

Complaint

IN THE MATTER OF

ADIEL VANDEWEGHE AND DAVID FESHBACK

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

Docket 1383. Complaint, May 12, 1926—Decision, Jan. 27, 1931

Where an individual engaged in importation and sale of Australian and New Zealand rabbit skins and in the dyeing thereof so as to resemble fur of genuine dyed sealskin, labeled the backs thereof "superior seal" and, later, "bonded northern seal" or "Baltic seal" in large and conspicuous letters, and, in small and inconspicuous letters, "seal dyed coney" or "dyed coney", as the case might be; and

Where a garment manufacturer, purchaser of such skins from said individual, sold garments made thereof labeled "superior seal" as above set forth;

With effect of placing in the hands of retail dealers means enabling them to mislead and deceive the consuming or purchasing public into buying said garments as and for those made of genuine sealskins, and of thereby diverting trade from competitors to said individual, and garment manufacturer:

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

Mr. James M. Brinson 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 Adiel Vandeweghe, with principal office and place of business in New York City, and operating a factory at Ridgefield Park, N. J., engaged in dressing and dyeing Australian and New Zealand rabbit skins purchased and imported by him, through use of a process causing the fur of such skins to resemble that of genuine sealskins sufficiently to mislead and deceive the purchasing public as to garments made from such rabbit skins, and respondent David Feshback, engaged in New York City in the manufacture, sale, and distribution of fur garments, with misrepresenting product 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 Vandeweghe, as charged, engaged as above set forth, causes each of the aforesaid rabbit skins dyed by it as above described, to be marked on the back thereof with a trade-mark contain-

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ing the words "superior seal", and respondent Feshback purchases from said first named dyer respondent a substantial quantity of aforesaid rabbit skins thus dyed and resembling appearance of genuine seal fur as above set forth, though greatly inferior to seal-skins in pliability and wearing qualities of the leather and luster and wearing qualities of the fur, and sells and distributes garments made therefrom through retail dealers in the several States and the District of Columbia.

The designation, as alleged, "by the dyer respondent of rabbit skins dyed by him as 'superior seal' and the marking of such skins with a trade-mark containing the words 'superior seal', results in placing in the hands of the retail dealers to whom the manufacturing respondent and other manufacturers sell garments made from such skins, the means by which such retail dealers can perpetrate a fraud upon the purchasing public by representing that such garments are made from superior seal fur, the designation the dyer respondent has given the skins from which such garments are made, and by displaying to customers and prospective customers the trade-mark containing the words 'superior seal', to support their false representations that such garments are made from genuine seal fur, and such means have been employed and are now being employed by numerous retail dealers in such garments and numerous persons have been thereby induced to purchase such garments in the belief that such garments were in fact made of genuine seal fur."

Respondents' said practices, engaged in, as above set forth, for about three years last past, cause trade to be diverted to respondent manufacturer, from competitors, many of whom manufacture garments made of rabbit fur and market the same under designations, labels, and trade-marks disclosing such fact to the purchasing public, and others of whom manufacture and/or sell at wholesale garments made of genuine seal fur, and said practices further enable such respondent "to sell garments made by him from skins treated by the dyer respondent herein, in cases where, but for the use of such practices, such trade would go to competitors who do not use such practices"; all to the prejudice of the public and of respondents' competitors and in violation of the aforesaid section.

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 Adiel Vandeweghe and Davis Feshback, hereinafter called respondents, charging them with the use of unfair methods of competition in violation of the provisions of said act.

The respondents entered their appearance, applied for and received extension of time for answer to the complaint, but failed and neglected within the time prescribed therefor, to file an answer, or at all. Thereafter on August 8, 1929, testimony was taken and evidence received, after due notice to respondents, before an examiner of the Commission theretofore duly appointed for such purpose, whereupon the proceedings regularly came on for decision before the Commission, on the complaint, testimony, and evidence, record and argument of counsel, and the Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom, as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Adiel Vandeweghe has engaged for several years last past in the City of New York and State of New York in the business of buying and importing Australian and New Zealand rabbit skins, and dressing and dyeing such skins or causing them to be dressed and dyed by others, and in their sale, and transportation when sold, from his place of business in the City of New York and State of New York, to purchasers consisting of fur dealers and manufacturers of fur garments in the various States of the United States. When dyeing such skins himself or causing them to be dyed by others a process has been used therefor, which causes the fur of such rabbit skins to resemble in appearance the fur of genuine dyed sealskin. It has been and was the practice of the respondent Adiel Vandeweghe at the time when complaint was issued herein, that is to say, on or about May 12, 1928, to cause rabbit skins dyed and sold by him to be marked on the backs thereof with a trade-mark containing the words "superior seal" unaccompanied by any word or words showing that the skins so marked have been or were dyed rabbit skins. The practice by said respondent of marking rabbit skins sold by him with the trade-mark "superior seal" was discontinued about the time complaint issued as aforesaid, and thereupon he caused, and ever since has caused, rabbit skins sold by him in interstate commerce, to be dyed by various corporations engaged in such business, chiefly by the Great Northern Fur Dyeing & Dressing Co., Inc., and by Philip A. Singer & Bro., Inc. Rabbit skins dyed for him by said Great Northern

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Fur Dyeing & Dressing Co., Inc., and offered for sale and sold by him in interstate commerce, bear the trade-mark "bonded northern seal" in large and conspicuous letters and near them the words "sealed dyed coney" in small and inconspicuous letters. The rabbit skins dyed for him by Philip A. Singer & Bro., Inc., are marked with the words "Baltic seal" in large and conspicuous letters accompanied by the words "dyed coney" in small and inconspicuous letters.

