

Syllabus

IN THE MATTER OF

R. P. KUHN, HOMER LAY, ROY DECK AND E. J. STERNER, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE EASTERN SEED 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 1489. Complaint, Dec. 14, 1927—Decision, May 17, 1928

Where partners engaged in the sale of vegetables and flower seeds to persons in the various States, through the medium of agents, mostly children, whom they procured by the offer of premiums to be given as prizes for the sale of their said seeds; in advertising their aforesaid premiums and seeds in their catalogues,

- (a) Misrepresented such premiums as of costlier and better materials and of a greater value than was the case, describing dress patterns, fabrics and wearing apparel of cotton and rayon, and containing no silk, as composed in whole or in part of silk, and as crepe de chine or pongee, cotton tablecloths and napkins as linen, gold plated watches, not engraved, with an imitation sapphire, as "14-K white gold—Guaranteed 25 years, beautifully engraved with sapphire stem crown", manicure sets, of imitation substances, as ivory or shell, pocketbooks containing no leather, nor embossed, as embossed leather, imitation leather cases of military brush sets, as fancy grained leather, machine made sweaters as hand made, hosiery containing only 8 per cent silk, as silk, and umbrellas respectively covered and ornamented with imitation taffeta and amber, as covered and ornamented with the genuine substances;
- (b) Represented such premiums as of certain specified retail values greatly in excess of the actual values;
- (c) Misrepresented the number of packages required to be sold to secure the various premiums, by enclosing three extra packages, on the pretense of covering the expense of increased postal rates and insuring delivery of the premium, post paid and insured, instead of sending the same collect without responsibility for loss or damage, the fact being that the postage and fees did not amount to the additional thirty cents the agents were required to remit in order to insure such delivery; with the result that said agents, mostly children, were thereby induced to order seeds because of said misrepresentations regarding packages necessary to be sold, in order to insure receipt of premium; and
- (d) Made such false statements in describing their seeds, under pictures of their supposed gardens, as "Part of our flower testing garden. We grow to maturity part of each variety, to see if they test true to name and yield satisfactorily", and "A view of our vegetable-testing garden. A convincing proof of the reliability of our vegetable seeds. Each variety must undergo the same rigid test", the fact being that the pictures in question were not pictures of gardens maintained and owned by them, and that they purchased the seeds dealt in by them from the growers, accepting their statements as to the qualities thereof;

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With the capacity and tendency to cause, and with the effect of causing, many persons, mostly children, to become their agents, and many persons to purchase seeds from said agents in reliance upon the truth of such false, deceptive and misleading statements and representations, and of diverting trade from competitors who truthfully labeled and advertised their products:

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

Mr. G. Ed. Rowland 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 R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners engaged in the sale of vegetable and flower seeds to persons residing at points in various States, and with place of business at Lancaster, Pa., 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.

Respondents, as charged, for about three years last past, engaged as above set forth, in their letters, circulars, catalogues and other business literature sent to persons, mostly children, whose names and addresses are upon lists purchased by them, make many false, misleading and deceptive statements and representations, concerning the premiums offered to agents as compensation for the sale by said agents of its packages of seed, sold by said agents at 10 cents each, said statements and representations including the following:

(a) Articles and garments of wearing apparel as silk, in whole or in part, when composed of other materials;

(b) Tablecloths, napkins and other like textiles, composed of cotton, as linen;

(c) Watches as composed of gold and ornamented with sapphires, when composed almost entirely of other metal and ornamented with imitations of the aforesaid stones;

(d) Hair brushes, manicure sets and other toilet articles as made of ebony, ivory and shell, respectively, when in fact made of other materials;

(e) Pocketbooks as made of leather and embossed, when neither so made nor embossed;

(f) Certain machine-made garments as hand made;

(g) Hosiery composed of 8 per cent silk and 92 per cent other materials, as silk;

(h) Umbrellas as covered with taffeta and ornamented with amber, when neither so covered nor ornamented;

(i) That the premiums in question are, severally, of a specified retail value, when in fact the fair retail value thereof is substantially less; and

(j) Many other false, misleading and deceptive statements and representations concerning the aforesaid premiums of like tenor and effect.

