the complaint that the practice of offering, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads, without any label or marking to indicate to purchasers the foreign origin of such base beads, constituted an unfair and deceptive act and practice: the Commission was of the opinion and found, for the reasons stated in its opinion accompanying its findings and desist order in *L. Heller & Son, Inc., et al.*,

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docket 5358, hereinbefore reported at page 34 *et seq.*, that such charge was inadequately sustained.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondent.

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 *D. Lisner & Co.*, a corporation, hereinafter referred to as respondent, has 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 *D. Lisner & Co.*, a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 303 Fifth Avenue, city of New York, State of New York.

PAR. 2. Respondent *D. Lisner & Co.*, now and for several years last past has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and base beads for the manufacture of imitation pearls made into necklaces and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

The respondent causes and has caused its said merchandise, when sold, to be shipped from its said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondent maintains and at all times mentioned herein has maintained a course of trade in its said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent *D. Lisner & Co.*, in connection with the sale and distribution of its said products, imports from Japan, Spain, and other foreign countries, large quantities of imitation pearl necklaces and base beads for the manufacture of imitation pearls. Respondent causes its base beads of foreign origin to be finished by dipping or spraying said products in a solution, thereby completing the said base beads into imitation pearls. After said processing as aforesaid, respondent sells and dis-

tributes its imitation pearls made into necklaces in commerce together with other articles of jewelry.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondent receives said products of foreign origin, such products have been and are all labeled or marked with the word "Japan", or the words "Made in Japan", or the word "Spain", or the words "Made in Spain", or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondent causes the words or marks indicating their foreign origin to be removed therefrom and thereafter sells and distributes the said products made into necklaces and other articles of jewelry in commerce as above set forth, without any words or marks thereon indicating their foreign origin, and causes said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchaser thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to make or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearl necklaces. When products composed in whole or in substantial part of imported materials, are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin, unless the same are labeled, marked, or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now and for several years last past has been among members of the buying and consuming public, including purchasers and users of imitation pearl necklaces, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of the respondent, as aforesaid, of offering for sale, selling, and distributing its imitation pearl necklaces and other articles of jewelry of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces, has had and now has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and other articles of jewelry, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondent's said practice places in the hands of retailers of respondent's imitation pearl necklaces and other articles of jewelry a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on June 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, D. Lisner & Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation, dated March 8, 1946, was entered into by and between Richard P. Whiteley, Assistant Chief Counsel for the Commission, and counsel for the respondent, which provided, among other things, that subject to the approval of the Commission the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, shall be made a part of the record in this proceeding to the same extent as if the testimony taken in the *Heller* case were initially taken in this proceeding. Another stipulation, dated October 6, 1947, entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondent, provided, among other things, that subject to the approval of the Federal Trade Commission the statement of facts contained therein

may be made a part of the record herein and considered together with the transcript of all hearings held in the aforesaid *Heller* case, the complaint herein, and the answer thereto. A further stipulation between counsel, dated June 14, 1949, provided that subject to the approval of the Commission the briefs and oral argument of counsel in the aforesaid *Heller* case may be considered as briefs and oral argument in this proceeding.¹

Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answer thereto, stipulations between counsel (said stipulations having been approved by the Commission), testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and the briefs and oral argument of counsel in said *Heller* case; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, D. Lisner & Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 303 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent, for several years last past, has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia. The respondent causes its said merchandise, when sold, to be shipped from its place of business in New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent, prior to December 7, 1941, imported large quantities of imitation pearls from Japan. Such imported imitation pearls were received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When imported and when received by the respondent said imitation pearls were all marked with tags or labels, either on the

¹ See, for findings and order in said case, *ante*, at p. 34.

strings or on the containers, so as to disclose the name of the country in which they originated. After being received in the United States a minor portion of such imported imitation pearls were processed by the application of additional coats of pearling solution. Respondent ordinarily, however, did nothing more than grade and sort such pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces, to which clasps of domestic manufacture were attached, or used them in other articles of jewelry. The necklaces of such imported imitation pearls, and other articles of jewelry composed in substantial part of said imported imitation pearls, are, therefore, substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 4. During the handling and processing of imported imitation pearls as described in paragraph 3, respondent causes to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondent then offers for sale, sells, and distributes necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, et cetera, are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces, and other articles of jewelry composed in substantial part of imitation pearls, offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 6. The complaint herein also charges that the practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads without any label or marking to indicate to purchasers the foreign origin of the base beads constitutes unfair and deceptive acts and practices. For the reasons stated in its opinion accompanying its findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No.

