

Complaint

IN THE MATTER OF

AMEEN BARDWIL AND GEORGE BARDWIL, PARTNERS
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE BARDWIL BROTHERS

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

Docket 1268—April 27, 1926

SYLLABUS.

Where it had long been considered that lace crocheted in Ireland was superior to laces crocheted elsewhere, and the word "Irish" as applied to or used in connection with the word "crochet" or the word "lace" had come to signify, and to be understood by the purchasing public as meaning, crocheted lace made in Ireland; and thereafter a firm engaged in the importation of lace made in China, and in the sale thereof for trimming to garment manufacturers and retailers, variously described the same by advertisements, invoices, and otherwise, as "Irish lace", "Irish crochet", "Chinese Irish and Fillet laces", "Chinese Fillet and Irish crochet"; with the result that garments trimmed with such lace were by the aforesaid manufacturers thereof and by their retail dealer customers described as trimmed with "Irish lace", and were by the latter extensively so advertised and sold to the consuming public, lace purchased from it directly by retail dealer customers was advertised, offered and sold to the consuming public as "Irish lace", a substantial portion of the purchasing public was misled and deceived in respect of the place of manufacture of the lace so dealt in by it, trade was diverted from others engaged in the sale of crocheted lace made in Ireland and truthfully denominated "Irish lace", sales and business of individuals and concerns engaged in the sale of lace under the name of the particular country in which made, were reduced and injuriously affected; and there was a capacity and tendency to induce the purchase from it of the aforesaid lace as and for the more valuable and highly reputed Irish lace:

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

Mr. L. B. Perkins for the Commission.

Mr. Robert P. Lewis, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, a New York City firm engaged in the importation of lace from China and sale thereof in interstate commerce to garment manufacturers and retail dealers, with naming or designating their product misleadingly, and advertising falsely or misleadingly in

violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that in their business, price lists, circulars, invoices, and other trade stationery and literature, they designated, offered for sale, and sold said lace as "Irish lace" in competition with the long popular and favorably known lace made in Ireland.

The complaint alleges that the "lace dealt in by respondents closely resembles Irish lace in pattern, design, and general appearance, but is inferior thereto in quality and value and for many years has been and now is sold at prices much less than the prices at which Irish lace is sold," and that the above practices place "in the hands of respondents' aforesaid vendees the means of committing a fraud upon retail dealers and the consuming public by enabling said vendees to represent and sell said lace and said garments in and upon which said lace is used * * * to tradesmen and to the consuming public as and for Irish lace and as and for garments trimmed and decorated with Irish lace"; and that many of such vendees "do in fact represent to tradesmen and the consuming public that respondents' said lace is 'Irish Lace' and do in fact cause substantial numbers of tradesmen and of the consuming public to purchase respondents' said lace and garments trimmed and decorated with said lace in that belief."

Such acts and practices, as charged, have the tendency to divert and the effect of diverting business from competitors "who sell lace made in, and imported to the United States from, Ireland, and who correctly name and designate said lace 'Irish Lace'", all to the prejudice of the public and respondents' 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 a complaint upon Ameen Bardwil and George Bardwil, partners, doing business under the trade name and style, Bardwil Brothers, hereinafter called respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act, and thereupon they entered appearance and filed answer. Thereafter formal hearings were duly had before an examiner of the Commission and testimony introduced in support of the complaint and on behalf of the respondents, which was reduced to writing and filed,

together with other evidence duly received, and this proceeding thereupon came on regularly for decision, 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 its Conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Ameen Bardwil and George Bardwil, are copartners, trading under the firm name and style of Bardwil Brothers, and are, and for several years last past have been, engaged in the business of importing lace made in China, and selling and causing it to be transported from their place of business in the City and State of New York to purchasers in the various States of the United States, in competition with individuals, partnerships, and corporations, now and for many years last past selling lace made in Ireland and other lace, and transporting it or causing it to be transported from their places of business in various States to purchasers in other States of the United States.

PAR. 2. It has been, during said period of time, and is, the practice of respondents in the course and conduct of their said business, to offer for sale and sell said Chinese made lace to manufacturers of garments, for trimming, chiefly on women's and children's clothes, and to retailers for resale for the same purpose, and to describe it by advertisements, invoices and other means, variously as "Irish lace," "Irish crochet," "Chinese Irish and Fillet laces," "Chinese Fillet and Irish Crochet." The manufacturers purchasing from respondents the lace made in China, so described and invoiced to them, have used it as trimming in the form of insertion, edging, and otherwise, upon such clothes, and have utilized the said designation of such lace by respondents in advertisements, and the invoices supplied by them, by offering for sale and selling, describing and invoicing to retail dealers, the garments so trimmed with lace made in China, as garments "Trimmed with Irish lace." The retailers purchasing such garments from the said manufacturers, by reason of the description of their trimming as "Irish lace," a designation originating with the respondents, and passed to them by respondents through such manufacturers, have advertised extensively and sold to the consuming public the garments so purchased as "Trimmed with Irish lace"; and the lace made in China which the retailers have purchased directly from respondents, unattached to any garments, and invoiced to them as "Irish lace" they have likewise offered for sale, advertised and sold as "Irish lace," to the consuming public, to be used in trimming garments or for various other forms of adornment.

