IN THE MATTER OF

CARROLL F. CHATHAM TRADING AS CHATHAM RESEARCH LABORATORIES ET AL.

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

Docket 7609. Complaint, Oct. 13, 1959—Decision, Feb. 28, 1964

Order reinstating consent order of Apr. 4, 1960 (56 F.T.C. 1196)—vacated April 5, 1962—requiring a San Francisco manufacturer of man-made stones having the appearance of emeralds, and the New York City wholesalers of the stones, to cease representing falsely that said stones were cultured or natural or identical to natural stones, and using the word "emerald" as descriptive thereof unless preceded by the word "synthetic" or some other word which would clearly disclose that the product was not natural; and adding the provision that the charges of the complaint be dismissed in so far as they might be construed to allege that the term "Chatham-Created Emeralds" was deceptive.

Mr. Berryman Davis and *Mr. Paul F. Helfer* for the Commission.

Mr. Caesar L. Pitassy, New York, N.Y., for respondents *Mr. Carroll L. Chatham*, trading as Chatham Research Laboratories, Anglomex, Inc., and *Mr. Dan E. Mayers*.

Mr. Peter W. Quinn, New York, N.Y., for respondents Ipekdjian, Inc., *Mr. Adom Ipekdjian*, *Mr. Georges Ipekdjian*, and Cultured Gem Stones, Inc.

Hollabaugh & Jacobs, Washington, D.C., for all respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

SEPTEMBER 4, 1963

The Federal Trade Commission issued a complaint herein on October 13, 1959, charging in effect that respondents' advertising was misrepresentative. The complaint alleged that respondents variously referred to their product as "Chatham Emeralds" and "Chatham Cultured Emeralds", and claimed their stones are identical to natural emeralds in all their properties; that these statements were exaggerated, false, misleading and deceptive because the stones were not identical to emeralds, but were synthetic.

Soon after the complaint was issued, the parties entered into discussions for the purpose of working out a consent order. The chronology of events at that time is hereinafter set forth.

On December 28, 1959, counsel for respondents wrote the Com-

mission's Compliance Division, referring to the discussions and to a proposed consent order submitted by the Commission. In this letter [1] counsel stated:

As we understand it, your position is that the use by respondents, in connection with their advertising, of the phrase "Chatham-Created Emeralds" would not violate the proposed order, and that the Compliance Division would so recommend to the Commission in the event the question, whether or not that phrase violates the proposed order, is ever raised by or before the Commission.

Would you be kind enough to confirm by letter that the foregoing accurately sets forth the substance of our conferences.

The reply of the Compliance Division dated January 11, 1960, states: [2]

In response to your letter of December 28, 1959, it is my personal opinion that "Chatham-Created Emeralds" would comply with the terms of the proposed consent order forwarded by you.

You are again reminded, however, that this opinion is not binding on our Bureau of Consultation or the Commission.

After receiving these assurances, the respondents and counsel for the Commission signed an Agreement for a Consent Order, dated February 3, 1960.[3] This was accepted by Hearing Examiner Walter R. Johnson whose Initial Decision of February 29, 1960, contained an order requiring respondents to cease and desist from:

1. Representing, directly or by implication, that such stones have been cultured, are natural stones, or are identical to natural stones;

2. Using the word "emerald" or the name of any other precious or semiprecious stone as descriptive of such stones unless such word or name is immediately preceded, with equal conspicuity, by the word "synthetic" or by some other word or phrase of such meaning as clearly to disclose the nature of such product and the fact that it is not a natural stone; provided, however, that this prohibition shall not be construed as requiring respondents, or any of them, to disclose the method or process, or any part thereof, used by respondent Chatham in the manufacture of his stones.

