

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

representations concerning the materials of and with which their said various articles of apparel are made, or decorated and trimmed."

Said false, fraudulent and misleading assertions and representations include, among many other of like tenor, the following:

(a) Fur scarves for women, as Manchurian Fox, Manchurian Lynx or Manchurian Wolf, when in fact made of pelts inferior in quality and value to those above set forth;

(b) Suits and dresses for women, composed wholly of cotton and, in some instances, decorated with braid made of a material resembling silk, as wool serge style and wool finish serge, and as decorated with silk braid;

(c) Dresses for women, shirts for men and hosiery for men and women as made of silk, when in fact made of a material inferior thereto in quality and value, though resembling the same in general appearance.

Said false and misleading assertions and representations, as alleged, "have the capacity and tendency to and do cause many of the consuming public residing in various States of the United States to purchase various articles of respondents' said wearing apparel in the belief that same are composed of or decorated and trimmed with the various materials of and with which respondents falsely assert and represent said articles of apparel to be made, or decorated and trimmed, as hereinbefore set out," and said acts and practices tend to and do divert business from and otherwise injure and prejudice competitors of respondents, many of whom deal in similar articles and truthfully represent to purchasers and prospective purchasers the actual materials of which made or with which decorated and trimmed; 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 a complaint upon respondents B. J. Sackheim and Mary Rae Sackheim, partners, doing business under the trade name and style of Norman Roberts & 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 said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in op-

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position thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final 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. Respondents B. J. Sackheim and Mary Rae Sackheim are partners, doing business under the trade name and style of Norman Roberts & Co., with their office and principal place of business in the city of Chicago, State of Illinois. They are now and since the year 1922 have been, engaged in the business of selling wearing apparel for men, women and children, by mail in the following manner: Respondents solicit and secure orders for their said wearing apparel by means of advertisements, catalogues, and other trade literature which they cause to be published and circulated among the several States of the United States, all as set out more particularly in paragraph 2 of these findings. Respondents fill the orders so secured by shipping the wearing apparel so ordered from their principal place of business in the city of Chicago, Ill., through and by means of the United States mails, to the purchasers thereof at their respective places of location, in the several States of the United States. In the regular course and conduct of their said business, respondents have been and now are in competition with other persons, partnerships and corporations who are also engaged in selling wearing apparel by mail direct to customers located in various States of the United States.

PAR. 2. In the regular course and conduct of their business, for more than a year last past respondents published and caused to be published, advertisements in various newspapers and magazines having interstate circulation, and catalogues and other trade literature which they caused to be distributed through and by means of the United States mails to customers and prospective customers located in the several States of the United States. In the said advertisements and catalogues appeared pictures and written descriptions of the wearing apparel offered for sale by respondents, together with the prices thereof, and the customers referred to followed the said descriptions and prices in sending orders for respondents' merchandise.

PAR. 3. In their newspaper and magazine advertisements, catalogues, and other trade literature published and distributed as set out in paragraph 2 of these findings, for more than a year prior to

March 1, 1926, respondents designated and described (1) certain furs made of goat skins as "Manchurian Fox", "Manchurian Lynx", and "Manchurian Wolf"; (2) certain fabrics composed wholly of cotton as "wool serge style", and "wool finish serge", and (3) certain fabrics composed wholly of artificial silk as "silk".

PAR. 4. The terms "Manchurian Fox", "Manchurian Lynx", and "Manchurian Wolf" when used to designate and describe furs, are understood by the trade and by the purchasing public to mean that the furs so designated and described are made of fox, lynx or wolf fur, as the case may be.

The terms "wool serge style" and "wool finish serge" when used to designate and describe a fabric, are understood by the trade and the purchasing public to mean that the fabric so designated and described is composed wholly of wool.

The word "silk" when used to designate and describe a fabric is understood by the trade and the purchasing public to mean that the fabric so designated and described is composed wholly of silk made from the cocoon of the silkworm.

PAR. 5. The use by respondents of the terms "Manchurian Fox", "Manchurian Lynx", and "Manchurian Wolf" to designate and describe furs made of goat skins as set out in paragraph 3 of these findings, had and has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the furs so designated and described are made of the fur of fox, lynx or wolf, and to cause them to purchase the said furs in that false belief.

The use by respondents of the terms "wool serge style" and "wool finish serge" to designate a fabric composed wholly of cotton, as set out in paragraph 3 of these findings, had and has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the fabric so designated and described is composed wholly of wool, and to cause them to purchase it in that false belief.

