

Complaint

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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.

Respondent corporation, as charged, engaged as above set forth, stamps on the back of each of the skins thus treated by it its trade-mark "Baltic seal" or "Baltic beaver", as the case may be, and respondent partners make garments from large quantities of such rabbit skins, thus dressed, dyed, and trade-marked for them by the aforesaid dyer respondent, and resembling, as above set forth, appearance of genuine seal fur or genuine beaver fur, as the case may be, though greatly inferior to skins of seals and beaver in pliability and wearing qualities of the leather and luster and wearing qualities of the fur.

The designation, as alleged, by the dyer respondent of rabbit skins treated by it as above set forth, "as 'Baltic seal' and 'Baltic beaver', respectively, and the marking of such skins with trade-marks containing the words 'Baltic seal' and 'Baltic beaver', respectively, results in placing in the hands of the retail dealers to whom the manufacturing respondents 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 of Baltic seal fur, or Baltic beaver fur, the designations the dyer respondent has given the skins from which such garments are made, and by exhibiting to customers and prospective customers the trade-mark stamped on the back of each of the skins from which said garments are made, which trade-marks contain either the words 'Baltic seal' or 'Baltic beaver' to support their false representations that such garments are made from genuine seal fur or genuine beaver fur, and such means have been employed and are 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 are in fact made of genuine seal fur or genuine beaver fur."

Said practices of respondents, engaged in for about three years last past, cause trade to be diverted to aforesaid manufacturing respondents, from competitors, many of whom make garments from rabbit skins and market the same under "designations, labels, and trade-marks which disclose to the purchasing public" that such garments are made from rabbit skins, and others of whom manufacture and/or sell at wholesale "garments made of genuine seal fur and genuine beaver fur", and further enable such respondents "to sell garments made by them from rabbit skins treated by the dyer respondent, in instances wherein but for the use of such practices such trade would go to competitors who do not use such practices", and the placing by the dyer respondent of its trade-marks as above set forth on the back of rabbit skins thus dressed and dyed by it further causes trade to be diverted to it from competitors "who do

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not stamp rabbit skins dressed and dyed by them with trade-marks which contain the names of animals other than rabbits"; all to the prejudice of the public and competitors 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 Philip A. Singer & Bro., Inc., and Herman Gelberg, and Benjamin Schwartz, hereinafter called respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed answer, testimony and evidence were duly received and recorded and filed in the office of the Commission and thereafter the proceeding regularly came on for decision before the Commission on such complaint, answer, testimony and evidence and brief of counsel, and the Commission having duly considered the same, now makes this its report and states its findings as to the facts and conclusion as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Philip A. Singer & Bro., Inc., is now, and for several years last past, has been a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with principal place of business at Newark in said State, and during said period of time has been and now is engaged in the business of dressing and dyeing rabbit skins, principally on contracts for the owners thereof. Said respondent has used and uses a process for dressing and dyeing rabbit skins which causes the fur of such skins to resemble in appearance the fur of genuine dyed sealskins or genuine beaver skins, and these skins so treated by respondent are greatly inferior to the skins of seals and beavers, in that the pliability and wearing qualities of the leather and luster and wearing qualities of the fur of skins so treated by respondent are greatly inferior to those qualities of genuine sealskins and genuine beaver skins, and the fur so produced from rabbit skins resembles a genuine seal fur and genuine beaver fur in appearance only. Said respondent has engaged in the practice of causing to be stamped or marked on the backs of rabbit skins so dressed and dyed by it, its trade-mark Baltic seal, or Baltic beaver, as the case may be.

PAR. 2. Respondents Herman Gelberg and Benjamin Schwartz were until complaint issued herein on or about May 12, 1926, partners trading under the name and style of Gelberg & Schwartz, and were engaged in the manufacture of garments from rabbit skins which they had caused and were then causing to be dyed by respondent Philip A. Singer & Bro., Inc., and in the sale of such garments to dealers in fur garments in the various States of the United States. They caused such garments when sold to be transported from their place of business, which was situated in the City of New York and State of New York to purchasers located in the various other States of the United States, in competition with individuals, partnerships, and corporations engaged in the sale in commerce among and between the various States of the United States of garments made from rabbit skins, sealskins, and beaver skins.