The hearing examiner's Initial Decision became the decision of the Commission on April 4, 1960 [56 F.T.C. 1196], and in an order issued April 8, 1960, respondents were directed to submit a compliance re-

[1] RX 1.
[2] RX 2.
[3] RX 3.

port. They claim they have complied.[4] In this connection, they adopted the name "Chatham-Created Emeralds", having previously received the Compliance Division's qualified assurance concerning the use of the term.

On July 27, 1960 (RX-6), the Compliance Division advised the respondents that on July 25, 1960, the Commission itself decided that the term "Chatham-Created Emeralds" does not violate the order, unless used ambiguously. It has to be made clear "that it is only the 'emerald' which has been created by Chatham." "Great care should be taken to see to it that the words 'Chatham-Created' are adjectives to and modify the word 'emeralds' and nothing else", the Commission directed.

Respondents gave assurances that such care would be observed [5] and on September 21, 1960, submitted a further compliance report.[6] Thereafter, respondents received a letter dated November 18, 1960, from the Acting Assistant General Counsel for Compliance,[7] which stated:

> On November 15, 1960, the Commission rescinded its action of July 25, 1960, wherein it accepted your use of the term "Chatham-Created Emerald" when not used ambiguously.
>
> The Commission directed that you be required to modify the term in conformity with the order to cease and desist.

No reasons were stated in the letter for the action taken by the Commission on November 15, 1960. Respondents requested the Commission to reconsider its action of November 15, which request was denied by the Commission on January 24, 1961.

On January 19, 1962, the Commission issued an Order to Show Cause Why Order to Cease and Desist Should Not be Vacated, Complaint Amended, and Further Proceedings Conducted. On March 26, 1962, respondents filed a Memorandum Showing Cause in which they requested a hearing prior to a reopening of the case in reliance upon the provisions of Section 5(b) of the Federal Trade Commission Act and Section 4.29 of the Commission Rules of Practice. On April 5, 1962 [60 F.T.C. 1889], the Commission issued an Order Reopening

---

[4] RX 5.
[5] RX 7.
[6] RX 8.
[7] RX 9.

Matter, Vacating Order, Amending Complaint and Remanding for Further Proceedings. This order amended Paragraphs Four, Five and Six of the original complaint. In amended Paragraph Four the respondents were charged again with calling their product "Chatham Emeralds" and "Chatham Cultured Emeralds", and also with calling their product "Chatham-Created Emeralds", even though the use of this name had been previously approved by the Commission. The amended complaint was accompanied by a proposed new order which would require respondents to cease and desist from:

1. Representing, directly or by implication, that such stones have been cultured, are natural stones, or are identical to natural stones;

2. Using the word "emerald" or the name of any other precious or semi-precious stone as descriptive of such stones, unless such word or name is immediately preceded, with equal conspicuity, by the word "synthetic".

The matter was assigned to the hearing examiner for further proceedings. Thereafter, on April 23, 1962, respondents filed a Motion to Reconsider and to Rescind, Vacate or Set Aside the Order Issued April 5, 1962, contending the Commission acted without authority in issuing the reopening order, in that respondents were not granted a hearing as was requested in their Memorandum Showing Cause dated March 26, 1962. The Commission denied the motion on May 29, 1962 [60 F.T.C. 1891].

Thereafter, on July 11, 1962, the respondents filed their answer, two prehearing conferences were held, prehearing briefs were filed, hearings before the undersigned hearing examiner commencing on May 13, 1963, in New York City, extended over a period of approximately four weeks, and an order was entered closing testimony as of June 20, 1963.

The history of the proceedings reflects that from the initial stages, respondents have adopted a cooperative attitude. The initial order was agreed to without undue delay, and after assurances were obtained that what respondents proposed to call their product would be in compliance with the order.

