

Complaint

IN THE MATTER OF
OHIO LEATHER COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1378. Complaint, May 5, 1926—Decision, Feb. 11, 1929*

Where the word "Kid" had for many years come to mean a leather made of goatskin; and thereafter a corporation engaged in the tanning of leather and in the sale thereof to shoe manufacturers, chiefly,

- (a) Applied the trade name "Kaffor Kid" to a calfskin leather closely resembling kid and so invoiced the same and labeled the bundles thereof in which shipped; and
- (b) Advertised its said leather under such name in trade periodicals of general circulation, and featured and employed the same in display signs and circular letters sent to retailers, together with the words, in smaller letters, "the distinctive calf leather" or the words "calf" or "calfskin" in much smaller letters;

With the result that shoes of said "Kaffor Kid" were purchased as and for kid shoes, preferred by certain classes to those of calfskin, manufacturers and retailers of shoes thereof adopted and employed said term in designating, advertising, and selling said shoes, and the former so billed the same, and, occasionally, as kid, trade was diverted from manufacturers of kid and calfskin leathers sold under their true names, there was a capacity and tendency to deceive the consuming public in respect of the composition of shoes made from said "Kaffor Kid", and there was placed in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer and sell shoes and other products made of the aforesaid leather as and for articles made of kid:

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

Mr. E. J. Hornbrook for the Commission.

Harrington, DeFord, Huxley & Smith, of Youngstown, Ohio, 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, an Ohio corporation engaged in the manufacture of leather and sale thereof to manufacturers of shoes and other leather products at points in various States, and with principal office and place of business in Girard, Ohio, with naming product misleadingly, advertising falsely or misleadingly and 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.

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Respondent, as charged, for about two years last past, has named a leather made by it from the hides of calves "Kaffor Kid", featured said name in its advertisements of such leather, under said name, in trade journals of general circulation among the shoe and leather goods trades throughout the United States and in certain sections thereof, so branded said leather, and sold the same, so named, branded, advertised, invoiced, and billed, to its aforesaid vendee manufacturers of shoes and other leather products, by whom said shoes and products are sold to wholesale and retail dealers in various States, named, designated, advertised, labeled, branded, and otherwise represented by many of said vendees manufacturers as "Kaffor Kid" products and made of "Kaffor Kid" and "kid", and resold by said vendee's wholesale dealer customers thus labeled and branded to retailers, and, by said retailers, still so labeled and branded, offered and sold to the consuming public; notwithstanding the fact that leather made from the skin of calves is not and never has been named, designated, and known as "Kid", but as calf and calfskin, and that kid has long since meant leather made from the skin of goats, preferred by many for shoes and other leather products to similar articles made of calf or calfskin, as above set forth.¹

The use, as charged, of said name and designation "Kaffor Kid", as above set forth, "has the capacity and tendency to mislead and deceive many members of the shoe and leather-goods trades and many of the consuming public into the belief that respondent's said 'Kaffor Kid' leather is said leather known as 'kid', hereinbefore described, and to cause many of the trade and consuming public to purchase respondent's said leather and shoes and other leather products manufactured therefrom, in said belief", and further, respondent's "said acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public shoes and other leather products made of respondent's said 'Kaffor Kid' leather as and for articles made of said leather 'kid', hereinbefore de-

¹ The allegations of the complaint relating to the meaning of the words 'kid', etc., as above set forth, are as follows:

"PAR. 4. Leather manufactured from the skins of goats is and for many years past has been named and designated and commonly and generally known to the trade and consuming public as 'kid'. Leather manufactured from the skins of calves is not now and never has been named, designated, and known as 'kid' and now is and for many years past has been named, designated, and commonly and generally known to the trade and consuming public as 'calf' and 'calfskin'.

"PAR. 5. There has been for many years and now is a large and widespread demand among the consuming public throughout the United States for shoes and other leather products made of said leather known as 'kid', hereinbefore described, and many of the consuming public throughout the United States prefer shoes and other leather products which are made of said 'kid' to similar [products] made of said leather known as 'calf' or 'calfskin', hereinbefore described."

scribed"; all to the prejudice of the public and of respondent's competitors, many of whom sell leather made from goatskins, rightfully and lawfully represented by them as "kid", and others of whom sell leather made from the skins of animals other than goats, without in any wise representing such leather as "kid".

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 the respondent, Ohio Leather Co., 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 filed answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is incorporated under the laws of the State of Ohio, with its place of business at Girard in said State. It has an issued capital stock of 48,657 shares, representing a value of \$1,599,400. Since 1901 respondent has been engaged in the manufacture or tanning of leather and in the sale thereof principally to manufacturers of shoes located in various States of the United States. When sales of its leather are made, the respondent causes it to be transported from its tannery in the city of Girard, Ohio, to, into and through other States of the United States to the purchasers thereof at their respective places of business.

In the course and conduct of its said business respondent is in competition in commerce with individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation of leather made from calfskin and kidskin.