Respondents further, as charged, in their aforesaid advertisements hold out to the agents that said premiums will be given to them in return for sale by them of a specified number of packages of seeds at 10 cents each and remittance to respondents of the monies thus procured, when as a matter of fact they require said agents to sell in each instance three additional 10 cent packages as a condition of earning and securing the premiums.

Respondents also, as charged, in their said advertising set forth false, misleading and deceptive statements and representations to the effect that they regularly test their seeds for quality and productiveness in gardens maintained by them for the purpose, when in fact they make no such test and maintain no such gardens.

Said acts and practices, as alleged, "have the capacity and tendency to and do cause many persons, for the most part children, to become agents for respondents and as such to sell respondents' said seeds and many of the public to purchase said seeds from said agents, all in the belief that respondents' false, misleading and deceptive statements all in this complaint before set out are true"; all to the prejudice of the public and of 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 the respondents, R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners, doing business under the trade name and style Eastern Seed Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer to the complaint herein, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such

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order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same or in opposition thereto; 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Eastern Seed Co., with their place of business in the city of Lancaster, State of Pennsylvania. They are engaged in the sale of vegetable and flower seeds to persons residing at points in the various States of the United States. The method of sale and distribution of said flower and vegetable seeds is as follows: Respondents purchase lists containing names and addresses of persons, for the most part children, residing at points throughout the United States, and send letters, circulars and other literature to said persons soliciting them to become agents for respondents in the sale of their said flower and vegetable seeds. Respondents also send to said persons catalogues offering and describing various premiums which will be given by respondents to said agents as prizes for the sale of said seeds. Descriptions of respondents' seeds are set forth in said catalogue, together with alleged facts concerning them. Upon receipt of an answer from one of those solicited agreeing to become an agent to sell their said seeds, respondents send from their place of business in the city of Lancaster, Pa., to said agent at his place of residence, a number of packages of seeds, corresponding to the number of packages required in order to secure the premium which said agent has selected as set forth in the catalogue, which packages of seeds are to be sold by said agent at 10 cents per package. After selling the packages of seeds the agent remits to respondents the money secured by said agent in payment of said packages of seeds, and thereupon respondents send to the agent the premium selected. All of respondents' business is conducted by mail, and their seeds are sold throughout the United States in competition with other individuals, partnerships and corporations engaged in the sale of seeds in commerce between and among the various States of the United States by mail or otherwise.

PAR. 2. In the catalogue sent to its agents, as aforesaid, respondents make many false, misleading and deceptive statements and representations regarding the premiums offered to agents for the sale of their seeds, all of said statements having the effect, and being for the purpose of leading said agents to believe that the said prem-

iums are made of costlier and better materials, and are of a greater value, than is actually the case. Among the said statements and representations are the following:

(a) That certain dress patterns, fabrics and articles of wearing apparel are made wholly or in part of silk, and are crêpe de chine or pongee; when in fact all of said articles are made of cotton and rayon, and not crepe de chine or pongee, and do not contain any silk obtained from the cocoon of the silkworm.

(b) That certain tablecloths and napkins are made of linen; when in fact said articles are made entirely of cotton and do not contain any linen.

(c) That certain wrist watches are made of "14-K white gold—Guaranteed 25 years, beautifully engraved with sapphire stem crown"; the fact is that said watches are gold plated, are not engraved, and do not contain a sapphire in the stem crown, but an imitation thereof.

(d) That certain manicure sets are made of ivory or shell; when in fact said manicure sets are not made of either ivory or shell, but of imitations thereof.

(e) That certain pocketbooks are made of embossed leather; when in fact said pocketbooks do not contain any leather, but are composed entirely of an imitation thereof, and are not embossed.

(f) That certain military brush sets are contained in cases made of fancy grained leather; when in fact said cases do not contain any leather, but are made of an imitation of leather.

(g) That certain sweaters are hand made; when in fact said sweaters are not hand made but are machine made throughout.

(h) That certain hosiery is made of silk; when in fact said hosiery contains only 8 per centum of silk from the cocoon of the silk worm, the rest of the material being rayon.

(i) That certain umbrellas are covered with American taffeta and ornamented with amber; when in fact said umbrellas do not contain any silk of the cocoon of the silkworm, but are covered with an imitation thereof, and are not ornamented with amber, but with an imitation thereof.