5358,¹ the Commission is of the opinion, and finds, that such charge has not been adequately sustained.

PAR. 7. Respondent's aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondent's said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

The acts and practices of the respondent as herein found are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, stipulations between counsel, testimony and other evidence introduced before a trial examiner of the Commission in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel in said *Heller* case; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, D. Lisner & Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

¹ See *ante*, p. 43.

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Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
COLONIAL BEAD CO., INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5371. Complaint, Aug. 22, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan and Spain, and also understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where a corporation and its president and secretary, who directed and controlled its acts, policies and business affairs, engaged in the interstate sale and distribution at wholesale of domestic and imported merchandise, including necklaces and other jewelry composed of imitation pearls, which, imported in large quantities by them from Japan, prior to December 7, 1941, were, when received by them, on strings, or in bulk, so marked with tags or labels, either on the strings or on the containers, as to disclose the name of the country of origin; and were ordinarily thereafter, with only incidental use of domestic materials, graded, sorted, and strung into graduated or ungraduated necklaces, to which clasps of domestic manufacturers were attached, or used in other articles of jewelry;

Without disclosing by any mark, label, or otherwise the foreign origin of said imported imitation pearls, which are not generally distinguishable from the domestic product, and from which, during the handling and processing as above set out, they caused to be removed all tags, labels, or other means of identification indicative of said origin, offered, sold, and distributed said jewelry products which, composed in whole or in substantial part of said imported imitation pearls, were substantially of foreign origin;

*With capacity and tendency to mislead and deceive purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into such false belief, and thereby into their purchase:

Held, That said acts and practices, under the circumstances set forth, were to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge in the complaint that the practice of offering, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads, without any label or marking to indicate to purchasers the foreign origin of

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such base beads, constituted an unfair and deceptive act and practice: the Commission was of the opinion and found, for the reasons stated in its opinion accompanying its findings and desist order in *L. Heller & Son, Inc., et al.*, docket 5358, hereinbefore reported at page 34 *et seq.*, that such charge was inadequately sustained.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.
Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

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 Colonial Bead Co., Inc., a corporation, and Abraham Abramovitz and Abraham Goldenberg, 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 Colonial Bead Co., 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 1 East Thirty-third Street, city of New York, State of New York.

Individual respondents Abraham Abramovitz and Abraham Goldenberg are president and secretary, respectively, of respondent corporation. Acting in their said official capacities, said individual respondents formulate and control, and have formulated, directed, and controlled, the respective acts, policies, and business affairs of said corporation.

PAR. 2. The respondents are now, and for several years last past, have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and alabaster base beads for the manufacture of imitation pearls made into necklaces and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be transported from their said 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.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents, in connection with the sale and distribution of their said products, import from Japan, Spain, and other foreign countries, large quantities of imitation pearl necklaces and alabaster bead bases for the manufacture of imitation pearls. Respondents cause their bead bases of foreign origin to be finished by dipping or spraying said bead bases in a solution, thereby completing the said products into imitation pearls. While said products are being sprayed or dipped, the tags of foreign origin are removed. After said processing, as aforesaid, respondents sell and distribute their imitation pearls made into necklaces, in commerce, together with other articles of jewelry.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents receive said products of foreign origin, such products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the said products made into necklaces and other articles of jewelry, in commerce, as above set forth, without any words or marks thereon indicating their foreign origin, and cause said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchaser thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearl necklaces. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be

products wholly of domestic manufacture and origin, unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of imitation pearl necklaces, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of the respondents, as aforesaid, of offering for sale, selling, and distributing their imitation pearl necklaces and other articles of jewelry of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces, has had and now has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and other articles of jewelry, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of retailers of respondents' imitation pearl necklaces and other articles of jewelry a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on August 22, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Colonial Bead Co., Inc., a corporation, and Abraham Abron (desig-

nated as Abraham Abramovitz in the complaint) and Abraham Goldenberg, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, a stipulation, dated March 8, 1946, was entered into by and between Richard P. Whiteley, Assistant Chief Counsel for the Commission, and counsel for the respondents, which provided, among other things, that subject to the approval of the Commission the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.*, Docket No. 5358, shall be made a part of the record in this proceeding to the same extent as if the testimony taken in the *Heller* case were initially taken in this proceeding. Another stipulation, dated October 6, 1947, entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondents, provided, among other things, that subject to the approval of the Federal Trade Commission the statement of facts contained therein may be made a part of the record herein and considered together with the transcript of all hearings held in the aforesaid *Heller* case, the complaint herein, and the answer thereto. A further stipulation between counsel, dated June 2, 1949, provided that subject to the approval of the Commission the briefs and oral argument of counsel in the aforesaid *Heller* case may be considered as briefs and oral argument of this proceeding.¹

Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answer thereto, stipulations between counsel (said stipulations having been approved by the Commission), testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel in said *Heller* case; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Colonial Bead Co., 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 1 East Thirty-third Street, New York, N. Y.

¹ See, for findings and order in said case, *ante*, at p. 34.

Individual respondents Abraham Abron and Abraham Goldenberg are president and secretary, respectively, of respondent corporation. Acting in their said official capacities, said individual respondents formulate and control, and have formulated, directed, and controlled, the acts, policies, and business affairs of said corporation.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

The respondents cause, and have caused, their said merchandise, when sold, to be transported from their said 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.

The respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents, prior to December 7, 1941, imported large quantities of imitation pearls from Japan. Such imported imitation pearls were received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When imported and when received by the respondents said imitation pearls were all marked with tags or labels, either on the strings or on the containers, so as to disclose the name of the country in which they originated. After being received in the United States a minor portion of such imported imitation pearls were processed by the application of additional coats of pearling solution. Respondents ordinarily, however, did nothing more than grade and sort such pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces to which clasps of domestic manufacture were attached, or used them in other articles of jewelry. The necklaces of such imported imitation pearls, and other articles of jewelry composed in substantial part of said imported imitation pearls, are, therefore, substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 4. During the handling and processing of imported imitation pearls as described in paragraph 3, respondents cause to be removed all tags, labels, or other means of identification which indicate

the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, et cetera, are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces and other articles of jewelry composed in substantial part of imitation pearls offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 6. The complaint herein also alleges that the respondents' practice of offering for sale, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls made from imported base beads without any label or marking to indicate to purchasers the foreign origin of the base beads constitutes unfair and deceptive acts and practices. For the reasons stated in its opinion accompanying its findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358,¹ the Commission is of the opinion, and finds, that such charge has not been adequately sustained.

PAR. 7. Respondents' aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

¹ See *ante*, p. 43.

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CONCLUSION

The acts and practices of respondents as herein found are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, stipulations between counsel, testimony and other evidence introduced before a trial examiner of the Commission in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel in said *Heller* case; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondent, Colonial Bead Co., Inc., and its officers, agents, representatives, and employees, and the individual respondents, Abraham Abron and Abraham Goldenberg, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

It is further ordered, That the respondents shall, within 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.

Syllabus

IN THE MATTER OF
LOUIS DETKIN ET AL. TRADING AS ROYAL BEAD
NOVELTY CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5374. Complaint, Aug. 30, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations, such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan, and also understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where two partners engaged in the interstate sale and distribution at wholesale of domestic and imported merchandise, including necklaces and other jewelry composed of imitation pearls, which, imported in large quantities by them from Japan, prior to December 1941, and thereafter also purchased from importers and others in the United States, were, when received by them on strings, or in bulk, so marked with tags or labels, either on the strings or on the containers, as to disclose the name of the country of origin; and were ordinarily thereafter, with only incidental use of domestic materials, graded, sorted, and strung into graduated or ungraduated necklaces, to which clasps of domestic manufacture were attached, or used in other articles of jewelry.

- (a) Without disclosing the foreign origin of said imported imitation pearls, which are not generally distinguishable from the domestic product, and from which, during the handling and processing as above set out, they caused to be removed all tags, labels, or other means of identification indicative of said origin, offered, sold, and distributed said jewelry products which, composed in whole or in substantial part of said imported imitation pearls, were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into such false belief, and thereby into their purchase:

- (b) Represented and implied through the use of words "American Made", with which some of their necklaces of imported imitation pearls were marked and labeled when offered and sold as aforesaid, that such products were composed entirely of domestic materials, when in fact they were composed in substantial part of imported imitation pearls; and
- (c) Represented, through use of the words "La Royal Pearl Indestructible," with which some of their said necklaces were marked or labeled when offered and sold, without any tag or label informing purchasers that they

