

FEDERAL TRADE COMMISSION

v.

SAMUEL KATZ AND SAMUEL DAVIDSON DOING BUSINESS UNDER THE NAME AND STYLE OF KATZ & DAVIDSON.

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

Docket 1065—July 8, 1924.

SYLLABUS.

Where a firm engaged in the manufacture of men's shirts from a domestic cotton fabric termed "broadcloth" and in the sale thereof, labeled said shirts "English Broadcloth," and so sold the same in competition with concerns which so described their product only when made of a fabric imported from England, with the effect of misleading the retail trade and a substantial portion of the purchasing public in respect of the source of the material of which said garments were made:

Held, That the sale of products labeled as above set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Alex M. Hamburg of New York City, for respondents.

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 Samuel Katz and Samuel Davidson doing business under the name and style of Katz & Davidson, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Katz & Davidson with their principal place of business in the City and State of New York. They are engaged in the manufacture of men's shirts and the sale thereof to wholesale and retail dealers located in various States of the United States. They cause said shirts when so sold to be transported from their said principal place of business in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with

Complaint.

7 F. T. C.

other individuals, partnerships, and corporations similarly engaged in the manufacture and/or sale of men's shirts in interstate commerce and with the trade generally.

PAR. 2. For more than three years last past there has been imported into the United States a certain cotton fabric manufactured in England, called and sold under the name of, "English Broadcloth." During said time manufacturers of men's shirts located in the United States have manufactured shirts from said material and sold the same to wholesale and retail dealers, and through them eventually to the purchasing public, under the name, and as being made of, said English Broadcloth. Because of said material from which they are made, said shirts have acquired a wide popularity amongst the public throughout the United States and a great demand for said shirts has existed amongst the public during aforesaid period of time and still exists.

PAR. 3. For more than a year last past respondents have manufactured and sold to wholesale and retail dealers in the course of their business described in paragraph 1 hereof, shirts made from materials manufactured in the United States, to which said shirts and upon the containers in which they are packed, respondents have caused to be affixed labels bearing the words "English Broadcloth" and representing said shirts to be made of that material. In their price lists, catalogues and other trade literature respondents similarly list and describe said shirts as being made of English Broadcloth. The use by respondents of said labels and said designations appearing in said trade literature as above set out, has the capacity and tendency to mislead and deceive the trade and the public into the erroneous belief that said shirts are manufactured of the aforesaid English Broadcloth imported from England, and to cause the trade and public to purchase said shirts in that belief.

PAR. 4. Many of respondents' competitors referred to in paragraph 1 hereof, sell and distribute throughout the United States shirts made from said English Broadcloth imported from England and advertised, branded and labelled as such.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 14th day of September, 1923, issued and served its complaint upon the respondents, Samuel Katz and Samuel Davidson, charging them with unfair competition in violation of Section 5 of said Act. The respondents having entered their appearance and filed their answer and an agreed statement as to the facts having been made and filed in which it is stipulated that the facts therein recited may be taken in lieu of the testimony in this proceeding, and that upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and conclusions, and enter its order disposing of the proceeding.

Thereupon, this proceeding came on for final hearing without oral argument and the Commission having duly considered the record and having now been fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Samuel Katz and Samuel Davidson, are partners doing business under the trade name and style of Katz & Davidson with their principal place of business in the City and State of New York. They are engaged in the manufacture of men's shirts and the sale thereof to wholesale and retail dealers located in various States of the United States. They cause said shirts when so sold to be transported from their said principal place of business in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture and sale of men's shirts in interstate commerce.

PAR. 2. During the year 1919 certain American importers learned of a cotton fabric then being manufactured in England, which, by reason of its construction and the quality of the yarn used, possessed a distinctive appearance and was, in fact, a new species of cotton cloth. This cloth was made from the finest grade of Egyptian long staple cotton yarn, the counts running from 156 by 84 to 144 by 76, two-ply, both ways, 100 yarn, gassed and highly mercerized. This fabric possessed a fine, silken sheen, great durability, and resembled

Findings.