The use by respondents of the word "silk" to designate and describe a fabric composed wholly of artificial silk, as set out in paragraph 3 of these findings, had and has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the fabric so designated and described is composed of silk made from the cocoon of the silkworm, and to purchase it in that belief.

PAR. 6. There are among the competitors of respondents mentioned in paragraph 1 of these findings, many who offer for sale and sell by mail direct to consumers, furs composed of fox, lynx,

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or wolf pelts, and other articles of wearing apparel of which some are composed wholly or in part, of wool, of silk, or of cotton, and who truthfully represent to purchasers and prospective customers the kind of fur and the materials of which the said articles of wearing apparel are composed. Respondents' acts and practices, as set out in the foregoing findings, tend to and do divert trade from said competitors.

CONCLUSION

The acts and practices of respondents, under the conditions and circumstances set forth in the foregoing findings, are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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, the testimony and evidence, and the brief of counsel for the Commission, the respondents having filed no brief, and the Commission having made its conclusion based thereon 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, B. J. Sackheim and Mary Rae Sackheim, their representatives, servants, and employees cease and desist from—

(1) Using the words "wool serge style" or "wool finish serge" as a trade brand or designation in advertising, or on labels, or otherwise, in connection with the sale or distribution, in interstate commerce, of women's dresses which are not made from a fabric composed wholly of wool; provided, that, when dresses are made in substantial part of a fabric composed wholly of wool, and the words "wool serge style" or "wool finish serge" are used as a trade name or designation for said dresses, the said words or either of them shall not be used unless they are immediately accompanied with some other word or words displayed in type equally as conspicuous as said words are displayed, clearly indicating that said dresses are not made from fabric composed wholly of wool, and

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that will otherwise indicate clearly that said dresses are made in part from fabrics other than wool fabrics.

(2) Using the word "silk" either independently, or in conjunction or combination with any other word or words, letter or letters, as a trade name or brand, or designation in advertising, or on labels, or otherwise, in connection with the sale or distribution, in interstate commerce, of a product which is not composed wholly of silk made from the cocoon of the silkworm; provided, that, when a product is composed in substantial part of silk, the word "silk" shall not be used unless it is immediately accompanied with some other word or words, letter or letters, displayed in type equally as conspicuous as that in which the word "silk" is displayed clearly indicating that said product is not made wholly from silk made from the cocoon of the silkworm, and that will otherwise indicate clearly that the product is composed in part of a material or materials other than silk. [And]

Whereas, On February 3, 1928, a trade practice conference for the fur industry was held by the Commission, which was attended by approximately ninety per cent of the volume of the fur industry, at which certain rules were established determining what is proper and what is improper in the naming of furs, which rules were approved by the Commission, February 27, 1928, to become effective immediately, and

Whereas, The respondent herein, on March 12, 1928, subscribed in writing to an agreement to abide by said rules,

It is further ordered, That the charges of the complaint with respect to the marking of furs, as set forth in paragraph 3 (a) of said complaint, be and the same are hereby dismissed.

It is further ordered, That the respondents shall, within 30 days after the date of receipt of the order herein set forth, file with the Commission a report setting forth the manner and form in which they have complied with the foregoing order.

Complaint

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IN THE MATTER OF

ABBOTT E. KAY AND R. T. NELSON, AS INDIVIDUALS
AND AS COPARTNERS, DOING BUSINESS UNDER THE
NAME OF AABAN RADIUM COMPANYCOMPLAINT (SYNOPSIS), MODIFIED FINDINGS AND ORDER IN REGARD TO THE
ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT.
26, 1914*Docket 943. Complaint, Dec. 14, 1922—Modified Findings and Order, June 21,
1928¹*

Where two individuals engaged under a trade name including the word "radium" in the sale of a substance which they advertised and sold as radium but which showed no radio activity upon being subjected to the usual and accepted tests and was not the genuine and far more expensive radium; with the effect of deceiving and misleading the public as to the true character thereof and inducing its purchase as and for radium or containing radium or possessing radio active properties as known to the scientific or commercial world, and with the capacity and tendency so to do: Held, that such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. J. T. Clark 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 Abbott E. Kay, and respondent R. T. Nelson, engaged individually and as partners, under the name Aaban Radium Co., in the manufacture and sale of a product which purported to contain, but contained no radium, 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, engaged as above set forth, advertised in magazines and other periodicals of general circulation throughout the United States as well as by circulars and letters to prospective customers that the product dealt in by them as above set forth, contains radium, with the tendency to mislead and deceive the purchasing public into believing the same to be genuine radium; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND MODIFIED ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a com-

¹ Original findings and order Nov. 10, 1923. Sec. 7, F. T. C. at p. 16 et seq.