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were made of imitation pearls, that said products were genuine pearls; when in fact they were only imitation pearls made from alabaster or glass beads treated with coatings of a preparation to simulate genuine pearls;

With tendency and capacity to mislead and deceive purchasers into the false belief that their said necklaces of imported imitation pearls were composed entirely of domestic materials, and that the imitation pearls were genuine pearls, and into the purchase thereof in reliance upon such erroneous belief:

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge in the complaint that the practice of offering selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads, without any label or marking to indicate to purchasers the foreign origin of such base beads, constituted an unfair and deceptive act and practice: the Commission was of the opinion and found, for the reasons stated in its opinion accompanying its findings and desist order in *L. Heller & Son, Inc., et al.*, docket 5358, hereinbefore reported at page 34 *et seq.*, that such charge was inadequately sustained.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

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 Louis Detkin and Lillian Detkin, individually and as co-partners, trading as Royal Bead Novelty Co., 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 Louis Detkin and Lillian Detkin, are individuals and co-partners, trading as Royal Bead Novelty Co., with their office and principal place of business located at 34-36 West Thirty-second Street, New York, N. Y.

PAR 2. Respondents are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and alabaster bead bases for the manufacture of imitation pearl necklaces and other articles of jewelry in commerce among and

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between the various States of the United States and in the District of Columbia.

Respondents cause and have caused their said merchandise when sold to be shipped from their said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said merchandise in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In connection with the sale and distribution of their said products, respondents have imported from Japan, Spain, and other foreign countries large quantities of imitation pearl necklaces and alabaster bead bases for the manufacture of imitation pearl necklaces. During the last several years respondents have also purchased large quantities of imitation pearl necklaces of foreign origin from importers and others engaged in the sale and distribution of said products in the United States. Respondents ship their alabaster bead bases from their place of business aforesaid to manufacturers who thereupon dip or spray said alabaster bead bases in a solution, which process completes their manufacture into imitation pearls. The finished imitation pearls are then returned to the respondents, who thereafter sell and distribute said imitation pearls made into necklaces in commerce, together with other merchandise.

PAR. 4. Respondents' imitation pearl necklaces when offered for sale and sold in commerce, as aforesaid, are all marked or labeled with the words and letters "American Made." Respondents thereby represent and imply, and the purchasing public is led to believe that said products so marked or labeled are composed entirely of domestic materials. In truth and in fact said products are made in whole or in part from imported materials as aforesaid. As a result thereof many members of the public have purchased respondents' said products in commerce as aforesaid.

PAR. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, respondents have marked or labeled their products with the words or letters "La Royal Pearls Indestructible" and thereby represent to purchasers and prospective purchasers that their products so designated are genuine pearls and indestructible, when in truth and in fact said products are not genuine pearls, but are nothing more than glass beads treated with several coatings of a preparation or solution to simulate genuine pearls. Said products are not indestructible.

PAR. 6. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents receive said products of foreign origin, such products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom, and thereafter sell and distribute the said products in commerce as above set forth without any words or marks thereon indicating their foreign origin and cause the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition without informing the purchasers thereof that the said products are of foreign origin.

PAR. 7. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearls. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be, products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 8. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of imitation pearls, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial parts of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 9. The practice of the respondents as aforesaid of offering for sale, selling, and distributing their imitation pearl necklaces of Jap-

anese, Spanish, or other foreign origin, without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces and the use of the trade name "La Royal Pearls Indestructible", has had and now has the capacity and tendency to, and does mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic manufacture and origin and that such imitation pearls are genuine natural pearls and indestructible, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of retailers of respondents' imitation pearl necklaces a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 30, 1945, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on October 10, 1945. On March 8, 1946, October 6, 1947, and June 24, 1949, respectively, certain stipulations were entered into by and between counsel, and in said stipulations it was provided, among other things, that, subject to the approval of the Commission, (1) the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, should be made a part of the record in this proceeding to the same extent as if the testimony taken in said *Heller* case were initially taken in this proceeding, (2) that the statement of facts contained in said stipulations, together with the transcript of all hearings in said *Heller* case, may be made a part of the record in this proceeding and considered together with the complaint and answer thereto, and (3) that the briefs and oral

arguments of counsel in the aforesaid *Heller* case should be considered as the briefs and arguments in this proceeding.¹

Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondents' answer thereto, the stipulations between counsel (said stipulations having been approved by the Commission), the testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et. al.*, docket No. 5358, the recommended decision of the trial examiner and exceptions thereto (which exceptions have been separately disposed of), and the briefs and oral arguments of counsel in the aforesaid *Heller* case; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Louis Detkin and Lillian Detkin are copartners trading as Royal Bead Novelty Co., with their office and principal place of business located at 34-36 West Thirty-second Street, in the city of New York, State of New York.

