

IN THE MATTER OF
EVERITT & GRAF, INC.

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

Docket 1611. Complaint, Apr. 25, 1929—Decision, May 19, 1930

Where trade names and brands featuring the word "California", and, particularly, the words "California Sports Hat", had come to be associated with a type of hat long since made by California hat manufacturers, sold throughout the several States under said name, exhibited and displayed along with such words, prominently featured, in the larger cities, possessed a good will and reputation for style, quality, and workmanship and especially for the distinctive manipulation and combination of colors therein embodied, and in demand through its qualities and characteristics and extensive advertising by the makers, with total sales amounting to about \$10,000,000 annually and an annual advertising expenditure in excess of \$100,000, and the phrase "California Sports Hat", usually accompanied in advertisements with illustrations of California scenery and products, motoring, boating, and other sports popular in said State, and such phrases as "From Sunny California", "Colors Born of Sunshine", etc., had come to be known and understood by the trade and purchasing public as describing sport hats made in California; and thereafter a Milwaukee manufacturer,

- (a) Designated a sport hat made and styled by it in its Milwaukee factory and sold at a lower price, "California sport hat" and so branded the lining and, after a time and in inconspicuous type, with the words "Made in Milwaukee" and also the individual containers thereof and larger cartons containing same, sealed with gummed paper strips containing the words "Styled and produced by Everitt & Graf, Inc., Milwaukee, Wis.", and depicted on said containers and cartons outdoor scenes of motoring, boating, and golfing, with background of water, mountains, and palm trees, without further accompanying explanatory statement; and
- (b) Employed the words "California sport hat" in advertising its said product, in newspapers and other publications of general circulation and featured prominently said product, in newspapers and other publications of general circulation and featured prominently said words in circulars and bulletins sent to customers and prospective customers, together with such phrases as "Style, fit, make, and finish—America's greatest hat sensation—Happy days and sunny skies", and pictorial representations of styles and types of hats and aforesaid hat boxes or containers prominently featuring the aforesaid phrases, along with California sport scenes;

With the capacity and tendency to mislead and deceive customers and many of the consuming public into believing its said hats to have been made in California and into purchasing the same in such belief and with effect of placing in the hands of retail dealer customers, who prominently featured the phrase "California sport hat", in advertising such Milwaukee

Complaint

made hat, together with pictorial representations of said individual containers, and descriptive phrases indicating the same to have been made in California (and, subsequently at said maker's instance, with such phrases, in inconspicuous type, as "By arrangement with the maker, Everitt & Graf, Inc., Milwaukee, Wis."), a means for defrauding a substantial portion of the consuming public by enabling said dealers to represent its said hats as made in California, and with tendency to divert business from and otherwise injure competitor manufacturers selling women's sport hats in the various cities, without in any manner representing same as made in California, but lawfully labeling, advertising, and representing the same to retailers and the consuming public, and, more particularly, competitor manufacturers of such hats in California:

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

Mr. Everett F. Haycraft for the Commission.

Mr. A. R. Townshend, jr., of Washington, D. C., and *Mr. Ira Milton Jones*, of Milwaukee, Wis., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charges respondent, a Wisconsin corporation, engaged in the manufacture and sale of women's hats and with principal place of business in Milwaukee, with misbranding or mislabeling, advertising falsely or misleadingly, and simulating trade name of competitor's product, 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, brands the linings of its hats, made by it in Wisconsin, as above set forth, and also the individual containers thereof, with the inscription "California Sport Hat," together with illustrations of outdoor scenes depicting such sports as motoring, yachting, and golfing, with backgrounds of water, mountains, and palm trees, suggestive of the State of California, and advertises its said hats under the aforesaid inscription in newspapers and other publications circulating among the various States, and in trade literature.

