

Complaint

IN THE MATTER OF

N. B. BARDWIL, T. B. BARDWIL, M. BARDWIL, PARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE N. B. BARDWIL & 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 1272—October 19, 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, had come to be known and generally designated as "Irish lace", and was of a higher quality and workmanship, and brought a considerably higher price, than lace made in China; and thereafter a firm engaged in the importation of said last-named lace which closely resembled "Irish lace" in pattern, design and general appearance, but was inferior thereto in value and quality, and in the sale thereof to garment manufacturers, used the word "Irish" either alone or in conjunction with other words in the trade designations under which it imported and sold the aforesaid lace, and which it placed upon its price lists, circulars, advertising matter and invoices; with the result that garments made by such manufacturers were by them represented to their retail-dealer customers and by the latter to the purchasing or consuming public as decorated and trimmed with "Irish lace", many were caused to purchase such garments in the erroneous belief thereby induced as and for garments trimmed with the more expensive lace made in Ireland, a substantial portion of the purchasing public was misled and deceived in reference to the source of the aforesaid lace, and trade was diverted from concerns dealing in lace made in Ireland and truthfully designated as "Irish lace", and with the tendency to reduce and injuriously affect the sales and business of concerns selling lace under the name of the particular country in which made:

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.

Mr. Jeremiah F. Connor, 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, partners engaged in importing from China, lace there made, closely resembling in pattern, design and general appearance the long popular, more expensive and superior lace made in Ireland, and in selling the same to garment manufacturers in various States for use by them in trimming the garments made by them, and with

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principal 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 such act, prohibiting the use of unfair methods of competition in interstate commerce, in that they designated the aforesaid lace so dealt in by them as "Irish lace", and offered and sold the same under said name and designation, and in and upon their price list, circulars and other trade stationery and literature so designated said lace, with the effect of placing in the hands of their aforesaid manufacturer vendees the means of committing a fraud upon the retail dealer, and eventually upon the consuming public, by enabling them to represent and sell said garments so trimmed as and for garments trimmed and decorated with Irish lace, and with the result that many of such vendees did in fact represent said lace as Irish lace and caused substantial numbers of retailers and eventually many of the consuming public to purchase garments trimmed and decorated therewith as and for garments trimmed and decorated with Irish lace, and with the effect of diverting business from and otherwise injuring competitors dealing in genuine imported Irish lace and correctly naming and designating the same as "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, 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 the respondents, N. B. Bardwil, T. B. Bardwil, and M. Bardwil, partners, doing business under the trade name and style of N. B. Bardwil & Co., charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance 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 as the facts in this proceeding, and in lieu of testimony, and upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and its conclusion and enter its order disposing of the proceeding.

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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, N. B. Bardwil, T. B. Bardwil, and M. Bardwil, are partners, doing business under the trade name and style of N. B. Bardwil & Co. and have their principal place of business in the City and State of New York. The respondents are engaged in importing from China lace made in that country, and in the sale of such lace to manufacturers of garments located at points in various States of the United States. They cause such lace when sold by them to be transported from the City and State of New York, into and through other States of the United States to the purchasers thereof at their respective points of location. In the course of their business the respondents are in competition with other individuals, partnerships and corporations engaged in the sale of lace in commerce among the several States of the United States. The respondents admit the allegations contained in paragraphs 1, 2, 4, 5, and 8 of the complaint issued in this proceeding by the Federal Trade Commission.¹

PAR. 2. Manufacturers of garments who purchase from the respondents lace imported from China and sold by respondents as aforesaid use such lace for trimmings and decorations upon many garments made by such manufacturers, and such manufacturers of garments thereafter sell and transport said garments to purchasers and retail dealers in various States of the United States, including States other than the States of the respective locations of said manufacturers, and such purchasers and dealers thereafter sell such garments to the consuming public.

PAR. 3. In the course of their said business and sales to garment manufacturers among the several States as aforesaid, respondents have designated and sold such lace imported and sold by them under trade designations containing the word "Irish", either alone or in conjunction with other words, and have placed such designations upon their price lists, circulars, advertising matter and invoices to said purchasers and 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 such lace is of a higher quality and workmanship, and brings a price considerably higher than lace made in China, and is considered by manufacturers, tradesmen, and the consuming public to be lace of high quality, fine workmanship and other desirable characteristics.

* ¹ Paragraphs 3, 6, 7, and 9 were those specifically charging respondent with the acts and practices described in the synopsis, with the specific effects and consequences therein set forth, as unfair methods of competition under section 5, in the light of the facts alleged in the other paragraphs.

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principal 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 such act, prohibiting the use of unfair methods of competition in interstate commerce, in that they designated the aforesaid lace so dealt in by them as "Irish lace", and offered and sold the same under said name and designation, and in and upon their price list, circulars and other trade stationery and literature so designated said lace, with the effect of placing in the hands of their aforesaid manufacturer vendees the means of committing a fraud upon the retail dealer, and eventually upon the consuming public, by enabling them to represent and sell said garments so trimmed as and for garments trimmed and decorated with Irish lace, and with the result that many of such vendees did in fact represent said lace as Irish lace and caused substantial numbers of retailers and eventually many of the consuming public to purchase garments trimmed and decorated therewith as and for garments trimmed and decorated with Irish lace, and with the effect of diverting business from and otherwise injuring competitors dealing in genuine imported Irish lace and correctly naming and designating the same as "Irish Lace"; all to the prejudice of the public and respondent's competitors.