PAR. 2. Respondents are now, and for several years last past they have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

Respondents cause and have caused their said merchandise, 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. Respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents, prior to December 1941, imported large quantities of imitation pearls from Japan. Since December 1941 respondents have also purchased imitation pearls from importers and others engaged in the sale and distribution of said products in the United States. Such imported imitation pearls were received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When

¹ See, for findings and order in said case, *ante*, at p. 34.

imported and when received by respondents said imitation pearls are marked with tags or labels either on the strings or on the containers so as to disclose the name of the country in which they originated. After being received in the United States a minor portion of such imported imitation pearls are processed by the application of additional coats of pearling solution. Respondents ordinarily, however, do nothing more than grade and sort such imitation pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces to which clasps of domestic manufacture are attached, or use them in other articles of jewelry. The necklaces of such imported imitation pearls and other articles of jewelry composed in substantial part of said imported imitation pearls are, therefore, substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 4. During the handling and processing of imported imitation pearls as described in paragraph 3 respondents cause to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls and other articles of jewelry composed in substantial part of imported imitation pearls without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials where other considerations such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces and other articles of jewelry composed in substantial part of imitation pearls offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 6. Respondents' aforesaid acts and practices of offering for sale, selling and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of

domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 7. Some of respondents' necklaces of imported imitation pearls, when offered for sale and sold in commerce as aforesaid, have been marked and labeled with the words "American Made." Some of such necklaces of imported imitation pearls have also been marked or labeled with the words "La Royal Pearl Indestructible" and after being so marked or labeled have been offered for sale and sold in commerce without any tag or label informing the purchasers thereof that the necklaces were made of imitation pearls.

PAR. 8. Through the use of the words "American Made" the respondents represented and implied to purchasers and prospective purchasers that the products so marked or labeled were composed entirely of domestic materials. In truth and in fact said products were composed in substantial part of imported imitation pearls.

Through the use of the words "La Royal Pearl Indestructible," as aforesaid, respondents represented and implied to purchasers and prospective purchasers that the products so marked or labeled were genuine pearls. In truth and in fact these products were not genuine pearls but were only imitation pearls made from alabaster or glass beads treated with several coats of a preparation or solution to simulate genuine pearls.

PAR. 9. The use by respondents of the aforesaid marks or labels has had the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the false and erroneous beliefs that respondents' necklaces of imported imitation pearls were composed entirely of domestic materials, and that imitation pearls were genuine pearls, and into the purchase of such products in reliance upon such erroneous beliefs.

PAR. 10. The complaint herein also alleges that the practice of offering for sale, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads without any label or marking to indicate to purchasers the foreign origin of the base beads constitutes unfair and deceptive acts and practices. For the reasons stated in its opinion accompanying its findings as to the facts and order to cease

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and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358,¹ the Commission is of the opinion, and finds, that such charge has not been adequately sustained.

CONCLUSION

The acts and practices of respondents as herein found are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, certain stipulations entered into by and between counsel, the testimony and other evidence introduced before a trial examiner of the Commission in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, the recommended decision of the trial examiner herein and exceptions thereto, and briefs and oral arguments of counsel in the aforesaid *Heller* case, and the Commission having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents Louis Detkin and Lillian Detkin, individually and as co-partners trading as Royal Bead Novelty Co., or trading under any other name or trade designation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of imitation pearls, whether offered for sale or sold as necklaces or in other articles of jewelry, do forthwith cease and desist from:

(1) Representing by the use of the word "pearls" or any other word or words of similar import or meaning, or in any other manner, that said imitation pearls are genuine pearls: *Provided, however*, That the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, whenever used, the word "pearls" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated," or other word of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

¹ See *ante*, p. 43.

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It is further ordered, That said respondents and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

(1) Representing by the use of the words "American Made," or otherwise, that said products are composed entirely of domestic materials.

(2) Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

It is further ordered, That the respondents shall, within 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.