The hearing examiner has carefully considered the proposed findings of fact and conclusions submitted by counsel in support of the complaint and counsel for the respondents, and such proposed findings and conclusions if not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

Upon the entire record in the case the hearing examiner makes the following findings of facts and conclusions:

FINDINGS OF FACT

1. Respondent Carroll F. Chatham is an individual trading as Chatham Research Laboratories, with his principal office and place of business located at 70 - 14th Street, in the city of San Francisco, State of California. [8]

2. Respondent Anglomex, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 214 East 18th Street, in the city of New York, State of New York. Respondent Dan E. Mayers is president and principal owner of this corporate respondent. He formulates, directs and controls the acts and practices of this said corporate respondent, including the acts and practices hereinafter set out. The address of this individual respondent is the same as that of the said corporate respondent.[9]

3. Respondent Ipekdjian, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of New York, with its principal office and place of business located at 580 Fifth Avenue, in the city of New York, State of New York. Respondent Georges Ipekdjian is the president and respondent Adom Ipekdjian the vice president of this said corporate respondent. These individuals formulate, direct and control the policies, acts and practices of this corporate respondent, including the acts and practices hereinafter set out. The address of these individual respondents is the same as that of the said corporate respondent.[10]

4. Respondent Cultured Gem Stones, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 580 Fifth Avenue, in the city of New York, State of New York. This corporate respondent is a whollyowned subsidiary of corporate respondents Ipekdjian, Inc. Respondent Georges Ipekdjian is the president and respondent Adom Ipekdjian the vice president and treasurer of this said corporate respondent. These individuals formulate, direct and control the policies, acts and practices of this corporate respondent, including the acts and practices hereinafter set out. The address of these individual respondents is the same as that of the said corporate respondent.[11]

[8] See complaint and answer.
[9] See complaint and answer.
[10] See complaint and answer.
[11] See complaint and answer.

5. Respondent Carroll F. Chatham is now, and for some time past has been, engaged in the manufacture of synthetic stones which have the appearance of emeralds, advertising the same, and the sale thereof to respondents Anglomex, Inc., and Dan E. Mayers. In the course and conduct of his business, respondent Carroll F. Chatham causes his said synthetic stones to be moved from his place of business in San Francisco to a receiver located in New York City who acts in the capacity of a grader of such merchandise on behalf of respondents Anglomex, Inc., Dan E. Mayers, Ipekdjian, Inc., Cultured Gem Stones, Inc., Adom Ipekdjian and Georges Ipekdjian.[12]

6. Respondents Anglomex, Inc., and Dan E. Mayers are now, and for some time last past have been, engaged in the sale to respondents Ipekdjian, Inc., Adom Ipekdjian and Georges Ipekdjian of synthetic stones manufactured by, and purchased from, respondent Carroll F. Chatham, and delivered by said Carroll F. Chatham to the aforementioned grader. Thereafter, respondents Anglomex, Inc., and Dan E. Mayers require the grader to deliver such synthetic stones to respondents Ipekdjian, Inc., Adom Ipekdjian and Georges Ipekdjian. Respondents Anglomex, Inc., and Dan E. Mayers oversee, direct and control advertising which is disseminated by respondents Ipekdjian, Inc., Adom Ipekdjian and Georges Ipekdjian in their promotion and sale of such synthetic stones to retailers of jewelry and to the purchasing public.[13]

7. Advertising disseminated by respondents Ipekdjian, Inc., Adom Ipekdjian and Georges Ipekdjian in their promotion of synthetic stones manufactured by respondent Carroll F. Chatham is approved by respondents Carroll F. Chatham, Anglomex, Inc., and Dan E. Mayers.[14]

---

[12] Partially admitted by answer. That respondent Chatham is now, and for some time has been, engaged in advertising synthetic stones manufactured by him is reflected by the record. See Tr. 116 and 223, also 134–136 showing that this respondent participated in the preparation of CX 4B–D, copy containing claims basic to all subsequent copy. See CX's 3, 13, 14, and 15A.

That the stones in question are synthetic was conceded by Chatham who makes them. Tr. 166–167.

That the stones are those stones advertised and sold by the other respondents as Chatham Cultured Emeralds or Chatham-Created Emeralds is thoroughly demonstrated by the evidence. See Tr. 114, 121, 200, 201.