In the course and conduct of his said business, respondent Adiel Vandeweghe has been, was, and still is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of rabbit skins and sealskins in interstate commerce.

PAR. 2. At the time complaint issued herein or on May 12, 1926, respondent David Feshback was, and for several years prior thereto had been, engaged in the manufacture, in the City of New York and State of New York, of fur garments from rabbit skins dressed and dyed by respondent Adiel Vandeweghe and purchased from him for such purpose, and in offering for sale and selling such garments in the various States of the United States still bearing on the backs of the rabbit skins from which made, the trade-mark "superior seal" placed thereon, as described in paragraph 1 hereof, by respondent Adiel Vandeweghe. Said manufacturing respondent David Feshback caused such garments so manufactured by him from rabbit skins dyed by respondent Adiel Vandeweghe, when sold, to be transported from his place of business in the City of New York and State of New York to purchasers in the various other States of the United States.

PAR. 3. The practice of respondent Adiel Vandeweghe in selling in interstate commerce to fur dealers and manufacturers of fur garments rabbit skins dyed to resemble dyed sealskins and marked and designated "superior seals" has placed, and the practice of respondent David Feshback in manufacturing fur garments from rabbit skins so dyed and marked by respondent Adiel Vandeweghe, and of selling such garments in interstate commerce bearing such trade-mark or designation "superior seal", has likewise placed, in the hands of retail dealers in the various States of the United States, the means by which they have been enabled to mislead and deceive the consuming or purchasing public into buying garments made from rabbit skins so marked or designated, in the belief that such garments have been made from or consisted of genuine sealskins and thereby to divert trade to respondents from their competitors.

CONCLUSION

The above acts and practices of respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents Adiel Vandeweghe and David Feshback and on testimony, evidence, briefs and arguments of counsel, and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that said respondents Adiel Vandeweghe and David Feshback have been violating 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 therefore ordered, That respondent David Feshback and respondent Adiel Vandeweghe, cease and desist, the former, David Feshback from offering for sale or selling in interstate commerce garments made from dyed rabbit skins bearing the trade brand, trade-name, trade-mark, designation or description "superior seal" or "seal", except and unless it is made prominently to appear in immediate conjunction with the word "seal" in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins; and the latter, Adiel Vandeweghe from stamping, branding, marking, or labeling as "superior seal" or "seal" rabbit skins dyed by it for respondent David Feshback or others engaged in the manufacture and sale of fur garments in interstate commerce, except and unless it is made prominently to appear in immediate conjunction with the word "seal" in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins.

It is further ordered, That respondents shall, within 60 days from and after the service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form of their compliance therewith.

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IN THE MATTER OF

PHILIP A. SINGER & BRO., INCORPORATED, AND HERMAN GELBERG AND BENJAMIN SCHWARTZ, PARTNERS, TRADING UNDER THE NAME AND STYLE OF GELBERG & SCHWARTZ

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

Docket 1384. Complaint, May 12, 1926—Decision, Jan. 27, 1931

Where a corporation engaged for garment manufacturers in dressing and dyeing rabbit skins so as to resemble the appearance of the much more pliable, lustrous, and better wearing superior dyed sealskins or genuine beaver skins, stamped the backs thereof "Baltic seal" or "Baltic beaver", as the case might be, with effect of aiding, assisting, and abetting in distribution and sale of garments made therefrom; and

Where manufacturers of such garments sold same to retail dealers, with aforesaid trade-mark "Baltic seal" or "Baltic beaver", and, later, the words, in much smaller and less conspicuous letters, "dyed coney", stamped on the back of the pelts, and covered only by the usual linings;

With result of placing in hands of retail dealers the means enabling said retailers in turn to mislead and deceive the consuming public into purchase of such garments as and for those made of genuine seal or genuine beaver skins, and with tendency to divert trade from competitors to themselves;

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

Mr. James M. Brinson 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 Philip A. Singer & Bro., Inc., a New Jersey corporation, with principal place of business at Newark, engaged in the business of dressing and dyeing rabbit skins on contract for the owners for such skins, through use of a process resulting in the fur resembling that of genuine seal or beaver sufficiently to mislead and deceive the purchasing public as to garments made from such rabbit skins, and respondents Gelbert & Schwartz, partners, engaged in New York City in the manufacture of fur garments and sale and distribution thereof to retailers in New York and other States, with misrepresenting product 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.