Syllabus

IN THE MATTER OF
CORO, INC. ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5395. Complaint, Dec. 21, 1945¹—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations, such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan and Spain, and also understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where a corporation and its subsidiary, and three individuals who were officers or directors of one or both and formulated, directed and controlled their acts, policies, and business affairs, engaged at wholesale in the interstate sale and distribution of domestic and imported merchandise, including necklaces and other articles of jewelry composed of imitation pearls made from alabaster or glass beads treated with coatings of a preparation to simulate genuine pearls; in advertising in newspapers, magazines, and other advertising matter of general circulation—

- (a) Falsely represented and implied that its said imitation pearls were genuine through designating them as "Coro Pearls" and did not in any way indicate that they were made of imitation pearls up to a certain period, and thereafter displayed said words in large and conspicuous type and set forth at some other place and not in close proximity thereto, the word "simulated" in smaller type;

With tendency and capacity through use of said words "Coro Pearls" as above set out to mislead and deceive purchasers and prospective purchasers into the false belief that its imitation pearls were genuine, and thereby into the purchase thereof; and

Where said corporations and individuals, engaged in importing from Japan and other foreign countries quantities of imitation pearls, which, when received by them, on strings or in bulk, were so marked with tags or labels, either on the strings or on the containers, as to disclose the name of the country of origin; and were ordinarily thereafter, with only incidental use of domestic materials, graded, sorted, and strung into graduated or ungraduated necklaces, to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing by any mark, label, or otherwise the foreign origin of said imported imitation pearls, which are not generally distinguishable from the domestic product, and from which, during the handling and processing as above set out, they caused to be removed all tags, labels, or other means of identification indicative of said origin, offered, sold, and distributed said

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jewelry products which, composed in whole or in substantial part of said imported imitation pearls were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that said products were wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such belief; and with the result of placing in the hands of retailers a means by which members of the public might be misled and deceived into such false belief, and thereby into their purchase:

Held, That said acts and practices, under the circumstances set forth, were to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge in the complaint that the practice of offering, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls manufactured in the United States from imported base beads, without any label or marking to indicate to purchasers the foreign origin of such base beads, constituted an unfair and deceptive act and practice; the Commission was of the opinion and found, for the reasons stated in its opinion accompanying its findings and desist order in *L. Heller & Son, Inc., et al.*, docket 5358, hereinbefore reported at page 34 *et seq.*, that such charge was inadequately sustained.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

AMENDED COMPLAINT¹

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 Coro, Inc., a corporation, Coro, Inc., of Rhode Island, a corporation, and Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, individually and as officers of said corporations, hereinafter referred to as respondents have violated the provisions of said act and it appear-

¹ The Commission on July 3, 1947, issued an order substituting a party respondent, as follows:

This matter coming on to be heard upon stipulation of counsel, which stipulation among other things, contained the agreement of all parties that the Commission might by its order make Coro, Inc., of Rhode Island, a corporation, a party respondent herein, without the issuance and service of formal amended complaint, or notice with respect thereto; that the name of Coro, Inc., of Rhode Island should be substituted for the name of Coro, Inc., of Providence wherever the latter appears in the amended complaint herein and the answer thereto; and the Commission having duly considered said stipulation and the record herein and being now fully advised in the premises;

It is ordered, That Coro, Inc., of Rhode Island, a corporation, be made a party respondent herein without the issuance and service of formal amended complaint, or notice with respect thereto: that the name of Coro, Inc., of Rhode Island, shall be substituted for the name of Coro, Inc., of Providence wherever the latter appears in the amended complaint herein and the answer thereto.

ing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Coro, 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 47 West Thirty-fourth Street, New York, N. Y. Respondent Coro, Inc., was incorporated under the laws of the State of New York in 1913 as Cohn and Rosenberger, Inc. The name of the corporation was changed to Coro, Inc., in 1942.

PAR. 2. Respondent Coro, Inc., of Rhode Island is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island with its office and principal place of business located at 167 Point Street, Providence, R. I.