See Tr. 160, 161 to the effect that the stones are not cultured.

[13] Partially admitted by answer. To the effect that respondent Anglomex, Inc., and respondent Dan E. Mayers oversee, direct and control the advertising in question which respondents Ipekdjian, Inc., Cultured Gem Stones, Inc., and Adom and Georges Ipekdjian have disseminated and are disseminating in the promotion of the synthetic stones simulating the appearance of emeralds manufactured by respondent Carroll F. Chatham is established by testimony, see Tr. 208 and 209, and related CX's 12, 13, 14, 15, and 16.

[14] CX's 4, 5, 10, 12, 13, 14, and 15.

8. Respondents Ipekdjian, Inc., Adom Ipekdjian and Georges Ipekdjian are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of natural and synthetic stones, including synthetic stones manufactured by respondent Carroll F. Chatham, which said synthetic stones are those synthetic stones that have been sold by respondent Carroll F. Chatham as aforesaid to respondents Anglomex, Inc., and Dan E. Mayers, and thereafter purchased by respondents Ipekdjian, Inc., Adom Ipekdjian and Georges Ipekdjian from respondents Anglomex, Inc., and Dan E. Mayers.[15]

9. Respondents Cultured Gem Stones, Inc., Adom Ipekdjian and Georges Ipekdjian are now, and for some time last past have been, engaged in the sale and distribution in interstate commerce of synthetic stones, which said synthetic stones are those same synthetic stones that have been manufactured by respondent Carroll F. Chatham, purchased therefrom by respondents Anglomex, Inc., and Dan E. Mayers, and sold by the latter to respondent Ipekdjian, Inc., the corporate parent of corporate respondent Cultured Gem Stones, Inc.[16]

10. All of the respondents have cooperated and acted together in the advertising and promotion, and sale to the public, of synthetic stones which they described and referred to as Chatham Cultured Emeralds, Chatham-Created Emeralds and Chatham Emeralds.[17]

11. In the course and conduct of their businesses, respondents Ipekdjian, Inc., Cultured Gem Stones, Inc., Adom Ipekdjian and Georges Ipekdjian now cause, and for some time last past have caused, their said synthetic stones, when sold, to be shipped from their place of business in the State of NewYork to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said synthetic stones in commerce, as "commerce" is defined in the Federal Trade Commission Act, in the maintenance of which said course of trade

---

[15] Partially admitted by answer.

That respondents Ipekdjian, Inc., and the two Ipekdjians engaged, and now are engaged, in advertising and selling the synthetic stones in question is clearly established by the evidence. See Tr. 200, 215 and 237, and related CX's 19–23, 25–34.

[16] Partially admitted by answer.

Also see footnote 12 as to evidence stones are synthetic. That sales and distribution of such synthetic stones have been made is also evidenced. See Tr. 215 and CX's 19–23 and 25–34.

[17] The interrelationship of all respondents leading to the sale of the synthetic stones at issue manufactured by respondent Chatham is thoroughly evidenced despite claims to the contrary. See also footnotes 12–16.

these said respondents were aided, assisted and abetted by respondents Carroll F. Chatham, Anglomex, Inc., and Dan E. Mayers.[18]

12. In the course and conduct of their businesses, and for the purpose of inducing the sale of their synthetic stones, respondents have made certain statements with respect to the nature of the synthetic stones offered for sale and sold by them, in advertisements in magazines of national circulation and by other means, of which the following are typical:

Chatham Emeralds
Chatham-Created Emeralds
Chatham Cultured Emeralds

These stones are identical to natural emeralds in all of their properties: chemically, physically, optically, with the same crystal faces, atomic arrangement, and even the same inclusions and "gardens".[19]

13. Through the use of the aforesaid false representations (with the exception of the statement "Chatham-Created Emeralds" unaccompanied by other representations set forth in Finding No. 12, and also unaccompanied by the advertiser's name as "Cultured Gem Stones, Inc." [20] respondents misrepresented that their said synthetic stones or synthetic emerald products had been cultured, were emeralds and were identical to emeralds, when in fact they were not natural, not cultured, and not identical in all respects.[21]

---

[18] Partially admitted by answer.

