

Complaint

14 F. T. C.

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

Braden's California Products Co., Inc., until his discharge,¹ engaged as alleged, in the following acts and practices:

Called upon and solicited customers of said Braden's California Products Co., through said Horowitz and through its salesmen, whom Horowitz supplied with names of the Braden's Co.'s customers for such purpose, and through said Horowitz and its other salesmen "misled and deceived said customers into purchasing the products of respondent, in the mistaken belief that they were purchasing the same products which they had formerly purchased from said Braden's California Products Co., Inc., and that they were still dealing with that company", said Horowitz (1) instructing respondent's salesmen to represent to prospective customers that the products offered were exactly the same as those theretofore sold to the customer by the Braden's Co., and came from the Braden's plant in California, (2) telling customers theretofore solicited by him while in the employ of the Braden Co., that respondent had taken over said company's business and was its successor and, in other instances that said Braden Co. was under new management and that respondent was selling the identical products theretofore sold said customers by said Horowitz when a representative of the Braden Co., (3) admitting to former customers, advised of his discharge from the employ of the Braden Co., said fact but stating that he had been reemployed, was now said Braden Co.'s authorized representative, and reading to the customer a fictitious letter purporting to be from said company reemploying him and authorizing him to take orders for it, and (4) calling on said last named customers, and, without advising them that he no longer represented said Braden Co., asking them if they had placed their orders for the current year and taking said orders for respondent, and leading the customer to believe that he, said Horowitz, was still representing said Braden Co.

"All of said statements and representations made by said Horowitz and the other salesmen of respondent concerning the business of said Braden's California Products Co., Inc., and said respondent, as alleged, are untrue, false, and deceptive, and the use of such false, deceptive, and untrue statements and representations by respondent has enabled said respondent to sell its products as and for the products of said Braden's California Products Co., Inc., and has caused

¹ During said employment, as alleged, said Horowitz solicited orders from said company's customers and prospective customers, had access to the names of many other customers of said company, and, prior to his discharge by said company, induced another employee thereof to give him the names of those from whom said company "bought its various products, together with the prices paid therefor, and endeavored to induce and persuade said other employee to give him other confidential information relating to his employer's business including lists of all the customers of said Braden's California Products Co., Inc."

Findings

14 F. T. C.

many of the public to purchase the products of said respondent in the belief that they were purchasing the products of that company."

Respondent further, as charged, in the course and conduct of its said business and with the intent to sell its products as and for those of said Braden Co., "has adopted labels and order blanks for its products which are so similar in general appearance and design to the order blanks and labels used by Braden's California Products Co., Inc., as to mislead and deceive purchasers of its products, and to cause them to buy its said products in the belief that they are purchasing the products of said Braden's California Products Co., Inc."

Respondent further, as charged, "has adopted and uses on its letterheads, envelopes, order blanks, labels, and other printed matter the name 'California Preserving Co., Inc.," notwithstanding the fact that respondent does not "preserve or otherwise prepare any of the products which it sells, but buys all of said products from the makers thereof", with "the tendency and capacity to mislead and deceive the public into the belief that respondent preserves or otherwise makes the products which it sells, and to purchase said products in that belief."

The above and foregoing acts and practices "of respondents are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having argued the case before the Commission, and the Commission having duly considered the record, and being now 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 is a corporation organized and existing by virtue of the laws of the State of New York, with its office and

principal place of business at 41 East Twenty-first Street, in the City of New York, in said State. It is engaged in the sale of preserves, canned fruits, pickles, vegetables, sea foods, and other articles direct to the consuming public, in various States of the United States. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale of preserves and canned goods and the transportation thereof in commerce between and among the various States of the United States.

PAR. 2. Respondent was organized and began doing business in 1928, and its officers are Morris Pelz, president; I. S. Horowitz, vice president; and Samuel Pelz, secretary and treasurer. Respondent sells its products through salesmen, who call on prospective purchasers and take orders for its various products for future delivery, collecting 25 per cent of the amount due with the order, the balance to be paid on delivery of the goods. Respondent causes its said products so sold to be transported from its said principal place of business in the City of New York, into and through other States of the United States to said purchasers at their respective points of location.

