

FEDERAL TRADE COMMISSION

v.

MEYER J. LOEB AND HARRY J. LOEB, PARTNERS, TRADING UNDER THE NAME AND STYLE OF THE LOEB COMPANY,¹ AND JOSEPH HUTNER, TRADING UNDER THE NAME AND STYLE OF P. HUTNER & CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 834—February 15, 1923.

SYLLABUS.

Where an individual engaged in the manufacture, jobbing, and sale of women's wearing apparel falsely represented that certain coats offered by him were composed of a material well known to the trade and public as "Salt's Peao Plush"; with the result that a number of said coats were purchased by a retail dealer on the basis of said representation, were so advertised to the purchasing public, and were bought by it in the mistaken belief thereby induced; to the injury of the manufacturer of the genuine fabric and of manufacturers of garments thereof:

Held, That such misrepresentation of product, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that Meyer J. Loeb and Harry J. Loeb, partners, trading under the name and style of The Loeb Company, and Joseph Hutner, trading under the name and style of P. Hutner & Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondents, Meyer J. Loeb and Harry J. Loeb, partners, trading under the name and style of The Loeb Company, own and operate a department store in the city of Washington, District of Columbia, and sell therefrom merchandise and commodities at retail in the District of Columbia, and in the conduct of such business are in competition with other persons, partnerships, and corporations similarly engaged. That respondent, Joseph Hutner, carries on business under the name and style of P. Hutner &

¹ By separate order dated February 15, 1923, the case was dismissed as to Respondents Meyer J. Loeb and Harry J. Loeb.

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Company, with his principal place of business in the city of New York, State of New York, and is engaged in manufacturing, jobbing, and selling women's cloaks, coats, and dresses, and causes articles sold by him to be transported to the purchasers thereof, from the State of New York through and into other States of the United States and the District of Columbia, and in the conduct of such business is in competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Joseph Hutner, trading under the name and style of P. Hutner & Company, in the course of his business as set out in paragraph 1 hereof, in December, 1920, caused to be brought from the State of New York to the District of Columbia, certain women's coats, which he displayed in a sample room of a hotel, and which coats were offered for sale to dealers, and the respondents, Meyer J. Loeb and Harry J. Loeb, partners trading under the name and style of The Loeb Company, were solicited to buy a portion or all of said coats upon the false representation that said coats were made of a material known to the trade and purchasing public as "Salt's Peco Plush," although each of said respondents well knew that said coats were not made of said material, but were made of a material greatly inferior in quality and value to Salt's Peco Plush; that as a means of inducing prospective customers to purchase said coats, the said respondent, Joseph Hutner, offered to supply appropriate bona fide Salt's Peco Plush labels to be attached to any of said coats so sold, whereupon the said respondents, Meyer J. Loeb and Harry J. Loeb, partners as aforesaid, were induced to purchase, and did purchase, 73 of said coats, at an agreed price of \$14.50 each, and the said respondent, Joseph Hutner, thereafter furnished bona fide Salt's Peco Plush labels for said coats.

PAR. 3. That the respondents, Meyer J. Loeb and Harry J. Loeb, partners, trading under the name and style of The Loeb Company, immediately after the purchase of the coats as set out in paragraph 2 hereof, arranged for a special sale of said coats, which was thereafter held in the store operated by them in the District of Columbia, and caused to be inserted in newspapers of general circulation, published in the District of Columbia, certain advertisements in which said coats were represented to be made of Salt's Peco Plush, which representation was false and misleading, in that said coats were not made of Salt's Peco Plush, but were made of material greatly inferior in quality and value to Salt's Peco Plush, as said respondents well knew, and which representation had the capacity or tendency to mislead and deceive the purchasing public, and the public was thereby induced to purchase said coats upon the mistaken belief that they were made of Salt's Peco Plush, a material which was well

known to the purchasing public, as being of good quality and in great demand.

PAR. 4. That the sale by respondents of the coats, upon the false representation that they were made of Salt's Peco Plush, as set out in paragraphs 2 and 3 hereof, had the further capacity or tendency to destroy or lessen the demand on the part of the purchasing public, for coats made of genuine Salt's Peco Plush, and had the further capacity or tendency to create prejudices in the minds of the purchasing public, against coats made of that material, by causing erroneous impressions to prevail in the minds of the purchasing public concerning the value or utility of coats made of that material, and as a consequence thereof competitors of respondents, who sold coats made of genuine Salt's Peco Plush were injured in their business.

