

Complaint

11 F. T. C.

IN THE MATTER OF

DAVID JACOBY AND MORRIS GOTTSEGEN, PARTNERS,
DOING BUSINESS UNDER THE TRADE NAMES AND
STYLES, MILLS SILVER WORKS, AND MILLS SALES
COMPANY

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

Docket 1440. Complaint, Mar. 1, 1927—Decision, July 21, 1927

Where a firm engaged as jobbers in the sale of merchandise of sundry kinds, and doing no manufacturing,

- (a) Used the trade name Mills Silver Works on their letterheads, billheads, invoices and other trade literature and in their catalogues and advertisements, together with such statements as "Manufacturers of Silver-plated Hollow-Ware" and "Importers and Manufacturers", with the intent and effect of misleading and deceiving customers into believing them to be manufacturers and that in dealing with them they were therefore obtaining better goods at cheaper prices than when purchasing from a jobber; and in their catalogues
- (b) Falsely described pyrolin or celluloid combs, ivory colored clocks, wood shaving brush handles painted black to resemble ebony, and bill folds made of some material imitating seal, as pyrolin ivory, and amber and shell, ivory, ebony wood, and American pin seal, respectively; with the capacity and tendency to deceive the purchasing public and induce them to purchase the articles thus described, in reliance upon the truth and accuracy of such description:

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

Mr. Alfred M. Craven 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 respondents, partners engaged in the sale of merchandise of sundry sorts and kinds at wholesale to retailers in various States, doing no manufacturing but purchasing the merchandise dealt in by them from the manufacturers and reselling the same at a profit, and with principal place of business in New York City, with using misleading trade name, misrepresenting business status, 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.

Respondents, as charged, featured the trade name Mills Silver Works, or Mills Sales Co., as the case might be, in their advertisements in newspapers, periodicals and other publications of general circulation throughout the United States and in certain sections thereof, and upon their letterheads, envelopes, bill heads, invoices and other trade stationery, together with statements that they were manufacturers of sundry articles dealt in by them, with the capacity and tendency to mislead and deceive, and with the effect of misleading and deceiving many retail dealers into believing that persons dealing with them were buying directly from the manufacturer, thereby eliminating the profits of middlemen, and to cause many to purchase their merchandise in such belief; with the capacity and tendency to divert business from and otherwise injure and prejudice competitors, many of whom manufacture the merchandise dealt in by them and rightfully represent themselves as so doing and others of whom purchase the merchandise dealt in by them and resell the same to others at a profit to themselves over and above the cost thereof to them, without in anywise representing themselves as the manufacturers thereof, and with the effect of so doing.

Respondents further, as charged, in their aforesaid advertising made many false and misleading statements and representations concerning the origin, nature, character and value of various articles depicted and described in said advertising and the materials whereof composed, holding out the same as of a greater and higher value and quality than was the case, said statements and representations including the following:

(a) Combs as ivory when made entirely of other materials, of much less value, through the use of the phrase "Pyrolin Ivory";

(b) Clocks containing no ivory, as ivory;

(c) Shaving brushes as having ebony handles and imported French bristles, the fact being that said handles were composed wholly of wood other than ebony, of much less value than ebony, and resembling it in general appearance;

(d) Pocket books or bill folds, as of seal skin leather, the fact being that they were made of material other than leather, of much less value than leather, and resembling it in general appearance through the use of the phrase "American Pin Seal"; and

(e) Numerous other similar false and misleading representations.

Said acts and practices, engaged in for about three years preceding the complaint, as charged, had the capacity and tendency to and did cause many retail dealers to purchase, deal in and resell said articles in reliance upon the truth of the aforesaid false and misleading rep-

representations, and had the capacity and tendency to and did divert business from and otherwise injure and prejudice competitors who did not misrepresent the origin, nature, character and value of the merchandise dealt in by them, and were, as charged, 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 its complaint upon the respondents, David Jacoby and Morris Gottsegen, copartners doing business under the firm names and styles of Mills Silver Works and Mills Sales Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

The respondents having waived the filing of briefs and oral argument, 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 drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, David Jacoby and Morris Gottsegen are, and have been for 10 years, partners doing business under various trade names and styles, among others, "Mills Silver Works" and "Mills Sales Company." They are engaged in the business of selling merchandise of sundry kinds at wholesale, to retail dealers located at points in various States of the United States. They cause said merchandise when so sold to be transported from their place of business in the City and State of New York into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations engaged in the sale and transportation of like articles of merchandise in interstate commerce between and among the various States of the United States.

PAR. 2. Respondents use their trade names mentioned in paragraph 1 hereof on their letterheads, billheads, invoices and other trade literature, in advertisements inserted in newspapers of national circulation, and also in catalogues descriptive of their merchandise and prices, widely distributed to customers and prospective customers throughout the United States. The trade name is usually accompanied by a statement to the effect that respondents are manufacturers.

The following are samples of respondents' printed matter appearing on such stationery as letterheads and invoices:

"MILLS SILVER WORKS
Manufacturers of
Silver-plated Hollow-Ware
661 Broadway, New York."

"MILLS SALES COMPANY
Importers and Manufacturers
13 East 16th Street,
New York, N. Y."

A catalogue issued by respondents in August, 1926, purporting to be the catalogue of the Mills Sales Company, containing description and prices of a large number of articles offered for sale by respondents, was subscribed as follows:

"MILLS SALES COMPANY
Importers and Manufacturers."