That sales and distribution of such synthetic stones were to purchasers located in states outside the State of New York is also evidenced. See Tr. 215 (and CX's 19–23 and 25–34).

The course of trade was substantial ($150,000–$245,000 by the Ipekdjians through their two companies in 1961 [Tr. 242], and about $317,000 in 1962 [Tr. 243]).

That respondents Chatham, Anglomex, Inc., and Mayers aided, assisted and abetted the maintenance of this course of trade is shown by CX's 3, 4, 5, 11, 12, 13, 14, 15, and 16. Respondent Mayers even insisted on the Ipekdjians' corporate reorganization at a time when "financial manipulations" of the Ipekdjians appeared to have brought discredit to respondent Chatham's product (CX 16) and Mayers paid for the reorganization (Tr. 241); and respondent Chatham considered his contribution to the preparation of advertising as being "* * * you might say for the whole cause". (Tr. 144.)

[19] Substantially conceded by respondents' answer.

Typical advertisements containing one or more of the quoted references are CX's 6, 8, 17, 18, 35, 36, and 55.

[20] See advertisements RX 13–17 in which respondents identified their stones as "Chatham-Created Emeralds", as advertised by "Cultured Gem Stones, Inc.", thereby imputing that such stones are cultured, although this is unestablished by the evidence, since Chatham refused to testify as to the creative process on the ground that it was and is a trade secret. (Tr. 163.) Furthermore, in avoidance of divulging the trade secret, Mr. Chatham conceded the Commission's contention that the stones at issue were synthetic. (Tr. 166.) Although, in this connection, respondents adduced evidence to the effect that the Chatham-Created Emeralds are not the result of synthesis and are of better quality than stones loosely termed by the jewelry trade and the public as synthetic, this argument becomes academic in view of Mr. Chatham's concession that his stones are synthetic. (Tr. 900–912.) See also transcript pages and exhibits cited at pages 30–42 of the respondents' brief.

[21] That they are not identical to emeralds was conceded by the manufacturer (Tr. 128, 129), confirmed by the expert witness Holmes (Tr. 445, 449, 450) and tests of the expert witness Crowningshield (Tr. 538, 539, 540, 542).

14. The use of the term "Chatham-Created Emeralds" unassociated with other words or statements imputes, as established by the evidence, that this product is not a creation of nature, that it is man-made, and that it is artificial or synthetic.[22] Such usage is, therefore, not deceptive.

15. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of emeralds.

16. The use by the respondents of the statements and practices, heretofore identified as deceptive, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements were and are true, and to induce a substantial number thereof into the purchase of respondents' synthetic stones by reason of said erroneous and mistaken belief.

17. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSIONS

Under section 5 of the Federal Trade Commission Act, the Commission is empowered to act against misrepresentation if the advertising involved has a tendency to mislead or to deceive a substantial segment of the purchasing public. *Herzfeld* v. *FTC*, 140 F. 2d 207