Large quantities of rabbit skins were so dressed, dyed, and trade-marked by respondent Philip A. Singer & Bro., for respondents Gelberg & Schwartz until dissolution of said partnership, which occurred shortly after issuance of complaint herein, May 12, 1926, and for other manufacturers of fur garments, theretofore and thereafter, by its said process and from such skins so dressed, dyed, and stamped by respondent, Philip A. Singer & Bro., Inc., for respondents Gelberg & Schwartz, and for other manufacturers of fur garments, respondents Gelberg & Schwartz have made and other manufacturers of fur garments have made coats and other garments which have been, and were sold and distributed by said manufacturers, including said manufacturing respondents, Gelberg & Schwartz, until their said dissolution, among and between the various States of the United States. As a result of such practice fur coats and other garments have been sold by retail dealers in the various States of the United States manufactured from rabbit skins dyed and dressed by respondent Philip A. Singer & Bro., Inc., bearing on the back of the pelts composing said garments the trade-mark Baltic seal or Baltic beaver covered only by the usual lining or linings of said coats or garments.

After service of complaint in this proceeding, respondent Philip A. Singer & Bro., Inc., adopted the practice of stamping on the back of each of the rabbit skins dressed and dyed by it for the owners thereof, in addition to, and immediately below its said trade-marks Baltic seal or Baltic beaver the words "dyed coney." Such additional words "dyed coney" have appeared and continue to appear below such trade-mark in much smaller and less conspicuous letters than those in which the words "Baltic seal" or "Baltic beaver" appear.

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PAR. 3. The practice of respondent Philip A. Singer & Bro., Inc., of dyeing rabbit skins of respondents Gelberg & Schwartz so as to resemble dyed sealskins or dyed beaver skins, and in returning them when dyed, to said respondents Gelberg & Schwartz, stamped or marked "Baltic seal" or "Baltic beaver", aided, assisted, and abetted said manufacturing respondent in the distribution and sale of garments made from such rabbit skins in interstate commerce, enabling them to put into the hands of retail dealers in the various States of the United States the means by which they in turn have been enabled to mislead and deceive the consuming public into the purchase of garments made from rabbit skins so dyed and marked, as and for garments made from genuine sealskins or genuine beaver skins. Such practice has had the tendency to divert trade to respondents from their competitors.

CONCLUSION

The above and foregoing practices of respondents under the conditions and circumstances described in these findings as to the facts 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, Philip A. Singer & Bro., Inc., and Herman Gelberg, and Benjamin Schwartz, trading as Gelberg & Schwartz, their answer thereto, testimony, evidence, brief and argument of counsel, and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion that said respondents have been and are 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 respondents Herman Gelberg and Benjamin Schwartz, partners, trading under the firm name and style of Gelberg & Schwartz, and Philip A. Singer & Bro., Inc., respectively, cease and desist, the former, Herman Gelberg and Benjamin Schwartz, 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 "Baltic seal" or

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"Baltic beaver" or "seal" or "beaver," except and unless it is made prominently to appear in immediate conjunction with the word "seal" or the word "beaver" 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, Philip A. Singer & Bro., Inc., from stamping, branding, marking or labeling as "Baltic seal," or "Baltic beaver," or "seal," or "beaver" rabbit skins dyed by it for respondents Herman Gelberg and Benjamin Schwartz or for 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" or the word "beaver" 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 of this order file a report in writing setting forth in detail the manner and form of their compliance therewith.

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

Docket 1726. Complaint, Dec. 2, 1929—Decision, Jan. 27, 1931

Where a corporation engaged in sale of preserves, canned fruits, pickles, vegetables, sea foods, and other articles direct to the consuming public, adopted and employed a trade and corporate name including the word "preserving" and displayed and used the same in all its business affairs and on its letterheads, envelopes, order blanks, labels, and other printed matter, notwithstanding the fact that it neither packed, preserved, nor prepared any of the products sold by it, but purchased same from the preservers and packers thereof, who, at its direction, affixed to the containers of the products so packed, labels bearing the name of the product and its said corporate name; with effect of misleading and deceiving purchasing public into buying said products from it as purchased direct from the packer or preserver thereof at a saving of jobber's or wholesaler's profit and of diverting to it trade from competitors actually packing, preserving, or otherwise preparing the canned and preserved products sold by them, and with capacity and tendency so to do:

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

Mr. G. Ed. Rowland for the Commission.

Mr. Samuel M. Birnbaum, of New York City, 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 New York corporation engaged in the sale of preserves, canned fruits, pickles, vegetables, sea foods, and other articles direct to the consuming public, with office and principal place of business in New York City, with soliciting customers of competitor through aid of former employee thereof, passing off and/or misrepresenting source or origin of product, business status, identity and connections, simulating labels and order blanks of competitors, and using misleading corporate name, 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, through the instrumentality of one I. S. Horowitz, its vice president, organizer, and former employee of