

IN THE MATTER OF

M. SAMUELS & COMPANY, INCORPORATED

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

Docket 1374. Complaint, Mar. 30, 1926—Decision, Mar. 22, 1927

Where a corporation engaged in the manufacture of a shoe with a sole composed chiefly of rubber and carbon black and painted and polished so as to resemble the appearance of leather, though containing none, and in the sale thereof, together with other shoes made by it, through a large number of retail stores which it operated, and also by means of mail-orders; stamped and imprinted the word "Tufhide" upon the sole of said shoe and in its advertising and display cards furnished to its retail stores described the same as soled with "Tufhide" soles; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing the material so designated and described to be leather and to cause them to purchase said shoes in such belief, and to divert trade from and otherwise prejudice competitors engaged in the sale of shoes soled with genuine leather, and so described by them to purchasers, and competitors engaged in the sale of shoes neither so soled nor so represented: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Mr. Robert E. Barry, 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 Delaware corporation engaged in the manufacture of shoes and in the sale thereof through retail stores owned and operated by it, through wholesale and retail dealers, and also direct to the consuming public, in various States, and with principal office and factory in Baltimore, with misbranding or mislabeling 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, for about five years preceding the complaint, respondent stamped and imprinted the word and legend "Tufhide", upon soles containing no leather, attached to many of its shoes, and advertised said shoes in newspapers, magazines and periodicals of general circulation throughout the United States and certain sections thereof, and in circulars distributed among retailers, and the consuming public, as shoes with "Tufhide" soles, with the

capacity and tendency to and with the effect of misleading and deceiving many of the trade and consuming public into purchasing said shoes as and for shoes fitted with leather soles, and with the capacity and tendency to divert trade from and otherwise injure and prejudice competitors dealing in shoes fitted with genuine leather soles and rightfully and lawfully so representing the same to the trade and consuming public, and competitors dealing in shoes fitted with soles composed of other materials and in nowise represented by them as having soles of leather; 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, the Federal Trade Commission issued and served a complaint upon respondent, M. Samuels & Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and made its answer to the said complaint, hearings were had before a trial examiner therefore duly appointed, and evidence was introduced in support of the allegations of the said complaint, respondent being present by its counsel but offering no evidence in its own behalf. The trial examiner having made his report upon the facts and respondent having filed its exceptions thereto, briefs were received and oral argument heard by the Commission.

Whereupon this proceeding came on for decision, and the Commission, having considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, M. Samuels & Co., Inc., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business in the city of Baltimore, State of Maryland. It is engaged in the manufacture of shoes, and the sale and distribution thereof in commerce between and among various States of the United States in the manner set out in paragraph 2 of these findings. In the course and conduct of its said business, respondent is in competition with other corporations, partnerships and individuals who are also engaged in the sale and distribution of shoes in commerce between and among the various States of the United States.

PAR. 2. Respondent sells and distributes its shoes in the following manner: It owns and operates about 400 retail stores located in various States of the United States, from which stores it sells its shoes to the purchasing public. It causes its said shoes to be transported from its said principal place of business in the city of Baltimore, Md., into and through other States of the United States to its said retail stores at their various points of location, where they are sold as aforesaid.

PAR. 3. Respondent solicits by means of advertisements published in newspapers, magazines, and other periodicals, and secures mail orders from members of the purchasing public in the several States of the United States, and fills said orders by causing its said shoes to be transported through the United States mail to the purchasers thereof.

PAR. 4. For more than a year prior to December 1, 1925, respondent appointed agents to solicit and secure orders for its shoes in several different States of the United States, and filled orders from said agents by causing its said shoes so ordered to be shipped from its said principal place of business in the city of Baltimore, Md., to said agents at their various points of location. Since on or about December 1, 1925, respondent has not sold its shoes through agents.

PAR. 5. Among the shoes manufactured and sold by respondent as set out in paragraphs 2, 3, and 4 hereof, is a shoe which is designated and described by respondent as the "Newark Shoes," intended for sale to workmen at prices ranging from three dollars to three dollars and a half. This shoe is made with a sole composed chiefly of rubber and carbon black, painted and polished so that it resembles leather, but contains no leather whatsoever. Upon each of the soles of its said "Newark Shoes," respondent stamps and imprints the word "Tufhide," and the said shoes, so stamped and imprinted, are offered for sale and sold to the purchasing public as heretofore described.