[22] The hearing examiner is aware of the Commission's possible position that the words "Chatham-Created" might infer that the stones in question are natural stones of Chatham design. However, the words "created" and "designed" are not in any sense synonymous as defined by any known dictionary. Furthermore, numerous witnesses queried on the subject, including experts, those in the trade, and others, all testified without contradiction that the terminology "created", prefixed by a name, would impute to them that the product created was synthetic. (Tr. 248, 258, 263, 278, 295, 307, 906–907, 792–793, 801, 270–273, 536–537, 414, 298–301.) Thus, the evidence clearly establishes that any reasonable interpretation of the statement "Chatham-Created Emeralds", regardless of the practice in the industry to the use of the word "synthetic" (Tr. 250–266, 280, 296, 297, 328, and 383) imputes such emeralds are synthetic and not real or natural emeralds of Chatham design. Nevertheless, it seems reasonable to assume that the advertising of "Chatham-Created Emeralds", supplemented by Cultured Gem Stones, Inc., as the advertiser, suggests that the "Chatham-Created Emeralds" are cultured. Since Mr. Chatham concedes, for the purpose of this proceeding, that his emeralds are synthetic, it must be assumed, in the absence of evidence to the contrary, that they are not cultured. Therefore, it would appear to be misrepresentative to suggest that the emerald created by Chatham is a cultured gem rather than a synthetic gem, which the use of the name "Cultured Gem Stones, Inc.", as advertiser, seems to suggest in contradiction to the reasonable inference, which is that "Chatham-Created Emeralds" are synthetic emeralds.

(2d Cir. 1944); *S. Buchsbaum & Co.* v. *FTC*, 160 F. 2d 121 (7th Cir. 1947). The accepted test is whether the natural and probable result of the respondents' advertising makes the average purchaser unwittingly, under ordinary conditions, purchase that which he did not intend to buy. *Pep Boys-Manny, Moe & Jack* v. *FTC*, 122 F. 2d 158, 161 (3rd Cir. 1941); *Indiana Quartered Oak Co.* v. *FTC*, 26 F. 2d 340, 342 (2d Cir. 1928). The *probability* of deception must be a real one and not remote, and the finding of a probability of deception cannot be a result of some fanciful exercise of semantics. *Arnold Stone Co.* v. *FTC*, 49 F. 2d 1017 (5th Cir. 1931).

Nevertheless, the Commission and the courts have also held that an advertisement which is ambiguous is deceptive, and an advertisement which is capable of two meanings is likewise deceptive, and a totally false statement in an advertisement cannot be qualified or modified. It has also been held that the Commission may require advertisements to be so carefully worded that the most ignorant and unsuspecting purchaser will be protected.[23]

Under the foregoing concept it is apparent that reference to respondents' product as "Chatham Emeralds" or "Chatham Cultured Emeralds" is deceptive. The former description imputes such emeralds may be natural, which admittedly they are not. The latter description specifically asserts the emeralds are cultured, which also admittedly they are not. It is of no consequence these admissions emanate from the desire of the respondent Chatham to keep a trade secret. The refusal of the respondents to produce evidence as to the procedures involved in making such stones requires that the inference be drawn that they are not natural or cultured, and that they are synthetic, which is also conceded.

Furthermore, respondents have ceased using these terminologies as descriptive of their product after the filing of the original complaint and agreement to a consent order precluding such use. They, therefore, apparently do not question the propriety of an order precluding the advertising of their product as "Chatham Emeralds" or "Chatham Cultured Emeralds". The fact that such a consent order has been vacated in order to permit the taking of evidence as regards all of the respondents' representations in selling their synthetic emeralds does not vitiate the need for the entry of an order to prevent a subsequent recontinuance of those representations that appear in accordance with the evidence to be false and deceptive.

Not only have the foregoing terminologies been misrepresentative of respondents' product, but the indication that the Chatham syn-

---

[23] *U.S.* v. *Ninety-Five Barrels of Vinegar*, 265 U.S. 438, 442, 443; *Progress Tailoring Co.* v. *F.T.C.*, 153 F. 2d 103, 105 (C.A. 7, 1946); 4 S.&D. 455, 459.

thetic stones are identical to natural stones is also deceptive and must be enjoined. The fact that there are many similarities between a natural emerald and a Chatham creation does not entitle respondents to represent they are identical. In fact, all of the experts, as indicated in the findings, found differences in the natural stone and Chatham's synthetic, particularly with regard to fluorescence under instrumentation.