PAR. 2. In 1922 respondent began the tannage of a calfskin, which it named and sold under the trade name "Kaffor Kid." The name or legend "Kaffor Kid" was originated by the respondent and copyrighted by it in the year 1922. This "Kaffor Kid" leather is sold almost exclusively to manufacturers of shoes, and since the year 1922

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respondent has manufactured and sold to shoe manufacturers \$2,893,903 worth of such leather—this represents but 22 per cent of respondent's tanning business.

"Kaffor Kid" leather is manufactured by respondent under what is known among tanners of leather as the chrome process of tanning and also a secret tanning process of its own. By the use of said process respondent produces a leather that when made into shoes strongly resembles kid leather.

"Kaffor Kid" leather is produced from light calfskin or deacons, that is to say, from the skins of calves which are killed when about a week old and never more than 10 days old. Only milk-fed calves are used, never calves that are old enough to subsist on grass.

The calfskins used by respondent in making "Kaffor Kid" come from dairy countries and are imported into the United States from the countries of Lithuania, Russia, Scandinavian countries, and some other European countries. "Kaffor Kid" leather is never made from kidskins or goatskins.

PAR. 3. Kid leather is of a finer texture than calf. It is lighter, the grain is smaller, and the leather made therefrom by tanning processes is softer and more pliable than calf leather generally, but under the process of tannage used by respondent upon the calfskins taken from the calf of 10 days or younger "Kaffor Kid" leather becomes soft and pliable and very closely resembles kid leather.

Respondent's "Kaffor Kid" leather, made in dark and morrow brown colors, is used in the manufacture of men's and women's shoes.

PAR. 4. Respondent ships its said leather to its customers in bundles of two dozen skins to a bundle and each bundle is stamped with the words "Ohio Kaffor Kid made exclusively by the Ohio Leather Co., Girard, Ohio, U. S. A." There is no explanation on these bundles that "Kaffor Kid" is not made of kidskin. This leather is billed and invoiced to respondent's customers as "Kaffor Kid" without explanation on such bills and invoices that the same is made from calfskin.

The customers of respondent, that is to say, shoe manufacturers, bill the shoes made from "Kaffor Kid" leather to their retail customers as "Kaffor Kid" without explanation that the same is made from calfskin. There have been occasions where these shoes were billed to such retailers as kid. Shoe retailers in ordering shoes made from respondent's said leather from the manufacturers of shoes frequently specify "Kaffor Kid" shoes. Shoes made of "Kaffor Kid" are sold to retailers of shoes in many of the cities of consequence in the United States under the name of "Kaffor Kid" without explanation in writing that the same are made from calfskin.

At times the retailers stamp the words "Kaffor Kid" upon the cartons in which such shoes are contained and sold to their customers without explanation on such cartons that the said shoes are made from calfskin, and upon request of the retailers, manufacturers stamp the name "Kaffor Kid" on such cartons without explanation that the shoes contained therein are made of calfskin.

PAR. 5. Respondent advertises its leather as "Kaffor Kid" and has spent the sum of \$90,535 in such advertising. It advertises in the Shoe & Leather Reporter of Boston, The Hide & Leather Magazine of Chicago, The Boot & Shoes Recorder of Boston, The Shoe Style Digest of Boston, and Shoe Retailer of Boston. These magazines are generally circulated in the leather trade of the United States and reach shoe manufacturers and retailers. Respondent uses display signs and furnishes retailers with the same upon which are featured in large letters the legend "Kaffor Kid" and in smaller letters the words "The distinctive calf leather" are printed. Four thousand of these cards were printed and distributed. Respondent also addresses circular letters to retailers in which the legend "Kaffor Kid" is used. In all of respondent's advertising of "Kaffor Kid" leather the word "calf" or the word "calfskin" appear in letters much smaller than the words "Kaffor Kid."

Manufacturers making shoes from "Kaffor Kid" leather advertise the same without reference to the fact that the same are made from calfskin. Some of such manufacturers sent circular letters to the consuming customers of retailers in which circulars "Kaffor Kid" shoes are mentioned without explanation that the same are made of calfskin.

Retailers advertise shoes made from respondent's said leather as "Kaffor Kid" without explanation that the same are made from calfskin.

PAR. 6. The value of calfskin and kidskin shoes now sold in the United States is about equal.

PAR. 7. The word "kid" as used in the shoe and leather trade and as commonly understood by the public has come to mean a leather made from the skin of a goat, old or young. It came to be applied to leather made from the skin of a goat or goat kid more than 30 years ago and prior to that time those who manufactured leather made from goatskins or kidskins called themselves morocco manufacturers and such leather was known as morocco leather. Eighty per cent of the true kidskin goes into the glove trade, 90 per cent of all kid shoes are made from the skin of old goats.

PAR. 8. The term "Kaffor Kid" or the coined word "Kaffor" were never applied to leather or shoes until adopted and used by the

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respondent in the said year 1922, and the term "Kaffor Kid" has been continuously used by respondent since said year in the designating, advertising, and selling of "Kaffor Kid" leather. Manufacturers of shoes from said leather have, since the adoption of said term by respondent, used the term "Kaffor Kid" in designating, advertising, and selling such shoes. Retail dealers of shoes made from "Kaffor Kid" leather have, since the adoption of the said term by respondent, frequently used the term "Kaffor Kid" in designating, advertising, and selling such shoes.