PAR. 3. Respondents are not manufacturers of silverware or of any other commodity, but are jobbers, and purchase the commodities in which they deal from the manufacturers thereof.

The trade name "Mills Silver Works" imports a factory or plant where silverware is manufactured. The use of such trade name, or of the representation that respondents are manufacturers, taken alone or in connection one with the other, has the tendency and capacity to mislead and deceive, and has misled and deceived, customers of respondent into the belief that respondents were manufacturers, and that said customers were, for that reason, obtaining better goods at cheaper prices than when purchasing from a jobber. It was the purpose and intention of respondents, in using the firm name "Mills Silver Works", to secure the custom of persons having such impression.

PAR. 4. In the catalogue referred to in paragraph 2 as being issued in August, 1926, numerous false and misleading descriptions are

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applied to certain articles, as follows: (Quotations are from the catalogue.)

1. "Fine Combs, Pyrolin Ivory No. 14."

The combs described were not made of ivory, but were made of pyrolin or celluloid.

2. "Fine Combs, White, Amber and Shell, 4.50 and 5.25 per gross."

None of the combs thus described were made of amber or shell, but were made of celluloid in imitation of amber and shell in color only.

3. "Fancy Clocks, metal, celluloid and ivory, for every conceivable purpose."

None of the clocks thus described were made in whole or in part of ivory, but those referred to as "ivory" in the description were colored to give the appearance of ivory.

4. "SHAVING BRUSHES, Black and Ebony Wood Handles, White French Bristles . . . 10.-per gross."

The shaving brushes thus described were not made of ebony wood, but of some kind of wood painted black to give the appearance of ebony.

5. "Leather Bill Folds, American Pin Seal, Gold Plated Corners and Shield, packed one to Gold Blue Ribbon box (a corking \$1.00 Number) 5.50 per dozen."

The bill folds thus described were not made of pin seal, or the skin or the hide of a seal, but were made of some other material in imitation of seal.

PAR. 5. The false and misleading descriptions mentioned in paragraph 4 hereof, each has the capacity and tendency to deceive the purchasing public, and to induce them to purchase the articles described, in reliance upon the truth and accuracy of such description.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of 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 and the evidence introduced, and the Commission having

made its findings as to the facts and 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 now ordered, that the respondents David Jacoby and Morris Gottsegen do cease and desist from:

1. Doing business under the trade name "Mills Silver Works", or under any other trade name importing or indicating that the respondents are manufacturers, unless and until the respondents herein are, in fact, manufacturers.

2. Representing by means of advertisements or catalogues or by any other means whatever, that they are manufacturers, unless and until the respondents herein are, in fact, manufacturers.

3. Using the word "ivory" as a noun in advertising or describing any article offered for sale by them, unless that article be made of ivory.

4. Using the word "ivory" in any description or advertisement of an article offered for sale by them, in such way as to indicate that the article is made of ivory, unless such be the fact.

5. Using the word "amber" or "shell" in advertising or describing articles offered for sale by them, except in an adjective sense denoting color, unless such article be made from amber or shell as the case may be.

6. Advertising or describing any article as being "ebony wood" unless it be made from ebony wood.

7. Advertising or describing articles to be made of American Pin Seal unless said articles be made of sealskin.

8. Making any other untruthful advertisement or description of any article offered for sale by them.

It is further ordered, that the respondents David Jacoby and Morris Gottsegen shall, within 30 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.

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IN THE MATTER OF

DAVID A. HORN AND J. M. HYSON, COPARTNERS, DOING
BUSINESS UNDER THE TRADE NAME AND STYLE OF
THE TAMPA CIGAR COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1326. Complaint, June 11, 1925—Decision, July 30, 1927*

Where cigars made in Tampa, Fla., and in the Tampa district for more than a quarter of a century had come to be widely known and referred to in the trade and by the cigar-purchasing public as Tampa cigars, and the word "Tampa" on containers of cigars or in the advertisements thereof had come to be understood by the cigar-purchasing public and the trade as meaning that such cigars had been manufactured in Tampa or in the immediately surrounding territory, and where the word "Havana" on such containers or in such advertising had come to be understood by said trade and public as meaning cigars manufactured from tobacco grown on the Island of Cuba; and thereafter a firm engaged at Red Lion, Pa., in the manufacture and sale of cigars composed of domestic tobacco only, and with no interest in any cigar factory in Tampa or the Tampa district,

- (a) Employed the words "Tampa cigar" as a part of their trade name and displayed the same on signs, on their business stationery, and in their advertising, and on the labels or containers of their cigars;
- (b) Caused the word "Havana" to be printed on the bands of one of their brands, and the legend "Made of the finest selected imported and domestic tobaccos," etc., to be printed on the labels and containers of another brand; and
- (c) Caused to be placed in gold letters upon the containers of another brand the phrase "Double Grand Prize St. Louis Exposition, 1904", together with a representation of a gold medal or prize at either end thereof, and underneath in small type the statement "Title and design registered by Tampa Cigar Co.," the fact being that no such prize was conferred on anyone at the exposition in question;

With the tendency and capacity to confuse, mislead and deceive the trade and cigar-purchasing public in respect of the place of manufacturing and composition of the aforesaid cigars, and into believing that the brand last above referred to had been awarded the "Double Grand Prize" by the exposition in question:

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

Mr. Charles Melvin Neff and *Mr. Henry Miller* for the Commission.

Mr. S. B. Meisenhelder, of York, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission

¹Amended complaint, Oct. 2, 1925.