As regards the use of the terminology "Chatham-Created Emeralds", this would not appear to be deceptive since any reasonable inference that may be drawn therefrom suggests only that such emeralds are Chatham created and must, therefore, be synthetic since they are not created by nature. Every witness, without exception, queried on this point was of the view that "Chatham-Created Emeralds" meant they were synthetic. Nor does this or other evidence suggest the slightest ambiguity in substituting "Chatham-Created" for Chatham synthetic in thus identifying respondents' product. However, the use of the name Cultured Gem Stones, Inc., as the advertiser of "Chatham-Created Emeralds" does create an ambiguity as to whether or not the Chatham creation is actually a cultured emerald. The use of the name of this advertiser, which incorporates the word "cultured" in its firm name, can and does destroy the reasonable inference that a "Chatham-Created Emerald" is a synthetic emerald. Obviously, therefore, the use of the advertiser's name, accompanied by the word "cultured" must be eliminated and enjoined if the terminology "Chatham-Created Emeralds" is to be used in substitution for "Chatham Synthetic Emeralds", otherwise the use of the terminology "Chatham-Created Emeralds" becomes ambiguous and therefore deceptive, as established by the cases hereinbefore cited.

The respondents argue that every effort must be made to preserve their trade name "Chatham-Created Emeralds". In this connection they cite *Jacob Seigel Co.* v. *FTC*, 327, U.S. 608, 613 (1946), and the Commission's *Country Tweeds, Inc.*, decision 50 FTC, 470, 474 (1953). In the latter decision it is pointed out by the Commission that "* * * every effort must be made to reach a solution which will be fair to all parties, which will afford the public and competitors reasonably adequate protection and which, at the same time, will avoid unnecessary hardship and loss to the owner of the tradename. Tradenames are valuable business assets, and should never be prohibited absolutely if less drastic measures will suffice."

Examination of the record in the case discloses that before respondents first used the trade name "Chatham-Created Emeralds", approximately three years ago, they received the approval of the

Commission provided the terminology was used unambiguously. According to respondents, large sums of money have been expended to promote the trade name "Chatham-Created Emeralds" in their advertising in reliance upon the Commission's ruling. Respondents, however, overlook the fact that they have not used the term unambiguously in that they have included in the advertising an advertiser whose name is Cultured Gem Stones, Inc., which imputes that the emeralds are possibly cultured rather than synthetic. This is an ambiguity which can hardly be overlooked in view of the fact that the evidence does not establish that "Chatham-Created Emeralds" are cultured. Quite to the contrary, the respondent Chatham admits they are synthetic. It would appear, therefore, that respondents have not complied with the Commission's original approval. Accordingly, there is no merit to respondents' contention that it would be inequitable to preclude them from using a trade name which the Commission has heretofore approved. There is merit, however, to their contention that their trade name should be preserved unless as used it is ambiguous or misrepresentative of their product.

There is also some merit to respondents' position that the Commission should not exercise its questionable power to require positive disclosures to the point of indicating the semantics to be used in making such disclosures.[24] The Commission in issuing a cease and desist order based upon available evidence may properly foreclose the possibility of misrepresentation or deception by negative restraining provisions. On the other hand, they are hardly in a position to look into a crystal ball to ascertain specifically what appropriate terminology should be used in describing a product, particularly without a formula upon which such description may be based. In the instant case, there is no evidence concerning the formula of the "Chatham-Created Emerald" since Chatham has refused to divulge the composition or the process in making their product which is herein at issue. Obviously, the Commission should not exercise its power of requiring positive disclosure categorically in a vacuum, even assuming that respondents admit their product is synthetic, in the absence of evidence of the product's chemical or inorganic composition and process formula. To do so in issuing an order applicable to the future conduct of the respondents might well lead to the condonement of a deceptive practice. This could clearly be the case if Chatham decided to make what is recognized in the industry as an imitation stone rather than a synthetic stone. In this same connection, it is also observed that the use of the terminology "Chatham-Created Emeralds" is more protective in the public interest than a required terminology of "Chatham Synthetic Emeralds" since the former