(j) That the premiums listed in said catalogue are of certain specified retail values; when in fact the retail value of said premiums, respectively, is a great deal less than said purported values.

(k) Many other statements and representations are made regarding other premiums listed in said catalogue, which said statements and representations are false, misleading and deceptive.

PAR. 3. In the course and conduct of their business, under the trade name and style of Eastern Seed Co., respondents represent that if an

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agent sells a specified number of packages of respondent's seeds at 10 cents, he is entitled to a premium of his selection, which will be sent to him postpaid upon receipt by respondents of the money obtained from the sale of the seeds. This statement is false and misleading because when respondents send the packages of seeds to the agent for sale by him, they enclose three extra packages of seeds together with a printed slip advising said agent that due to increased postal rates it is necessary to sell the three extra packages in order to insure the delivery of the premium, postpaid, insured. The said agent is further advised that if the extra packages of seeds are not sold and the additional sum of money remitted, respondents will send the premiums collect and will not be responsible for loss of or damage to the premium. The majority of premiums sent by respondents are transmitted by parcel post through the mails, and the postage and fees for insurance do not amount to the additional thirty cents which respondents require their agents to remit in order to insure delivery of the premiums; respondents thereby misrepresent to said agents the number of packages of seeds which it is necessary for the agents to sell before being entitled to a premium. Respondent's said agents, for the most part children, are thereby induced to and do order seeds from respondents because of the misrepresentations made by respondents regarding the number of said packages of seeds necessary to be sold in order to insure receipt by said agents of a premium.

PAR. 4. In the catalogue which respondents send to their agents are certain false, deceptive and misleading statements and representations concerning their said seeds. Among said false, deceptive and misleading statements and representations are the following, appearing under pictures showing growing flowers and vegetables: "Part of our flower-testing garden. We grow to maturity part of each variety, to see if they test true to name and yield satisfactorily" and "A view of our vegetable-testing garden. A convincing proof of the reliability of our vegetable seeds. Each variety must undergo the same rigid test". In truth and in fact respondents do not have any vegetable or flower gardens in which they grow or test part or any of the seeds which they sell; respondents do not test the seeds which they sell but accept the statements made by the growers of the seeds from whom respondents purchase them as to their qualities; and respondents do not grow any seeds themselves, but purchase them all from seed growers in different parts of the country. The pictures of flower and vegetable gardens in respondents' catalogue are pictures supplied to respondents by others, and are not pictures of flower or vegetable gardens maintained and owned by respondents.

PAR. 5. All of the aforesaid statements and representations made by respondents in connection with and relating to their aforesaid seeds, and also their representations concerning the number of packages of seeds it is necessary for their agents to sell to entitle them to premiums, have the capacity and tendency to and do cause many persons, for the most part children, to become agents for the sale of respondents' seeds, and many persons to purchase said seeds from said agents, in the belief that said statements and representations are true, when in truth and fact, said statements and representations are false, deceptive and misleading as hereinbefore set forth.

PAR. 6. Respondents, through R. P. Kuhns, who is the active head and manager of said Eastern Seed Co., claim that some of the statements and representations set forth in their catalogue as descriptive of the premiums contained therein, are furnished to them by the manufacturers from whom they purchase the said premiums, and are reprinted in the catalogues by respondents in the belief that said statements and representations are true statements, without any investigation as to their truth by respondents.

PAR. 7. Respondent R. P. Kuhns, is the active head of the partnership doing business under the trade name and style of Eastern Seed Co., and is responsible for and directs all activities of said partnership. Respondents Homer Lay, Roy Deck, and E. J. Sterner are partners with respondent R. P. Kuhns, but have nothing to do with the conduct of the business, their interest being solely a financial one.

PAR. 8. Many of respondents' competitors grow seeds which they sell and ship in interstate commerce in competition with respondents. Said competitors truthfully label and advertise the seeds which they sell as aforesaid. The misbranding and misrepresentations by respondents of their seeds and premiums offered to agents as hereinbefore set forth, is to the prejudice and injury of the competitors of respondents, and trade is diverted from competitors who truthfully label and advertise their products.

CONCLUSION

The practices of the 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".