PAR. 3. Respondent adopted for its trade name "California Preserving Co., Inc.", and was incorporated under said name under the laws of the State of New York, in June, 1928. Since that time respondent has at all times used said name in all of its business affairs, and on its letterheads, envelopes, order blanks, labels, and other printed matter. Respondent does not pack, preserve, or otherwise prepare any of the products which it sells, but buys all of said products from the preservers and packers thereof, which said preservers and packers affix to the containers in which the products are packed, by direction of respondent, labels bearing the name of the product, together with the corporate name of respondent.

PAR. 4. The word "preserving" in the corporate or trade name of a company indicates and means to the trade and purchasing public that the company using it packs, preserves, or otherwise prepares the canned and preserved products which it sells. The use by respondent of the name California Preserving Co., Inc., is false and misleading because it indicates to the purchasing public that respondent company actually packs, preserves, or otherwise prepares the products which it sells, when such is not the fact, and such use has the capacity and tendency to, and does, mislead and deceive the purchasing public into purchasing products from respondent in the erroneous belief that they are buying direct from the packer or preserver of such products, and that by so doing they save the profit of the jobber or wholesaler, and such use by respondent tends to

Order

14 F. T. C.

and does divert trade to respondent from competitors who actually pack, preserve, or otherwise prepare the canned and preserved products which they sell.

CONCLUSION

The practices of respondent, California Preserving Co., Inc., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony taken and briefs filed herein, and oral argument of counsel, and the Commission having made its findings as to the facts and 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, California Preserving Co., Inc., its officers, agents, representatives, and employees, in connection with the sale of preserves, canned fruits, vegetables, sea foods, and other articles in commerce between the several States of the United States and in the District of Columbia, or between the District of Columbia and any State of the United States, cease and desist from:

Using as part of its corporate or trade name, or on its letterheads, envelopes, order blanks, labels, and other printed matter, the word "preserving", or any other word or words which indicates, implies, or creates the impression that said respondent packs, preserves, or otherwise prepares the food products which it sells, unless and until said respondent owns, operates, or actually controls a plant in which it in fact packs, preserves, or otherwise prepares the food products sold by it.

And it is further ordered, That respondent shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF

GOLDEN FUR DYEING COMPANY, INCORPORATED, AND
SAMUEL JACOBS AND ISIDOR SACHS, PARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE JACOBS & SACHS

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

Docket 1381. Complaint, May 11, 1926—Decision, Jan. 29, 1931

Where a corporation engaged in dressing and dyeing skins of fur bearing animals, stamped "Golden Seal", and, inconspicuously and later, "Seal dyed coney" on large quantities of rabbit skins dyed black for garment manufacturers, and employed the words "The seal of safety", and said "Golden Seal" trade-mark in trade periodical advertising, and, conspicuously, the statement, "The stamp of approval on sealines that guarantees brilliance of lustre", etc., and the admonition to "Look for the Golden Seal", with result of aiding, abetting, and promoting sale by said manufacturers of garments made from rabbit skins as "sealines"; and

Where said garment manufacturers caused rabbit skins to be so dyed, and made into coats without removal of said "Golden Seal" mark or designation and advertised such coats as "sealines"; with effect of enabling dealers to open linings thereof in various places and display said "Golden Seal" mark or the subsequently employed "Bonded northern seal", without exposing aforesaid later qualification, and thereby mislead purchasers and prospective purchasers;

With effect of placing in hands of retail dealer vendees means enabling them to mislead or deceive the consuming or purchasing public, and with capacity and tendency to divert trade to said corporation and manufacturers from competitors offering and selling garments made from genuine sealskins and those made from furs of other animals, truthfully described or designated:

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.

Burnstine & Geist, of New York City, for respondent Golden Fur Dyeing Co., Inc., and *Mr. Morse S. Hirsch*, of New York City, for respondents Samuel Jacobs and Isidor Sachs.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Golden Fur Dyeing Co., Inc., a New York corporation with principal place of business in New York City, engaged in