A large number of manufacturers of women's hats, as alleged, located in California, have for a number of years past adopted and used the inscription "California Sport Hat" on sport hats made by them, and have exclusively advertised the same under the aforesaid trade name in newspapers, fashion magazines, and other periodicals of national circulation together with scenes typical of California and said trade name is known and understood by the trade and purchasing public as meaning sport hats made in said State, specialties in the

millinery industry and with a high reputation,¹ and the adoption and use by the respondent of the inscription in question, as alleged, "have the tendency and capacity to mislead and deceive the trade and purchasing public into the belief that respondent's hats so stamped, designated, and described are made by manufacturers of women's sport hats located in the State of California and to induce the trade and purchasing public to purchase respondent's hats relying upon that belief, and enables the respondent and the dealers in women's hats reselling said hats to the public to pass off the same as and for women's sport hats made in the State of California by manufacturers located therein"; all to the injury 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 9, 1928, issued and thereupon served, as required by law, upon Everitt & Graf, Inc., respondent above named, in which said complaint it is charged that respondent has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondent, having filed its answer herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission duly appointed.

¹ The allegations of the complaint relating to the manufacture of such hats in California read as follows:

For more than ten years last past a large number of the manufacturers of women's hats referred to, located in the State of California, have been and still are engaged in the manufacture of women's sport hats among others, and in the sale of the same in commerce throughout the various States of the United States, and in connection with the sale of said sport hats have adopted and used and continue to use as a trade name or designation for them, the words or inscription, "California Sport Hat".

During the times above mentioned and referred to, the said manufacturers located in California have extensively advertised their women's sport hats under the above trade name or designation, "California Sport Hat" in newspapers, fashion magazines, and other periodicals of national circulation throughout the United States, and have accompanied said inscription with scenes of sports typical of California, and said trade name or designation is known and understood by the trade and purchasing public to describe sport hats manufactured in the State of California. The sport hats manufactured in California as aforesaid, are specialties in the millinery industry and have acquired a high reputation for originality of design, distinctiveness of style and quality of workmanship and material. The said manufacturers located in California have built up a good will and reputation for said sport hats, and by extensive advertising, and through the qualities and characteristics of the said hats have created a demand for them as and for sport hats identified with and made in the State of California by manufacturers located there.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, the briefs having been filed on the part of the Commission and the respondent, and counsel for the Commission and the respondent having been heard in oral argument and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Everitt & Graf, Inc., is a corporation organized on or about March 8, 1927, under the laws of the State of Wisconsin, having its principal office, place of business, and factory located in the city of Milwaukee in said State. Since its organization said respondent has been and now is engaged in the business of manufacturing women's hats, and in the sale of said products to various individuals, partnerships, and corporations, dealers in women's hats located in the District of Columbia and in the several States of the United States other than the State of Wisconsin, where they are displayed and resold by such dealers to the purchasing public, and has caused and still causes said hats when so sold to be transported from its said place of business to, into, and through said other States and the District of Columbia to the purchasers thereof.

PAR. 2. During the period of time since said respondent was organized and for many years prior thereto, a large number of manufacturers of women's hats (more than fifteen) located in the State of California have been manufacturing a type of hat known as "Sports Hats" which they have been selling, transporting, and delivering to dealers located in the several States of the United States and in the District of Columbia under trade names and brands featuring the word "California" and particularly featuring the phrase "California Sports Hat" in advertising literature sent to the trade and consuming public either directly or inserted in leading trade, style, and fashion magazines and other periodicals having nation-wide circulation, usually accompanied by illustrations of natural scenery and products of California and of motoring, boating, golfing, and other sports popular in California, and usually accompanied by such phrases as "From Sunny California", "Colors Born of Sunshine", and other phrases of similar import.

Said sports hats manufactured and sold by California manufacturers as aforesaid have acquired a good will and reputation for their style, quality, and workmanship, and especially for the distinctive manipulation and combination of colors which they embody; and

Findings

14 F. T. C.

the said California manufacturers, by their extensive advertising and through the qualities and characteristics of said hats, have created and built up a demand, reputation, and good will for said hats, and the phrase "California Sports Hats" is known and understood by the trade and purchasing public to describe sports hats manufactured in the State of California.

Said hats manufactured in California sell at wholesale to retail dealers at prices ranging from \$39 per dozen upward to \$150 per dozen, and said hats are retailed at prices starting at \$5 each and ranging upward. The total volume of sales of said California manufacturers amounts to approximately \$10,000,000 annually, and said manufacturers have spent and are now spending more than \$100,000 annually in advertising their aforesaid hats. During the past five years some of the largest California manufacturers have exhibited their said hats in style shows in the larger cities of the country, including particularly New York City and Chicago, and maintain salesrooms containing displays of said hats in other large cities of the country, particularly Dallas, Tex., Portland, Oreg., and Seattle, Wash.; in all of which exhibitions and displays the word "California" and the phrase "California Sports Hats" are prominently featured.