[24] See *Alberty* v. *FTC*, 182 F. 2d 36 (D.C. Cir. 1950) *cert. denied* 340 U.S. 818 (1950).

merely imputes that the emeralds are man-made and not natural. This being the case, the public is put on notice that it should ascertain exactly what sort of a product they are purchasing.[25] However, the term "synthetic" may ambiguously impute respondents' product under a strict construction of the word "synthetic" is the result of synthesis, which expert testimony indicates it is not.

Contrary to the position taken by respondents, it would appear that all respondents should be made subject to the order, in view of the "pattern and framework of the whole enterprise" as evidenced, which suggests an interlocking relationship in which all respondents were participants in the resulting deception to the extent heretofore indicated herein in the findings of fact.[26] Accordingly, the following order shall issue:

ORDER

It is ordered, That respondents Carroll F. Chatham, an individual, trading as Chatham Research Laboratories, or under any other name; Anglomex, Inc., a corporation, and its officers, and Dan E. Mayers, individually and as an officer of said corporation; Ipekdjian, Inc., a corporation, and its officers, and Cultured Gem Stones, Inc., a corporation, and its officers, and Adom Ipekdjian and Georges Ipekdjian, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture for sale, offering for sale, sale and distribution of stones now known as "Chatham Emeralds" or "Chatham-Cultured Emeralds", or any other manufactured stone having essentially the same optical, physical and chemical properties, as a natural stone, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that such stones have been cultured, are natural stones, or are identical to natural stones;

2. Using the word "emerald" or the name of any other precious or semi-precious stone as descriptive of such stones unless such word or name is immediately preceded, with equal conspicuity, by the word "synthetic" or by some other word or phrase of such meaning as clearly to disclose the nature of such product and the fact that it is not a natural stone; provided,

[25] See *Keele Hair & Scalp Conditioners, Inc.* v. *FTC*, 275 F. 2d 18 (5th Cir. 1960); *Ward Laboratories* v. *FTC*, 276 F. 2d 952, 954 (2d Cir. 1960) *cert. denied* 364 U.S. 827 (1960); and *Lanolin Plus, Inc.*, Docket No. 8150.

[26] Where the businesses of several are interwoven, all are responsible for the acts and practices charged. See the Opinion of the Commission, per Chairman Dixon, In the Matter of *Delaware Watch Co., Inc., et al.*, Docket No. 8411, Aug. 15, 1963 [63 F.T.C. 491], citing *Lifetime, Inc., et al.*, Docket No. 7616.

however, that this prohibition shall not be construed as requiring respondents, or any of them, to disclose the method or process, or any part thereof, used by respondent Chatham in the manufacture of his stones.

and it is

Further ordered, That the charges of the complaint insofar as they may be construed to allege that the statement "Chatham-Created Emeralds" is deceptive when used exclusively and unaccompanied by the name of an advertiser whose corporate or firm name suggests it markets cultured gems is herein and hereby dismissed.

Opinion, Dissenting in Part

FEBRUARY 28, 1964

By Anderson, *Commissioner:*

I dissent from the majority's action in adopting that part of the hearing examiner's initial decision which holds in effect that there is no reasonable likelihood that the public would understand the expression "Chatham Created Emeralds" to refer to anything other than synthetic emeralds. I do not agree that the public is placed on notice by this expression that the stones so designated are synthetic stones.

Decision of the Commission and Order to File Report of Compliance

This matter having been heard by the Commission on appeal of counsel supporting the complaint from the initial decision of the hearing examiner, filed September 4, 1963, and upon briefs and argument in support thereof and in opposition thereto, and the Commission, having concluded that the appeal should be denied, and that the aforesaid initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, filed September 5, 1963, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Commissioner Anderson dissenting in part, and Commissioner Reilly not participating.