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The respondents having entered their appearance 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 as the facts in this proceeding, and in lieu of testimony, and upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and its conclusion and enter its order disposing of the proceeding.

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 conclusion drawn therefrom:

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PAR. 2. Manufacturers of garments who purchase from the respondents lace imported from China and sold by respondents as aforesaid use such lace for trimmings and decorations upon many garments made by such manufacturers, and such manufacturers of garments thereafter sell and transport said garments to purchasers and retail dealers in various States of the United States, including States other than the States of the respective locations of said manufacturers, and such purchasers and dealers thereafter sell such garments to the consuming public.

PAR. 3. In the course of their said business and sales to garment manufacturers among the several States as aforesaid, respondents have designated and sold such lace imported and sold by them under trade designations containing the word "Irish", either alone or in conjunction with other words, and have placed such designations upon their price lists, circulars, advertising matter and invoices to said purchasers and 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 such lace is of a higher quality and workmanship, and brings a price considerably higher than lace made in China, and is considered by manufacturers, tradesmen, and the consuming public to be lace of high quality, fine workmanship and other desirable characteristics.

* ¹ Paragraphs 3, 6, 7, and 9 were those specifically charging respondent with the acts and practices described in the synopsis, with the specific effects and consequences therein set forth, as unfair methods of competition under section 5, in the light of the facts alleged in the other paragraphs.

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Lace made in Ireland is herein called "Irish Lace", and is so known and designated generally.

PAR. 5. Lace imported by respondents from China and sold by respondents as aforesaid closely resembles "Irish lace" in pattern, design, and general appearance, but is inferior to "Irish lace" in value and quality, and for many years such lace has been and is now sold at prices much less than the prices at which "Irish lace" is sold. Among the competitors of the respondent who are engaged in commerce in competition with the respondents as herein set out are many persons, firms, and corporations who sell lace made in Ireland and imported therefrom to the United States, and such competitors correctly name and designate such lace sold by them as "Irish lace", and the acts and practices of the respondents as herein set out tend to and do divert business from such competitors of the respondents and otherwise injure them.

PAR. 6. From the designation and invoicing by respondents as set out herein of lace made in China and sold by respondents as aforesaid, many of the manufacturers purchasing such lace and using the same on garments as herein set out represent to retail dealers, who in turn so represent to the purchasing or consuming public that said garments are decorated and trimmed with "Irish lace" and thereby cause many of said garments to be purchased in the erroneous belief that the lace on such garments was actually made in Ireland, when in fact said lace was not made in Ireland but was made in China, and imported therefrom into the United States and sold at a price much less than that for which lace made in Ireland could be purchased and imported into the United States.

PAR. 7. Since the complaint in this proceeding was issued and served on the respondents, the respondents, in making sales of lace manufactured in China, have discontinued the use of the word "Irish" in connection therewith, and have discontinued the use of the word "Irish" in marking, designating and invoicing lace made in China either alone or in conjunction with other words, and the respondents hereby agree that this stipulation may be used in evidence against them in any other proceeding instituted by the Federal Trade Commission against these respondents if such practices heretofore discontinued shall be resumed.

PAR. 8. The said use by respondents of the word "Irish", either alone or in conjunction with other words, in describing lace made in China, had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the purchasing public into the belief that such lace was made in Ireland, and had the capacity and tendency to divert, and did divert, trade from other

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individuals, partnerships and corporations engaged in the sale in commerce of lace made in Ireland and truthfully designated as "Irish lace", and such use by the respondents of the word "Irish" had the further tendency to reduce and injuriously affect the sales and 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 such lace was made.

CONCLUSION

The practices of the said respondents, as hereinabove set out, under the circumstances and conditions described in the foregoing findings, are to the injury and prejudice of the public and to respondents' competitors and are unfair methods of competition in commerce and constitute a violation 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 of the respondents and a written stipulation of facts agreed upon by the respondents 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 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 ordered, That the respondents, N. B. Bardwil, T. B. Bardwil, M. Bardwil, partners, doing business under the trade name and style, N. B. Bardwil & Co., their 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 cease and desist from applying to lace made elsewhere than in Ireland the word "Irish", or any other word or words suggestive of Ireland as the place of manufacture of lace made elsewhere than in Ireland.

It is further ordered, That the respondents 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 of compliance with this order.

IN THE MATTER OF
THE DAISY PRODUCTS, 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 1363—October 19, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of ladies' hat bags from a material which resembled patent leather in appearance, but was not leather, and in the sale of the aforesaid hat bags, designated said material as "patent leather material" and "patent leather fabric" in advertising such products in newspapers, magazines, trade papers and other periodicals of wide circulation; with the tendency and capacity to mislead and deceive the purchasing public in respect of the composition there and induce them to purchase the same in such erroneous belief:

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

Mr. T. B. Dixon 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 the manufacture of hat containers trimmed on the outside with a woven fabric, the exposed surface of which was so coated and finished as to resemble closely patent leather in appearance, and in the sale of said hat bags to retailers, and directly to consumers in various States, and with principal place of business in New York City, with 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 it made statements and representations in its advertisements depicting and describing its said hat bags in newspapers, magazines and periodicals of general circulation, asserting, importing and implying that the same were made of patent leather, such as "made of patent leather material", "made of the best patent leather fabric" and "made of soft glazette (patent leather fabric)"; with the effect of causing many of the consuming public to purchase said bags or containers as and for articles composed of or covered with patent leather and of diverting business from and otherwise injuring and prejudicing competitors dealing