Respondent Coro, Inc., of Rhode Island was incorporated under the laws of the State of Rhode Island in the year 1910 as Cohn and Rosenberger, Inc., of Providence. The name of the corporation was changed to Coro, Inc., of Rhode Island in 1942. The respondent Coro, Inc., of Rhode Island is a subsidiary of the respondent Coro, Inc. and the said respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged. Respondent Gerald E. Rosenberger is president of the corporate respondent Coro, Inc., and treasurer of corporate respondent Coro, Inc., of Rhode Island. Respondent Carl Rosenberger is chairman of the board of directors of corporate respondent Coro, Inc., and is also president of the corporate respondent Coro, Inc., of Rhode Island. Respondent Henry Rosenblatt is a member of the board of directors of the corporate respondent Coro, Inc.

Acting in their official capacities, said individual respondents formulate and control and have formulated, directed, and controlled the respective acts, policies, and business affairs of said corporations.

PAR. 3. Respondents are now and for several years last past and while doing business under the corporate names Cohn and Rosenberger, Inc. and Cohn and Rosenberger, Inc. of Providence have been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and base beads for the manufacture of imitation pearls made into necklaces and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

The respondents cause and have caused their said merchandise when sold to be shipped from their said places of business located in the

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State of New York and in the State of Rhode Island, to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain and at all times mentioned herein have maintained a course of trade in their said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products respondents represent and have represented to purchasers and prospective purchasers in newspapers, magazines, and other advertising matter having a general circulation in various States of the United States and in the District of Columbia that their products designated "Coro Pearls" are genuine pearls when in truth and in fact said products are nothing more than base beads treated with several coatings of a preparation or solution to simulate genuine pearls. Said products are not genuine pearls but only imitation pearls which are strung, a clasp attached, and made into completed imitation pearl necklaces. In some advertisements respondents display the words "Coro Pearls" in very large and conspicuous type and the word "Simulated" appears in much smaller type at some other place in the advertisement and in no wise connected or in close proximity to the words "Coro Pearls." Through the use of the words "Coro Pearls" respondents represent and imply and the purchasing public is led to believe that said products so designated are in fact genuine pearls and as a result thereof many members of the public have purchased respondents' said products as aforesaid.

PAR. 5. In connection with the sale and distribution of their said products respondents have imported from Japan, Spain, and other foreign countries large quantities of imitation pearl necklaces and base beads for the manufacture of imitation pearl necklaces.

Respondents operate and control the output of the factory located at 167 Point Street, Providence, R. I., where they cause domestic bead bases as well as bead bases of foreign origin to be finished by dipping or spraying said products in a solution, thereby completing the said bead bases into imitation pearls. After said processing, as aforesaid, respondents cause said products to be strung and made into imitation pearl necklaces and sold in commerce, together with other articles of merchandise.

PAR. 6. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents receive said products of foreign origin, such products have been and are

all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the said products in commerce as above set forth without any words or marks thereon indicating their foreign origin and cause the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition without informing the purchasers thereof that the said products are of foreign origin.

PAR. 7. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearl necklaces. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be, products wholly of domestic manufacture and origin unless the same are labeled, marked, or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 8. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of imitation pearl necklaces a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 9. The practice of the respondents as aforesaid of offering for sale, selling and distributing their imitation pearl necklaces of Japanese, Spanish or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish or other foreign origin of such imitation pearl necklaces has had, and now has, the capacity and tendency to, and does, mislead and deceive pur-

chasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of retailers of respondents' imitation pearl necklaces a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 21, 1945, issued and subsequently served its amended complaint in this proceeding upon the respondents, Coro, Inc., a corporation, Coro, Inc. of Providence, a corporation, and Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, the Commission ordered, on July 3, 1947, pursuant to stipulation of counsel, that Coro, Inc., of Rhode Island, a corporation, be made a party respondent without the issuance and service of a formal amended complaint or notice with respect thereto and that the name Coro, Inc., of Rhode Island be substituted for the name Coro, Inc. of Providence wherever the latter appears in the amended complaint and answer thereto. Said stipulation, dated July 1, 1947, entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondents, provided, among other things, that subject to the approval of the Federal Trade Commission the entire transcript of all hearings in the matter of *L. Heller & Son, Inc., et al.* docket No. 5358, shall be made a part of the record in this proceeding to the same extent as if the testimony taken in the *Heller* case were initially taken in this proceeding, and that the statement of facts contained in said stipulation may be made a part of the record herein and considered together with the transcript of all hearings held in the *Heller* case, the amended

complaint, and the answer thereto. A further stipulation between counsel, dated June 14, 1949, provided that subject to the approval of the Federal Trade Commission the briefs and oral argument of counsel in said *Heller* case may be considered as briefs and oral argument in this proceeding.¹

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, answer thereto, stipulations between counsel (said stipulations having been approved by the Commission), testimony and other evidence taken in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and the briefs and oral argument of counsel in said *Heller* case; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Coro, 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 47 West Thirty-fourth Street, New York, N. Y. Respondent Coro, Inc., was incorporated under the laws of the State of New York in 1913 as Cohn & Rosenberger, Inc. The name of the corporation was changed to Coro, Inc., in 1942.