7 F. T. C.

a fabric made of silk so closely that it was named by the English mills and dealers, "taffeta poplin."

PAR. 3. This new fabric the American importers bought, shipped over to the United States, and introduced the same to the manufacturers of shirts, who at once designated it as a "broadcloth," on account of the resemblance of this very superior cotton to a silk fabric which for a generation or more has been made in America and known as a "silk broadcloth."

PAR. 4. This new fabric became known in the United States as "English Broadcloth." From the start it became very popular, the demand exceeded the supply, and between the latter part of 1919 and the fore part of January, 1921, a very high reputation was established for this cloth among the retail dealers in shirts throughout the States of the United States, and with the consumers, and "English Broadcloth" shirts came into great demand; and thereafter, about the middle of the year 1921, there appeared upon the market fabrics of similar appearance, but of inferior yarn, inferior workmanship, and of less durability than the fabric described above. These fabrics were in various grades and were made by both English and American mills. These fabrics were bought by American shirt manufacturers and were by some of them sold to retailers as "English Broadcloth," and often labeled "English Broadcloth," without regard to whether the cloth of which the shirts were made was imported from England or not.

PAR. 5. The word "broadcloth" is not, in England, applied to any cotton fabric, but for centuries has been applied to a very fine woollen fabric of unusual width, from which men's dress suits and women's skirts and tailored suits are made, and in the United States, the word "broadcloth" is also used to designate the same woollen fabric. The words "silk broadcloth" were used in the shirt industry to designate a fine fabric made of silk, and from which shirts were made, and after the introduction from England, in 1919, of the fine cotton fabric described in paragraph 2, the American mills manufactured a similar cotton cloth which was known to the shirt manufacturers in the United States as "broadcloth." The American mills do not style or designate the cotton fabric produced by them "English Broadcloth."

PAR. 6. The respondents, Samuel Katz and Samuel Davidson, in the course and conduct of their business in interstate commerce for more than a year immediately prior to the issuance of the complaint herein, bought the cotton fabric termed "broadcloth" made by American mills, and manufactured same into shirts, to which shirts they affixed labels bearing the words "English Broadcloth" and sold

525

Order.

such shirts as English broadcloth shirts, in competition with many competitors who affixed the label "English Broadcloth" to shirts only when such shirts were made from the fabric referred to in paragraphs 2, 3, and 4 hereof as being imported from England.

PAR. 7. The word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings denotes to the purchaser that the fabric was made in England, is a product of English mills, and among a large proportion of the retailers and a substantial proportion of the consuming public of the United States the word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings, has acquired a reputation for excellence in quality and has a recognized value.

PAR. 8. The words "English Broadcloth," as applied to the cotton fabric described in paragraph 2 hereof, have not acquired a secondary meaning, but in the minds of the retailers and a substantial portion of the purchasing public are understood to signify and represent that the garment so labeled is made from a material which is made in and imported from England.

PAR. 9. The labels, "English Broadcloth," as used by the respondents, are literally false, the cloth of which the garments were made not being made in England and not being a product of English mills, and are calculated to, and, in fact, do deceive, not only the retailers, but a substantial portion of the purchasing public, into the belief that the shirts so labeled are made of material imported from England, this deception being due primarily to the words of the label.

CONCLUSION.

That 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 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."

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 the agreed statement as to the facts made and filed therein, in lieu of the testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved Sep-

Order.

7 F. T. C.

tember 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, Samuel Katz and Samuel Davidson, do cease and desist from—

Using the words "English Broadcloth" as a label or brand for shirts, or other garments, unless such garments be made from broadcloth made in and imported from England.

And it is further ordered, That the respondents, within 60 days after the date of the 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 hereinbefore set forth.

INTERSTATE FUEL CO. ET. AL.

531

Complaint.

FEDERAL TRADE COMMISSION