Large and small retail dealers in women's hats, including some of the larger chain stores maintaining retail establishments in department stores in the larger cities of the country, sell and distribute said hats manufactured and sold by said California hat manufacturers as "California Sports Hats", using display cards and other advertising matter furnished by said California hat manufacturers to said retail dealers for that purpose. Buyers for said retail dealers recognize the demand for hats manufactured in California because of their style, color, and other characteristics, to the extent that they look to California for advanced styles and colors as featured by early style exhibitions of said California manufacturers in San Francisco and Los Angeles, new models of said hats being displayed by leading moving picture stars.

PAR. 3. Said respondent, in the course and conduct of its said business as described in paragraph 1 hereof, has since the date of its organization and now is manufacturing sports hats under the trade name and style of "California Sport Hat" which are styled by its own designers in its own factory at Milwaukee, Wis., and are sold to dealers located throughout the several States and in the District of Columbia at prices ranging from \$24 to \$36 per dozen, and which said hats are retailed by said retail dealers at prices ranging from \$2.98 to \$7 each. Said respondent, during the year 1927 and the early part of 1928, stamped upon the linings of its said

hats manufactured by it as aforesaid the phrase "California Sport Hat" in large, distinctive type, surrounded by three concentric circles, but since on or about May 1, 1928, after investigation in this case was begun, said respondent has caused to be placed under said phrase, with the accompanying concentric circles, the following language in small, inconspicuous type: "Made in Milwaukee". Said respondent since it began business has packed and now packs said hats in individual boxes in which said boxes said hats are delivered to the purchasers thereof, and has caused and now causes to be inscribed and printed upon said individual boxes in which said hats are packed the said phrase "California Sport Hat" surrounded by three concentric circles, and further surrounded and accompanied by illustrations of outdoor scenes depicting such sports as motoring, boating, and golfing, with backgrounds of water, mountains, and palm trees, without any accompanying statement or insignia indicating that said hats are not manufactured in California, but were in truth manufactured in the State of Wisconsin. Said respondent, since its organization, has packed and now packs said individual boxes in which said hats are packed in larger cartons containing the same insignia as heretofore described, and sealed with gummed strips of paper containing, among other things, the following phrase: "Styled and produced by Everitt & Graf, Inc., Milwaukee, Wis."

PAR. 4. Said respondent in the course and conduct of its business as aforesaid and as described in paragraph 1 and 3 hereof, has caused and now causes various statements, illustrations, and representations descriptive of its said hats containing the words or inscription "California Sport Hat" to be printed or displayed in advertisements which it has caused and still causes to be inserted in newspapers and other publications having a circulation between and among the various States of the United States and the District of Columbia, and also has advertised and now advertises directly to the trade and consuming public through the medium of circulars and bulletins which are sent through the mails to customers and prospective customers, in which said circulars and bulletins said respondent prominently features the phrase "California Sport Hat" accompanied by such phrases as "Styles, Fit, Make, and Finish—America's Greatest Hat Sensation—Happy Days and Sunny Skies", and other phrases of similar import with many references to "California Sports Hats" and accompanied by pictorial representations of various styles and types of hats and of the hat boxes in which said respondent's hats are sold to the consumers and which feature in most prominent type the phrase "California Sport Hat" along with

Findings

14 F. T. C.

California sport scenes. Retail dealer customers of said respondent advertise the said hats manufactured by said respondent in daily newspapers having a circulation among the several States, prominently featuring the phrase "California Sport Hat" and always featuring pictorial representations of said individual hat boxes heretofore described, in which said hats are packed, and usually featuring other descriptive phrases indicating that the hats are manufactured in California. For illustration, one such advertisement contains the following statement "For play from America's playground * * * and the most popular color features capucine shades." In other retail advertisements, the following phrase was used "California Sport Hat—thousands of fashion-wise women the country over know them for their unique designs * * * in the wanted bright shades California sport hats distinguish the wearer." Numerous other retail dealers issued advertisements containing phrases of similar import during the years 1928 and 1919. Subsequent to August, 1929, said respondent caused and now causes said retail dealers in their advertisements to feature in inconspicuous type in their said advertisements, such phrases as "These sales now famous by arrangement with the maker, Everitt & Graf, Inc., of Milwaukee, Wis." or "By arrangement with Everitt & Graf, Inc., makers, Milwaukee, Wis."

