

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

Docket 948—April 11, 1923.

SYLLABUS.

Where a firm engaged in the sale to dealers of toilet articles composed of nitrated cellulose grained to simulate ivory; with a capacity and tendency to mislead and deceive a substantial part of the purchasing public, indelibly branded and labeled said toilet articles "French Ivory" and so sold the same; with the result that unscrupulous dealers were enabled to misrepresent such articles, and with a capacity and tendency to induce consumers to purchase the same as and for ivory:

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

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Eli Hyman and Louis M. Zaslav, are partners, doing business under the name and style of Hyman & Zaslav, at 83 Bowery, New York City. They are now and at all times hereinafter mentioned have been engaged in the jobbing of silverware, toilet articles, and novelties, and in the conduct of said business cause said silverware, toilet articles, and novelties, so dealt in by them, to be transported to wholesale and retail dealers thereof from the State of New York through and into other States of the United States. In the course of said business respondents continuously have been and are now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondents for the two years last past have been dealing in toilet articles composed of nitrated cellulose grained to

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imitate ivory, which are purchased from several different manufacturers in a finished state; for more than two years last past they labeled or branded, and are now labeling and branding, said toilet articles "French Ivory"; and in the course of said business for more than two years last past respondents have sold said toilet articles to wholesale and retail dealers thereof as "French Ivory," so that said wholesale and retail dealers are enabled to and do sell said toilet articles to the consuming public as "French Ivory."

PAR. 3. The words "French Ivory" used by respondents in branding or labeling their toilet articles as aforesaid, signify to and are understood by a substantial part of the purchasing public to mean ivory; and as used by said respondents as aforesaid they are false and tend to mislead the purchasing public to believe the articles so branded or labeled are composed of genuine ivory.

PAR. 4. There are a considerable number of dealers in toilet articles manufactured from genuine ivory. There are also many dealers in toilet articles manufactured from nitrated cellulose who do not brand or label their toilet articles "French Ivory" or sell said toilet articles as "French Ivory" or otherwise indicate to the purchasing public that their toilet articles are manufactured from ivory.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods 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 its complaint upon the respondents, Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, charging them with the use of unfair methods of competition in violation of the provisions of said act. The respondents having entered their appearance and filed their answer herein, a statement of facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence. And thereupon this proceeding came on for final hearing, and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDING AS TO THE FACTS.

PARAGRAPH 1. Respondents, Eli Hyman and Louis M. Zaslav, are and have been since 1915, partners, doing business at 83 Bowery, New York City, under the name and style of Hyman & Zaslav. They are now and at all times hereinafter mentioned have been engaged in the jobbing of silverware, toilet articles, and novelties, and in the course and conduct of their business sell such silverware, toilet articles, and novelties to wholesale and retail dealers throughout the eastern portion of the United States, and cause such products so sold by them to be transported to the purchasers thereof from the State of New York through and into other States of the United States. In the course of said business respondents continuously have been and are now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 2. The toilet articles dealt in by respondents are composed of nitrated cellulose, grained to simulate ivory, and are procured by them from a number of different manufacturers. For more than two years prior to the issuance of the complaint herein, respondents purchased such toilet articles in a finished state but unmarked, and labeled or branded them indelibly with the words "French Ivory." The articles so branded were then packed by respondents in cases and boxes, and sold by them, in the regular course and conduct of their business, as described above in paragraph 1, to wholesale and retail dealers throughout the eastern portion of the United States.

PAR. 3. The use by respondents of the words "French Ivory" as a brand for toilet articles composed of nitrated cellulose, enabled unscrupulous dealers to whom such articles were sold to misrepresent same in reselling to the public, and, in the absence of such misrepresentations, had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public, by creating in the minds of the public false and erroneous beliefs concerning the value and quality of said articles, and in some instances to induce ultimate consumers to purchase said articles upon the mistaken belief that they were procuring toilet articles made of ivory.

PAR. 4. There are considerable number of dealers in the United States who sell toilet articles manufactured from genuine ivory. There are also many dealers in toilet articles manufactured from nitrated cellulose who do not brand or label such articles "French Ivory" but sell same unbranded.

PAR. 5. On May 17, 1920, at a conference of representatives of manufacturers and dealers in various basic materials, sometimes known commercially as "Celluloid," "Pyralin," etc., and the manu-

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facturers of and dealers in various articles made from these basic materials, which conference was called by the Federal Trade Commission to meet at its offices at Washington, D. C., a resolution was passed which condemned the use as applied to articles made from these basic materials, of the following and similar terms: "French Ivory," "Pyroxylin Ivory," "Tortoise Shell," "Ivory," "Florentine Shell Ivory," "Pyralin Ivory," "Jade," "Coral," "American Ivory."

CONCLUSION.

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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 complaint of the Commission, the answer thereto and a stipulation as to the facts filed herein, and the Commission having made its report in which it stated its findings as to the facts and its conclusion that the respondents have 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 respondents, Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, their agents, representatives, servants, and employees, do cease and desist from:

1. Representing by any label, brand, or advertisement, that toilet articles and other wares sold by them are "French Ivory" or "Ivory" unless such articles and wares are made from animal ivory, and

2. Using the word "Ivory" as a part of any label, brand, or advertisement of toilet articles and other wares which are not made from animal ivory except as an adjective of color or finish; except that "imitation ivory" may be used to designate such product.

It is further ordered, That the said respondents, Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, shall within thirty (30) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

UNITED FIBRE WORKS.

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FEDERAL TRADE COMMISSION