Respondent Coro, Inc., of Rhode Island, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 167 Point Street, Providence, R. I. It was incorporated under the laws of the State of Rhode Island in the year 1910, as Streeter & Co., Inc. The name was changed to Cohn & Rosenberger, Inc., of Rhode Island, in 1915, and to Coro, Inc., of Rhode Island, in 1943. The respondent Coro, Inc., of Rhode Island is a subsidiary of the respondent Coro, Inc.

Respondent Gerald E. Rosenberger is president of the corporate respondent Coro, Inc., and treasurer of the corporate respondent Coro, Inc., of Rhode Island. Respondent Carl Rosenberger is chairman of the board of directors of corporate respondent Coro, Inc., and is also president of the corporate respondent Coro, Inc., of Rhode Island. Respondent Henry Rosenblatt is a member of the

¹ See, for findings and order in said case, *ante*, at p. 34.

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board of directors of the corporate respondent Coro, Inc. Acting in their official capacities, said individual respondents formulate and control, and have formulated, directed, and controlled, the respective acts, policies, and business affairs of said corporations.

PAR. 2. Respondents are now, and for several years last past and while doing business under the corporate names of Cohn & Rosenberger, Inc., and Cohn & Rosenberger, Inc., of Rhode Island have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and other articles of jewelry, in commerce among and between the various States of the United States and in the District of Columbia.

The respondents cause, and have caused, their said merchandise, when sold, to be shipped from their said places of business located in the State of New York and in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia. The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, respondents have designated their products composed of imitation pearls as "Coro Pearls" to purchasers and prospective purchasers, in newspapers, magazines, and other advertising matter having a general circulation in various States of the United States and in the District of Columbia. Prior to February 1944 there was nothing in respondents' advertising to indicate that the products designated "Coro Pearls" were made of imitation pearls. In some advertisements beginning in February 1944, and prior to the issuance of the original complaint in this matter in October 1945, the respondents displayed the words "Coro Pearls" in large and conspicuous type, while the word "simulated" appeared in smaller type at some other place in the advertising and not in close proximity to the words "Coro Pearls."

PAR. 4. Through the use of the words "Coro Pearls" as aforesaid, respondents have falsely represented and implied to purchasers and prospective purchasers that said products are genuine pearls. In truth and in fact, respondents' said products are not genuine pearls but are only imitation pearls made from alabaster or glass beads treated with several coatings of a preparation or solution to simulate genuine pearls.

The aforesaid practice of the respondents has had the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that respondents' imitation pearls are genuine pearls and into the purchase thereof in reliance upon such erroneous belief.

PAR. 5. In the course and conduct of their aforesaid business respondents have imported from Japan, Spain, and other foreign countries quantities of imitation pearls. Such imported imitation pearls are received in the United States either on strings, graduated or ungraduated as to size, or in bulk. When imported and when received by the respondents said imitation pearls are marked with tags or labels, either on the strings or on the containers, so as to disclose the name of the country in which they originated. After being received in the United States a minor portion of such imported imitation pearls are processed by the application of additional coats of pearling solution. Respondents ordinarily, however, do nothing more than grade and sort such pearls and, using only incidental domestic materials, string them into graduated or ungraduated necklaces to which clasps of domestic manufacture are attached, or use them in other articles of jewelry. The necklaces of such imported imitation pearls and other articles of jewelry composed in substantial part of said imported imitation pearls are, therefore, substantially of foreign origin. Imitation pearls produced in the United States are not generally distinguishable in quality or appearance from imported imitation pearls, and both are used for the same purposes in the production of jewelry.

PAR. 6. During the handling and processing of imported imitation pearls as described in paragraph 5, respondents cause to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 7. A substantial portion of the purchasing public has a general preference for products produced in the United States by American labor and containing domestic materials, where other considerations such as style, quality, etc., are equal, and has a prejudice against some imported products, particularly those originating in Japan or Spain. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces and other articles of jewelry