

Complaint

IN THE MATTER OF

BEN KREEGER, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF FEDERAL MAIL ORDER
COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1349—April 12, 1926

SYLLABUS.

Where an individual engaged in the sale by mail of wearing apparel for men, women and children; in advertising said apparel,

- (a) Described dresses composed wholly and chiefly, of cotton, as "wool finished serge", and "canton crêpe genuine silk", respectively;
- (b) Represented that he sold the former at a loss at the quoted price, solely in order to obtain new customers, and that the latter, sold at \$3.98 each, were of the value of fifty dollars, the fact being that he realized a profit on both classes of garments; and
- (c) Described certain ladies coats as trimmed with "genuine astrakhan", "astrakhan" and "astrakhan caracal", and as of the value of fifty dollars, and certain cotton "coat dresses" as "wool finished serge", trimmed with "genuine ermine fur", the fact being that the trimmings in question were much inferior in quality and value to those named, which they imitated in appearance, and that the former garments were sold by him at a profit at \$3.69 each;

With the effect of misleading and deceiving a substantial part of the purchasing public in reference to the nature and value of the aforesaid garments and of inducing the purchase thereof in such mistaken belief, and with the capacity and tendency to divert trade from and otherwise injure competitors who truthfully represented the apparel dealt in by them;

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. Robert O. Brownell for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale by mail of wearing apparel for men, women, and children to purchasers in various States, with place of business in Chicago, with advertising falsely or misleadingly in violation of the provision of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Findings

10 F. T. C.

Respondent, as alleged, for about two years previous to the complaint, caused many false, fraudulent, and misleading assertions and representations to be made in his advertisements, catalogues, and other trade literature "concerning the material of and of which his said articles of apparel are made and decorated and trimmed," for example, that certain dresses for women "are composed of wool finished serge and that respondent loses money on every such dress sold, for the purpose of obtaining new customers, when in truth and in fact said dresses contain no wool whatsoever but are composed wholly of cotton and are sold by respondent at a profit to himself"; that others "are composed of Canton crêpe genuine silk and are of the value of \$50, when in truth and in fact said dresses are composed of about 88 per cent cotton and 12 per cent silk and are sold by respondent for the sum of \$3.98, at which price respondent gains a profit on said dresses"; that certain coats, sold by respondent at a profit for \$3.69, are trimmed with genuine astrakhan and with astrakhan caracal, and worth \$50; and that certain "coat dresses," as a matter of fact composed wholly of cotton except for the trimming, are composed of wool finished serge trimmed with genuine ermice fur; together with numerous other similar false and misleading assertions and representations.

The complaint alleges that such false and misleading statements and representations "have the capacity and tendency to and do cause many of the consuming public," "to purchase various articles of respondent's said wearing apparel in the belief that the same are composed of or decorated and trimmed with the various materials" thus falsely asserted and represented, and have the tendency to divert and the effect of diverting business from and otherwise injuring and prejudicing competitors dealing in such wearing apparel and truthfully representing the composition of or the materials with which they are decorated and trimmed; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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 issued and served its complaint upon the respondent, Ben Kreeger, doing business under the trade name and style of Federal Mail Order Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress approved September 26, 1914.

The respondent having entered his appearance and filed his answer herein, and the chief counsel for the Federal Trade Commission and the respondent having thereafter signed and filed a stipulation containing an agreed statement of facts, and having therein stated that the stipulations of facts shall be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto and that said Commission might proceed further upon said agreed statement of facts to make its report in the proceeding and its findings as to the facts and its order disposing of the proceeding without brief or oral argument.

Thereupon this proceeding coming on for decision, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of Federal Mail Order Co. with his place of business in the city of Chicago, State of Illinois. He is engaged in the business of selling direct to the consumer by mail as hereinafter more fully set out, wearing apparel for men, women, and children, to purchasers thereof residing at points in various States of the United States. He causes said wearing apparel when so sold to be transported from his said place of business in said city of Chicago, Ill., into and through other States of the United States to said purchasers at their respective points of residence. In the course and conduct of his said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of wearing apparel for men, women, and children in commerce between and among various States of the United States, and with the trade generally.