(Seal)

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, and a statement of facts agreed upon by counsel for the respondents and counsel for the Commission, filed herein, 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",

Now, therefore, it is ordered, That the respondents, R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners, doing business under the trade name and style Eastern Seed Co., their agents, servants, and employees cease and desist from directly or indirectly in catalogues, letters, circulars, or other advertising matter or otherwise:

(1) Using the words "crêpe de chine", "pongee", "taffeta" or either of them, respectively, to represent, describe or advertise fabrics, umbrellas, or articles of wearing apparel which are not composed wholly of silk made from the cocoon of the silkworm.

(2) Using the word "silk" or any modification thereof to represent, describe or advertise a fabric or article of wearing apparel, such as hosiery, (1) unless such fabric or article of wearing apparel is made entirely of silk derived from the cocoon of the silkworm, or (2) unless where the fabric or article of wearing apparel is made partly of silk, it is accompanied by a word or words aptly and truthfully describing other materials of which such fabric or article of wearing apparel is in part composed.

(3) Using the word "linen" to represent, describe or advertise tablecloths, napkins or other articles which are not composed wholly of linen made from flax.

(4) Using the words "gold" or "white gold" or either of them to represent, describe or advertise gold filled or gold plated watch cases.

(5) Using the marks or symbols "14-K" or marks or symbols of similar import to represent, describe, or advertise watch cases when the carat fineness of such watch cases is less than the number of carats indicated by the marks or symbols used.

(6) Using the words "engraved" or "sapphire stem crown" or either of them to represent, describe or advertise watch cases which are not engraved and which do not contain a genuine sapphire in the stem crown.

(7) Using the word "ivory" or the word "shell" to represent, describe or advertise articles unless such articles are in fact made or composed of ivory or shell, as the case may be.

(8) Using the word "leather" or the words "embossed leather" to represent, describe or advertise a product which is not made from or composed of the skins or hides of animals or which is not embossed, as the case may be.

(9) Representing that machine made sweaters or other articles of merchandise are hand made.

(10) Using the word "amber" to represent, describe or advertise articles which are not composed of genuine amber.

(11) Representing that premiums or other articles have retail values in excess of the price or prices at which such premiums or articles are ordinarily and customarily sold to the consuming public.

(12) Making any other false or misleading statement with respect to premiums or articles of merchandise.

(13) Falsely representing the number of vegetable and/or flower seeds it is necessary for an agent to sell to entitle him to a premium.

(14) Falsely representing the character, quality or origin of the seed sold by them, and more specifically any false or misleading statements concerning:

(a) Tests given their seeds for purity and germination;

(b) The place wherein seeds sold by them are grown;

(c) The source from which they obtain the seeds sold by them.

It is further ordered, That respondents, R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners, doing business under the trade name and style Eastern Seed Co., shall within 60 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

B. J. SACKHEIM, AND MARY RAE SACKHEIM, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF NORMAN ROBERTS & 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 1350. Complaint, Oct. 5, 1925—Decision, May 28, 1928

Where a firm engaged in the sale of wearing apparel for men, women and children, by mail, in advertising certain goat skin furs, and cotton and artificial silk fabrics in their catalogues and in newspapers and magazines, described the former as "Manchurian Fox", "Manchurian Lynx" and "Manchurian Wolf", and the latter as "wool serge style", "wool finish serge", and "silk", respectively; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public in respect of the nature or composition of the aforesaid furs and fabrics, and to cause them to purchase the same in such belief, and to divert and with the effect of diverting, trade from competitors engaged in the sale of furs composed of fox, lynx or wolf pelts, and of wearing apparel composed in whole or in part of wool, silk or cotton, and truthfully represented by them to purchasers and prospective purchasers:

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

Mr. Robert O. Brownell and *Mr. William A. Sweet* for the Commission.

Tarnopol & Flamm, of Chicago, Ill., 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 B. J. Sackheim and Mary Rae Sackheim, partners engaged in the sale by mail of wearing apparel for men, women, and children, direct to consumer purchasers residing at points in various States, and with place of business in Chicago, 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.

Respondents, as charged, for about two years last past, in their advertisements in newspapers, magazines and periodicals of general circulation throughout the United States or in certain sections thereof and in their catalogues and other trade literature, describing and picturing the articles of apparel dealt in by them, "cause to be set forth many false, fraudulent and misleading assertions and