PAR. 3. The words "Crochet lace" describe a type of lace made with a crochet needle and is produced in many countries. In Ireland, for more than 50 years, the making of such lace has been, and still is, an established and regularly conducted industry from which a substantial portion of the inhabitants derive support. Originally called "Irish crochet" it gradually came to be known as "Irish lace" and is now, and has been for many years last past, more frequently called "Irish lace" than "Irish crochet" although both phrases are still in use. It is superior to and has greater value and reputation than the crocheted laces of other countries, among all of which it is the standard, and the word "Irish" applied to or used in connection with the word crochet, or the word lace, has come to signify, and by the purchasing public is understood to mean, crocheted lace made in Ireland. Irish crocheted lace was introduced into the United States and acquired its reputation as being superior to other crocheted laces long prior to the time of the importation and sale in this country of lace made in China.

PAR. 4. There are, and for many years last past have been, individuals, partnerships, and corporations engaged in the business of importing crocheted laces made in Asiatic and European countries, and offering for sale and selling same in the various States of the United States, under the name of the country in which such laces are or were made, and manufacturers and retail merchants dealing in garments trimmed therewith, who truthfully describe such lace in selling or offering the same for sale to the public.

PAR. 5. The said use by respondents of the word "Irish" in describing crocheted lace made in China has had, and has, the capacity and tendency to mislead and deceive, and does mislead and deceive, a substantial portion of the purchasing public into the belief that such lace was made in Ireland, whether the word "Irish" appears as the sole descriptive word or in combination or association with the word "Chinese," and has had, and still has, the capacity and tendency to divert, and does divert, trade from individuals, partnerships and corporations engaged in the sale in said commerce of crocheted lace made in Ireland and truthfully denominated "Irish lace," and to induce the purchase from respondents of lace made in China, as and for Irish lace, and such use of the word "Irish" has had, and has, the further tendency to reduce, and the effect of reducing, the sales, and injuriously affecting the business of individuals, partnerships, and corporations selling lace in the various States of the United States under the name of the particular country in which it is made.

CONCLUSIONS

The practices of said respondents under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in 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 of the respondents, the testimony and evidence and the argument of counsel, and the Commission having filed its report stating its findings as to the facts, and its conclusion that 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,"

Now, therefore, it is ordered, That the respondents, Ameen Bardwil and George Bardwil, individually and as partners, trading under the firm name and style of Bardwil Brothers, the agents, employees, and servants of them, and each of them, cease and desist from selling or offering for sale in commerce among the various States of the United States, as and for Irish lace or Irish crochet, lace made in China or elsewhere than in Ireland, and from applying thereto or using in connection therewith, or as descriptive thereof, the word "Chinese" or any other geographical designation in conjunction or association with the word "Irish," or any other name, or other word, suggestive of Ireland as its place of manufacture.

It is further ordered, That the respondents, Ameen Bardwil and George Bardwil, partners, doing business under the trade name and style, Bardwil Brothers, shall within sixty days after the service upon them of a copy 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.

IN THE MATTER OF
U. S. OIL COMPANY, INCORPORATED, ET AL.

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

Docket 1175—April 28, 1926

SYLLABUS.

Where a corporation engaged in the manufacture and sale of textile oils and allied products; and individuals interested therein as sole owners, and as officers, directors, and sales agent; gave and offered to give to employees of purchasers or prospective purchasers, without the knowledge or consent of their employers, sums of money as an inducement for them to recommend or procure the purchase of its products by their employers, or as a reward for so doing; with the effect of inducing the purchase thereof in preference to those of its competitors, and of diverting trade therefrom: *Held*, That such gifts and offers to give, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. E. Wallace and *Mr. James M. Brinson* for the Commission.
Mr. Charles F. Mitchell, of New Haven, Conn., 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 corporation, organized under the laws of Rhode Island, with principal place of business in Providence, and engaged in the manufacture of textile oils and allied products, and in the sale thereof to owners and operators of textile mills and factories in various States; five individuals, variously constituting its president, vice presidents, secretary-treasurer, and directors; and two individuals employed by it in selling its aforesaid products on a salary and commission basis; with bribing employees of customers in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

According to the complaint, for more than two years prior thereto "the individual respondents made parties to this proceeding and other persons in the employ of respondent corporation have offered and given at divers times during the past three years sums of money to employees of the aforesaid purchasers of respondent corporation's textile oils and allied products, all without the knowledge and consent of the employers and principals of such employees, as inducements to such employees to recommend said commodities of respondent corporation to, and secure or induce the purchase thereof by, their