PAR. 2. Respondent conducts his business in the following manner: In order to procure orders for and to make sales of his said apparel, respondent causes advertisements soliciting orders for certain of his wearing apparel to be inserted in newspapers, magazines, and periodicals of general circulation throughout the United States or in certain sections thereof, in which advertisements respondent causes pictures and descriptions of sundry pieces of wearing apparel to be set forth. Respondent, through aforesaid means, procures many orders for and inquiries concerning his said apparel from members of the public, residing respectively, in various States of the United States, and thereupon fills said orders by causing the articles of apparel so sold to be transported by the United States mail from

his aforesaid place of business to said purchasers at their several places of residence, and answers said inquiries by entering into written correspondence with the persons marking same. To both said purchasers and inquirers, respondent sends catalogues and other trade literature describing and picturing the various articles which respondent offers for sale, together with solicitations for the purchase thereof, and through said last named means procures many orders for and makes many sales of his said apparel in the manner hereinbefore set forth.

PAR. 3. In the regular course and conduct of his business as described above, respondent has advertised certain dresses for women, and has designated and described them in the said advertising as composed of "wool finished serge," and has further advertised concerning same that he, respondent, loses money on every such dress sold and is selling them at the quoted prices only for the purpose of obtaining new customers. The said dresses, so advertised and described, are composed wholly of cotton, and are sold by respondent at prices which yield him a profit. The said description and designation of the said dresses are false and misleading, and have the capacity to, and do, mislead and deceive a substantial part of the purchasing public into the belief that the said dresses are composed in whole or in part of wool, and that they are being sold at prices less than cost to respondent, and to cause said substantial part of the purchasing public to purchase the said dresses in that belief.

PAR. 4. In the regular course and conduct of his business as described above, respondent has advertised and sold certain dresses for women and has designated and described same in the said advertising as being composed of "Canton crêpe genuine silk," and to be of the value of \$50. The said dresses are composed of about 88 per cent cotton and 12 per cent silk, and are sold by respondent for the sum of \$3.98, at which price he realizes a profit on said dresses. The said designation and description of the said dresses are false and misleading and have the capacity and tendency to, and do, mislead and deceive a substantial part of the purchasing public into the belief that the said dresses are composed wholly of genuine silk, and are of the value of \$50, and to cause them to purchase the said dresses in that belief.

PAR. 5. In the regular course and conduct of his business as described above, respondent has advertised and sold certain ladies' coats which respondent has designated and described in his said advertising as being trimmed with "genuine astrakhan" and "astrakhan" and "astrakhan caracal" and to be of the value of \$50. The said coats are not trimmed with astrakhan wool or with as-

trakhan caracal, but are trimmed with a material imitating astrakhan wool in appearance and of less quality and value than genuine astrakhan wool. The said coats were sold by respondent for \$3.69, at which price he made a profit. The said designation and description of the said coats are false and misleading and have the capacity and tendency to, and do, mislead and deceive a substantial part of the purchasing public into the belief that the said coats are trimmed with astrakhan wool or astrakhan caracal, and to cause them to purchase the said coats in that belief.

PAR. 6. In the regular course and conduct of his said business as described above, respondent advertised and sold certain garments for women denominated by respondent as "coat dresses" which were designated and described in the said advertising as composed of "wool finished serge" and trimmed with "genuine ermine fur." The said dresses, so designated and described are composed wholly of cotton except for the trimmings, and are not trimmed with ermine fur but are trimmed with other material imitating ermine fur in general appearance and of much less quality and value than ermine fur. The said designation and description of the said dresses are false and misleading, and have the capacity and tendency to, and do, mislead and deceive a substantial part of the purchasing public into the belief that the said dresses are composed wholly or in part of wool, and are trimmed with ermine fur, and to cause them to purchase the said dresses in that belief.

PAR. 7. There are among the competitors of respondent referred to in paragraph 1 hereof, several who advertise for sale and sell to the purchasing public wearing apparel for men, women, and children, and who truthfully represent to purchasers and prospective purchasers the materials of which their garments are composed or with which they are decorated and trimmed. The said practices of respondent have the capacity and tendency to divert trade from and otherwise injure his said competitors who truthfully represent their apparel.