PAR 5. That the practices of respondents, and each of them, as hereinbefore set out, constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, Joseph Hutner, trading under the name and style of P. Hutner & Company, having entered his appearance herein and filed his answer to said amended complaint, evidence was thereupon introduced in support of the charges stated in the complaint and on behalf of said respondent, before an examiner for the Commission, which evidence was filed in the office of the Commission, and thereupon the matter came on for final hearing and the Commission having considered the amended complaint, the answer thereto, and the evidence adduced, and being fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Joseph Hutner, at the time of the issuance of the original complaint herein, and prior thereto, was and had been engaged in the business of manufacturing, jobbing, and

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selling women's coats and other wearing apparel, and carried on such business under the name and style of P. Hutner & Company, having its principal place of business in the city of New York, State of New York. In the conduct of said business, said respondent caused the commodities sold by him to be transported to the purchasers thereof from the State of New York through and into other States of the United States and the District of Columbia, and was in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Joseph Hutner, trading under the name and style of P. Hutner & Company, in December, 1920, had in his employ as manager and house salesman one Abe Shensel, and as traveling salesman one William Goodman, who brought to the District of Columbia and to cities in the adjoining States of Maryland and Virginia women's coats fabricated of plush, which coats were carried in trunks and unpacked and displayed in sample rooms of hotels, and retail dealers were solicited to purchase said coats. That said respondent, Joseph Hutner, directed his said salesmen to represent to customers and prospective customers that the coats so offered for sale by them had been fabricated of a material well known to the public as "Salt's Peco Plush," although such coats were made of a material other than Salt's Peco Plush, and confirmed the representation in that respect made by his salesmen to the respondent The Loeb Company.

PAR. 3. That Salt's Peco Plush is now made in America by the Salt's Textile Company, Inc., which in 1893 acquired the American rights to manufacture the plushes which had been originated in England in 1829 by Sir Titus Salt. That the American manufacturer of such material by extensive advertising has caused Salt's Peco Plush to become well known to the manufacturers of and dealers in women's plush coats, and to the public who purchase in the course of retail trade garments made from that material.

PAR. 4. That on December 8, 1920, the salesmen for the respondent, Joseph Hutner, by representing that the coats offered for sale by him were made of Salt's Peco Plush, induced The Loeb Company, proprietors of a retail store in the District of Columbia, to purchase 73 of said coats, which coats were described in the invoice made out by said salesman as having been made of Salt's Peco Plush, and The Loeb Company thereupon represented in the advertisement which it caused to be published in a newspaper of general circulation in the District of Columbia that said coats were made of Salt's Peco Plush, and the purchasing public in the District of Columbia were thereupon misled and deceived and induced to purchase said coats upon the mistaken belief that they were in fact made of Salt's Peco Plush.

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PAR. 5. That the sale of women's coats by the manufacturers thereof, upon the representations that such coats are made of Salt's Peco Plush, although made of a material other than Salt's Peco Plush, has the capacity and tendency to destroy or lessen the demand upon the part of the purchasing public for coats made of genuine Salt's Peco Plush, and further has the capacity and tendency to prejudice the purchasing public against Salt's Peco Plush, thereby injuring the manufacturer of the genuine material in its business and reputation, and likewise injuring other manufacturers of coats made from the genuine material.

CONCLUSION.

That the practices of the respondent Joseph Hutner, trading under the name and style of P. Hutner & Company, under the conditions and circumstances described in the foregoing findings, were unfair methods of competition in interstate commerce and constituted a violation of Section 5 of the Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent and the testimony and evidence submitted, and the Commission having made its findings as to the facts and its conclusion that the respondent Joseph Hutner, trading under the name and style of P. Hutner & Company, has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent Joseph Hutner, trading under the name and style of P. Hutner & Company, cease and desist from representing to the purchasing public, or to prospective purchasers of coats manufactured and offered for sale by him, or purchased by him for resale, that such coats are made of Salt's Peco Plush, as a means of inducing the public to purchase such coats, or for any other purpose, unless such coats are in fact made of the product of the Salt's Textile Company, Inc., and of the genuine material known as Salt's Peco Plush.

It is further ordered, That the respondent within sixty (60) days after the date of the service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth by the Commission.

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