The said coined word "Kaffor" as applied to leather has no meaning. There is no such word in the dictionary or in the English language. There is a word spelled "Kaffir" meaning black. The term "Kaffor Kid", when applied to respondent's said leather, means kid leather to many of the consuming public.

PAR. 9. Respondent's said use of the term "Kaffor Kid", as applied to its said leather, suggested said use of said term to said manufacturers, and in turn the said use of said term by said manufacturers suggested said use of said term to said retailers.

PAR. 10. There is a preference for kid shoes, and people with tender feet and people who prefer stylish shoes generally prefer a shoe made of kid or goatskin as over and against a shoe made from calfskin. The said use of the term "Kaffor Kid" by retailers in the advertising and sale of said shoes enables them to dispose of shoes made of "Kaffor Kid" leather as and for shoes made of kid leather.

The use by respondent of the term "Kaffor Kid" on its said leather and its subsequent use by manufacturers and retailers of shoes diverts trade from those who are engaged in the manufacture of kid leather and those who are engaged in the manufacture of calfskin leather and selling the same under their true names.

PAR. 11. "Kaffor Kid" has a "soft kiddy appearance" and shoes made from "Kaffor Kid" and kid leather are sold by retailers at about the same price. Many of the purchasing public can not tell the difference between calf leather and kid leather when said leather is made into shoes. Many of the purchasing public can not tell the difference between "Kaffor Kid" leather and kid leather. Purchasers of shoes made from "Kaffor Kid" leather have been led to believe by the use of the term "Kaffor Kid" in the advertising and sale of such shoes that they were purchasing shoes made from kid leather.

PAR. 12. The coined word "Kaffor" associated with the word "Kid" as used by the respondent and subsequently used by the respondent's customers or the customers of respondent's customers

does not enable the ultimate consumer to determine that the leather so named is a calfskin leather.

PAR. 13. The aforesaid use by respondent of the term "Kaffor Kid" and its subsequent use by the customers of the respondent and the customers of respondent's customers has the capacity and the tendency to deceive the consuming public into the belief that the shoes made from respondent's said "Kaffor Kid" leather are in fact kid leather.

PAR. 14. Respondent's said acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public shoes and other leather products made of respondent's said "Kaffor Kid" leather as and for articles made of kid leather.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's 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 respondent thereto, the testimony, evidence, briefs, and arguments of counsel; and the Commission, having made its findings as to the facts and its conclusion that respondent has been, and is, using unfair methods of competition in commerce in violation of the provisions 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",

It is now ordered, That respondent Ohio Leather Co., its officers, agents, representatives, and employees, in connection with the advertising, offering for sale, and sale in commerce among the several States of the United States, of leather made from calfskins, or other leather not made from kid or goatskins, shall cease and desist:

1. From using the word "kid" alone or in combination with the word "Kaffor", or other word or words, as a trade or brand name for or as descriptive of any such leather.

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2. From using the word "kid" alone or in combination with the word "Kaffor", or other word or words, on labels, letterheads, envelopes, or in the advertising or other designation, or description of any such leather.

It is further ordered, That the respondent, Ohio Leather Co., 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 hereinbefore set forth.

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IN THE MATTER OF
FARLEY HARVEY COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1544. Complaint, Nov. 3, 1928—Decision, Feb. 11, 1929

Where a corporation engaged in the sale of dry goods at wholesale, designated, tagged, and labeled a cloth or fabric composed of approximately 60 per cent cotton and 40 per cent silk, and resembling silk in texture and general appearance, "silk chiffon" and/or "chiffon" and so sold the same to retailers by whom said fabric, in accordance with its purpose and plan, was offered to the consuming public thus labeled and was so represented; with the capacity and tendency to mislead and deceive many of the consuming public into believing said cloth to be made entirely of silk, and into purchasing the same in such belief, and with the effect of so doing, to the prejudice of the public and its competitors, many of whom manufacture and/or deal in similar or silk fabrics, as the case may be, accurately and truthfully labeled, advertised and branded:

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

Mr. Martin A. Morrison for the Commission.

Phipps, Durgin & Cook, of Boston, Mass., 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 Massachusetts corporation engaged in the sale of dry goods, including textile fabrics, at wholesale to retailers in various States, and with principal office and place of business in Boston, with naming product misleadingly and 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.

Respondent, as charged, engaged as above set forth, tags, labels, and designates a cloth or fabric dealt in by it, composed of approximately 60 per cent cotton and 40 per cent silk and resembling silk in texture and general appearance, silk chiffon and/or chiffon, and so offers and sells the same to its aforesaid retail dealer customers, by whom said fabric, thus labeled, is offered, distributed, and sold, with respondent's knowledge and intent, to the consuming public throughout the United States and further, also in accordance with respondent's purpose and as a direct result of its use of the terms in ques-