CONCLUSION

The above practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce and constitute 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."

Complaint

10 F. T. C.

grape, and trade was diverted from manufacturers of grape juice, and from manufacturers of products similar to those herein concerned who did not use the word "Grape" or the words "Fruit of the Vine" in connection with the advertisement and sale of their products:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Bloodworth & Fort of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Tennessee corporation, with offices and manufacturing plant in Chattanooga, and engaged in the manufacture of a concentrate or syrup not made of the juice from the grape or the fruit thereof, though colored to simulate such juice, and known as "Good-Grape," and in the sale thereof to numerous bottling plants throughout various States and foreign countries, for use by them in manufacturing a beverage also known, advertised and sold in interstate commerce under respondent's said trade name or brand "Good-Grape"; with naming or designating its product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in the following acts and practices:

Respondent, as alleged, for more than one year preceding the complaint, in its advertising matter in publications of general circulation "has published and represented to the purchasing public its product, known and sold under its trade name, brand or label "Good-Grape" in such a way and with such qualifying statements used in the advertisements thereof and in connection therewith so as to import to a substantial part of the purchasing public that the said product was the juice from the natural fruit of the grape," using in its advertising matter a picture of a junior pirate designated "Cap'n Grapejack" together with such descriptive matter as "Good-Grape brings you the real, rich flavor of the sugary grapes—and there's a good reason why, for its wonderful flavor is derived by an entirely new process from the fruit itself. * * *" "Cap'n Grapejack wants to give you, with his compliments, a cool, delicious bottle of Good-Grape 'fruit of the vine,'" etc., and has caused its product to be marketed and sold its aforesaid product in bottles containing a metal crown and paper label featuring prominently its aforesaid trade name, brand or label together with its trade slogan

Syllabus

IN THE MATTER OF
GOOD GRAPE COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1186—April 13, 1926

SYLLABUS.

Where a corporation engaged in promoting the sale of an imitation grape beverage product, which contained substantially less than one per cent of the product of the grape, but had a pronounced grape flavor, color, and odor, artificially derived, and in the manufacture of a concentrate therefor, and sale thereof to bottling plants, to be by them made up into the aforesaid beverage, placed in six and one-half ounce bottles for final consumption, and sold to such concerns as delicatessen, drug, and soda stores, who sold the same in the bottle, or in a glass, to the ultimate consumer.

- (a) Named said beverage and concentrate "Good Grape" and advertised the former nationally under such name, without suggesting the true nature thereof;
- (b) Caused orders for labels by its bottler customers to be filled from a stock of labels designed and approved by it, bearing the name "Good Grape", and also in some cases, the phrase or slogan "Fruit of the Vine";
- (c) Supplied or caused to be supplied to customers crowns or bottle caps bearing at first only the words "Good Grape," and later, in addition thereto, in very small letters, legible only upon most careful scrutiny, the words "imitation, artificially colored flavor";
- (d) Procured the general use by customers of a bottle designed and recommended by it with the name "Good Grape" blown therein;
- (e) Supplied customers with calendars, metal signs and other advertising material with pictures of a bottle containing a purple or grape colored liquid, and with the words, "Fruit of the Vine" in many cases under the words "Good Grape", to be by them distributed among their own retail dealer customers;
- (f) Made such statements in newspaper advertisements as "Good Grape, Fruit of the Vine. Good Grape brings you the real rich flavor of sugary grapes, and there is a good reason why. This wonderful flavor is derived by an entirely new process from the fruit itself. Good Grape is a carbonated grape drink", and the statement "Cap'n. Grape Jack is a good little kid pirate who has a real treasure he wants to share with you * * *. It is known as Good Grape, a new sparkling grape drink, * * *";
- (g) Supplied customers for use in advertising said beverage, with thousands of pictures of "Cap'n Grape Jack", upon which were printed the words "Good Grape, Fruit of the Vine" and of paste board and metal signs upon which were printed the words "Good Grape" or "Drink Good Grape";

With the result that retailers and dispensers were enabled to pass off said beverage as and for a product containing a substantial amount of grape juice, and a grape drink, the ultimate purchaser was deceived into believing that he was buying grape juice or a product made from the fruit of the