

Complaint

IN THE MATTER OF
NANYANG BROTHERS, INCORPORATED

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

Docket 1270—September 25, 1926

SYLLABUS.

Where lace made in Ireland had long enjoyed a widespread popularity, demand and reputation among manufacturers, tradesmen and the consuming public in the United States, and brought a price considerably higher than lace made in China; and thereafter a firm engaged in the importation of said last named lace and sale thereof to garment manufacturers, designated such lace as Irish lace in its price lists, circulars and invoices, and so sold the same; with the result that garments made by the aforesaid manufacturers were by them represented to their retail dealer customers, and by the latter to the purchasing or consuming public, as trimmed or decorated with Irish lace, and many of such garments were purchased in the erroneous belief thereby induced as and for garments trimmed with the more expensive lace made in Ireland:

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

Mr. A. R. Brindley for the Commission.

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 New York corporation engaged in importing from China lace there made, which closely resembled in pattern, design and general appearance the long-popular, superior, and more expensive Irish lace, and in selling the same to garment manufacturers for their use in trimming garments, and with principal office and place of business in New York City, with naming product misleadingly and advertising falsely or misleadingly, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce, in that it designated, offered and sold said lace as "Irish lace" in the course of its business, and in and upon its price lists, circulars, invoices and other trade stationery and literature; with the effect of placing in the hands of its vendees the means of committing a fraud upon retail dealers and eventually the consuming public, by enabling such vendees to represent and sell garments with such lace as and for garments trimmed and decorated with Irish lace, and with the result that many of respondent's manufacturer-vendees did in fact represent respondent's lace as Irish lace, to retail dealers,

Findings

10 F. T. C.

and caused substantial numbers thereof and eventually many of the consuming public, to purchase garments trimmed and decorated with such lace as and for those trimmed and decorated with Irish lace, and with the effect of diverting business from and otherwise injuring competitors dealing in lace made in and imported to the United States from Ireland, and correctly named and designated by them "Irish lace"; 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, 1924, 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 the respondent, Nanyang Bros., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Thereupon the respondent entered its appearance herein, and the chief counsel of the Federal Trade Commission and the respondent thereafter entered into a written stipulation of the facts in this case and filed the same herein, and agreed and stipulated that such statement of facts shall be taken and considered by the Federal Trade Commission as the facts of this case and in lieu of testimony before the Commission in support of the charges stated in the complaint, and that the Federal Trade Commission might proceed upon such written stipulation of the facts to make its report in this proceeding and its findings as to the facts, and to enter its order disposing of this proceeding without briefs or oral argument, and such stipulation was duly approved by the Commission; and thereupon this proceeding came 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 conclusions therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nanyang Bros., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business in the City of New York, in said State. At the time of the issuance of the complaint herein, and for more than one year prior thereto, it had been engaged in importing from China lace made in said country to the said City of New York, and which it resold to manufacturers of garments, located in the various States of the United States, and

caused said lace, when so sold, to be transported from its place of business in the City and State of New York into and through other States of the United States to the purchasers aforesaid at their respective points of location. Respondent, in the course of its said business, is in direct and active competition with other individuals, partnerships and corporations engaged in the sale of lace in commerce between and among the various States of the United States.

PAR. 2. The manufacturers of garments who purchase from respondent the lace imported from China as aforesaid, use said lace as trimming and decoration upon many of the garments made by them, and thereafter sell and transport said garments to retail dealer customers in various States of the United States, including States other than the States of the respective locations of said manufacturers, said dealers thereafter selling said garments to the consuming public.

PAR. 3. In the course of its said business and sales to garment manufacturers as aforesaid, respondent has designated and sold said lace as "Irish lace", placing said designation upon its price lists, circulars and invoices to said manufacturers.

PAR. 4. For many years lace made in Ireland has enjoyed a widespread popularity, demand and reputation among manufacturers, tradesmen and the consuming public in the United States, and brings a price considerably higher than lace made in China.

PAR. 5. From the designation and invoicing by respondent of its lace as "Irish lace", many of the manufacturers purchasing and using said lace on garments as aforesaid, represent to retail dealers, who in turn so represent to the purchasing or consuming public that said garments are trimmed and decorated with Irish lace, thereby causing many of said garments to be purchased in the erroneous belief that the lace on said garments was actually made in Ireland, when in fact said lace was made in, and imported from, China, at a price much less than that for which lace made in Ireland could be purchased and imported into the United States.

CONCLUSION

The practices of the 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 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

10 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a written stipulation of facts agreed upon by the respondent and the counsel for the Commission and duly filed herein, and the Commission having made its findings as to the facts with its conclusion that the respondent 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 ordered, That the respondent, Nanyang Bros., Inc., a corporation, its officers, agents, and employees cease and desist from selling or offering for sale in commerce among the several States of the United States, as Irish lace or as lace made in Ireland, lace made elsewhere than in Ireland, and from applying to lace made elsewhere than in Ireland, the word "Irish," or any word suggestive of Ireland as the place of manufacture of such lace.

Syllabus

IN THE MATTER OF

PROGRESS PAINT MANUFACTURING COMPANY AND
REGULATION PAINT 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 1293—September 25, 1926

SYLLABUS

Where a corporation and its subsidiary, engaged in the manufacture of certain paints which did not conform with the requirements or specifications of the Army, Navy, or other branches of the Government, and in the sale of a large part thereof through concerns, which were generally known and referred to as "Army and Navy goods stores," and which dealt in Government surplus, and merchandise conforming to the aforesaid requirements or specifications,

- (a) Sold paints denominated, described, represented and conspicuously branded as "CAMP mixed paint" and as "REGULATION PAINT," together with the red, white and blue shield or emblem associated with and commonly used by the United States Government, on the label thereof;
- (b) Advertised their aforesaid "Regulation" paint under the above caption and label in a trade periodical published primarily for and circulating among the aforesaid stores, and in circulars distributed among them for use in selling such paint, with the result that said stores, with their knowledge, aid and encouragement, advertised, displayed and sold such paints as part and parcel of their stocks of war surplus, or merchandise made in accordance with Army or Navy specifications, and in some instances specifically sold the same as such surplus or merchandise;

With the capacity and tendency to mislead and deceive the purchasing public into believing the aforesaid paints to have been declared and sold as surplus by the United States Government or to have been manufactured in accordance with Army or Navy specifications, and thereby induce the purchase thereof by many of the purchasing public in the aforesaid erroneous belief; and

- (c) Sold their paints in short measure quantities in standard gallon, half gallon, and quart containers and in containers advertised, labeled and branded as respectively containing the aforesaid quantities, with the capacity and tendency to mislead and deceive the purchasing public and induce the purchase of the aforesaid paints in their containers as above set forth as and for the full standard liquid measures associated therewith or branded thereon;

With the effect of diverting trade from and otherwise injuring the business of competitors who packed, sold, and distributed their paints under truthful representations including those as to the character, quality, or quantity thereof:

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