PAR. 6. Respondent causes advertisements of its said "Newark Shoes" to be published in newspapers and periodicals having interstate circulation, and also distributes and causes to be distributed circulars, posters, and like advertising literature, in all of which it describes its said "Newark Shoes" as being soled with "Tufhide" soles. Respondent also furnishes to all of its retail stores cards for display in the windows of the said stores, advertising its said "Newark Shoes" and describing them as being soled with "Tufhide" soles.

PAR. 7. The word "hide" is understood by the trade and the purchasing public to mean the skin of an animal, or leather. The word "tuf" is understood by the trade and the purchasing public to be

the phonetic spelling of the word "tough" and to mean the quality of being tenacious or susceptible to great tension or strain without breaking. The word "Tufhide", when used to designate and describe the material used for soles of shoes, is commonly understood by the purchasing public to mean that the shoes so described are soled with a tough leather.

PAR. 8. The use by respondent of the word "Tufhide" to designate and describe the material used in the soles of the "Newark Shoes" sold by it, as above set out, has the capacity and tendency to mislead and deceive a substantial part of the purchasing public and to cause them to believe that the material so designated and described is leather, and to cause them to purchase the said shoes in that belief.

PAR. 9. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell and distribute in interstate commerce shoes soled with genuine leather, and who so describe them to purchasers. There are others of the said competitors of respondent who sell and distribute in interstate commerce shoes soled with materials other than leather, and who do not represent that their said shoes are soled with leather.

The acts and practices of respondent as hereinbefore set out have the capacity and tendency to divert trade from and otherwise prejudice all of its said competitors.

CONCLUSION

The acts and practices of respondent, M. Samuels & Co., Inc., under the circumstances set forth in the foregoing findings as to the facts are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce, in violation of 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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of respondent, testimony and evidence offered before the trial examiner, briefs and oral arguments, and the Commission having made its findings as to the facts and 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",

Order

11 F. T. C.

It is now ordered; That respondent M. Samuels & Co., Inc., its officers, agents, servants, and employees do cease and desist from—

(1) Using the word “Tufhide” as a brand, label or otherwise on a shoe sole which is not composed wholly of the prepared skin of an animal, or

(2) Using the word “Tufhide” in advertisements, circulars, posters, or otherwise, to designate or describe a shoe sole which is not composed wholly of the prepared skin of an animal, or

(3) Using any other word or words as a brand or label upon shoe soles not composed wholly of the hide or skin of an animal, which import or imply that such soles are composed of such hide or skin.

It is further ordered, That respondent M. Samuels & Co., Inc., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
SEA ISLAND THREAD COMPANY, INCORPORATED

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

Docket 1211. Complaint, Aug. 1, 1924—Decision, Mar. 24, 1927

Where a corporation engaged in the manufacture and sale of cotton thread so mercerized and finished as closely to resemble silk, featured the word "Satinsilk" or "Satin Silk" upon the labels on its spools and the containers thereof, using such legends in its aforesaid labels as "Satinsilk" with the word "Trade-Mark" and "None Better Mercerized Cotton", and "Satinsilk Trade-Mark. Mercerized Machine Twist," with the word "Trade-Mark" in each case written in small letters underneath the word "Satinsilk"; with the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe the aforesaid thread to be composed in whole or in part of silk, and to purchase the same in that belief, and to divert trade from and otherwise injure competitors engaged in the sale and distribution of sewing thread composed wholly of silk and so designated and described, and competitors engaged in the sale and distribution of sewing thread composed of mercerized cotton and so designated and described:

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

Mr. T. John Butler and Mr. Robert O. Brownell for the Commission.

Munn, Anderson and Munn, of New York City, 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 New York corporation engaged in the manufacture of sewing thread and in the sale thereof in part to wholesale dealers in dry goods and notions in various States, and with principal office and place of business in New York City, with 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 that it branded or labeled the spools of a cotton sewing thread made by it and composed wholly of mercerized cotton, "Satin Silk" or "Satinsilk," in large and conspicuous letters, together with the words, in some instances, "Mercerized Cotton," "Perfect Substitute for Best Silk" or "Mercerized Machine Twist,"