PAR. 5. Early in the year 1928 said California manufacturers of women's sports hats referred to in paragraph 2 hereof began to get reports from their salesmen and customers that hats manufactured by the respondent and labeled and advertised as aforesaid in paragraphs 3 and 4 hereof were being confused in the trade with hats manufactured in California and sold as "California Sports Hats".

PAR. 6. Respondent's aforesaid labeling, advertising, and representing of its women's sport hats as set out herein have the capacity and tendency to mislead and deceive its customers and many of the consuming public into the belief that its said hats were manufactured in California and to purchase said hats in that belief, when in truth and in fact all of respondent's said hats are manufactured in the State of Wisconsin.

PAR. 7. Further, respondent's said labeling, advertising, and representing of its women's sport hats as set out herein, places in the hands of said retail dealers the instrument and means whereby said retail dealers may commit fraud upon a substantial portion of the consuming public by enabling said retail dealers to represent, offer for sale, and sell respondent's said sport hats as hats manufactured in California.

PAR. 8. There are among the competitors of the respondent, in addition to those described in paragraph 2 hereof, many who manu-

facture and sell women's sport hats in the various cities and States of the United States and who rightfully and lawfully label, advertise, and represent said hats to the retail dealers and consuming public and who in no manner represent their said hats to be manufactured in the State of California. Respondent's acts and practices hereinbefore set out tend to divert business from and otherwise injure its said competitors, including particularly manufacturers of women's sport hats located in the State of California.

CONCLUSION

Respondent, by reason of the facts set forth in the foregoing findings, has been and now is using unfair methods of competition in commerce in 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 the respondent, 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",

It is now ordered, That the respondent, Everitt & Graf, Inc., its representatives, agents, servants, employees, and successors forthwith cease and desist from using directly or indirectly, the word "California" in trade-marks, labels, or brands stamped on linings of women's hats or containers in which said hats are sold, offered for sale, delivered, or shipped in interstate commerce and/or advertising or representing, either directly or indirectly, by causing retail dealer customers to so advertise or represent either on display cards, counter cards, advertisements inserted in newspapers, trade and fashion magazines, or in any other manner, advertising, representing, or designating its said hats as being manufactured in California unless and until said hats are actually manufactured in the State of California.

And it is further ordered, That the respondent, Everitt & Graf, Inc., shall, within 60 days from service upon it of a copy of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order by this Commission herein set forth.

IN THE MATTER OF
SHAKESPEARE 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 1719. Complaint, Nov. 5, 1929—Decision, May 19, 1930

Where a corporation engaged in the manufacture of fishing tackle, extensively advertised, along with the specified price for each item, in magazines of national circulation and through catalogues sent to the public and trade, and in the sale thereof to mail order houses, retail hardware dealers, retail sporting goods dealers, and other retailers throughout the United States; in enforcing a merchandising system for the maintenance by retailers of certain minimum prices fixed by it for reels, sale of which constituted, in amount, the principal part of its total sales,

- (a) Made it generally known to dealers that it expected and required all those handling said reels to sell the same at such fixed prices and that it would refuse to sell to a dealer found to be deviating therefrom;
- (b) Entered into contracts, agreements, and understandings with and procured promises and assurances from dealers for the maintenance by them of said prices as a condition of opening accounts with them or of continuing their supplies of its products; and
- (c) Sought and secured from dealers information concerning and evidence of price cutting by others and investigated and procured from dealers concerned promises and assurances to maintain prices in the future, or declined further to supply the same or to sell to those failing to maintain its prices;

With the result that cooperation of its dealers was generally secured, prices fixed by it generally prevailed, and dealers engaged in the distribution and sale of its products were prevented from securing the same at such lower prices as might be deemed by them warranted, and competition in respect of its said products in interstate commerce was thus suppressed and hindered:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and constituted unfair methods of competition.

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 Michigan corporation engaged in the manufacture of fishing tackle, including lines, reels, baits, and other items, and in the sale and distribution thereof from its principal place of business at Kalamazoo, to mail order houses, retail hard-