

IN THE MATTER OF

EDWARD L. JENKINS AND MYRTLE E. AUTEN, PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CHERI

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

Docket 1850. Complaint, June 20, 1930—Decision, Feb. 10, 1931

Where partners engaged in preparation and sale of toilet articles and similar products to agents for resale to purchasing public and individuals,

- (a) Represented themselves as manufacturers in circular letters sent to customers and prospective customers, selling direct, facts being that they had not at all times since starting business manufactured or compounded a substantial part of products dealt in, originally made only a few of such products, had never made 16 items on their price list, and had only meager facilities and equipment for manufacture;
- (b) Represented that they had a beauty expert or "cosmetician" named "Edmyr Jenaut" or "Miss Jenaut," and also a chemist of wide experience, facts being that partner referred to under aforesaid fictitious name had no preparation for or practical experience in beauty culture and had a training therein consisting chiefly in answering correspondence from customers as former employee of a toilet goods house, together with a little private instruction in facial treatments, and familiarity with literature and instructions furnished customers by said company, and that other partner had never studied or trained in chemistry and there was no chemist connected with firm; and
- (c) Represented their business as an old established one and of world wide extent, facts being that their place of business consisted of basement apartment of four rooms employed in part as sleeping and living quarters of one of partners, they had other occupations requiring all their working days, gave only incidental attention to business in question, and had no working force, business was first started in 1929, their products had not been marketed under the trade name employed or otherwise prior thereto, business was confined to United States and no sales had been made direct to any foreign country;

With capacity and tendency to mislead and deceive members of purchasing public in respect of operations, extent, duration and nature of their business and advantages of dealing therewith, and with effect of unfairly diverting business from competitors who do not in anywise thus misrepresent their businesses, or qualifications or professional status of those connected therewith, and with capacity and tendency so to do, to injury and prejudice of said competitors;

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

Mr. Harry D. Michael for the Commission.

Mr. Henry L. Blinn of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, Edward L. Jenkins and Myrtle E. Auten, engaged as partners in Chicago in the sale of toilet articles and similar products to members of the public, and/or in the sale thereof to retailers, agents, and distributors, located in the various States, in competition with other individuals and concerns similarly engaged, with misrepresenting business status, advantages, personnel and connections, and advertising falsely or misleadingly in said respects, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth since about February, 1929, in soliciting the sale of and in selling aforesaid products make false and misleading statements in circular letters and circulars sent to respective customers in the various States implying or setting forth in substance—

That they manufacture products sold by them in a plant or factory which they own or control, that customers purchasing from them are buying direct from the manufacturer and that the business conducted by them is an old established one in which they have been engaged for years and in the conduct of which they have for a corresponding period of time sold, used and tested their products and that the business is world-wide in extent; facts being that the products so dealt in are purchased by them from the manufacturers and re-sold to their customers, they have only been in business for a year or so, and the business is only a small one and of limited extent and their products accordingly have not been sold, used and tested as above set forth:

That they have as a member of their firm or in their employ or available for personal individual service of customers, a beauty expert or cosmetician named "Edmyr Jenaut" or "Miss Jenaut," and that they similarly have associated with them a chemist of wide experience; facts being that aforesaid Edmyr Jenaut or Miss Jenaut is a fictitious person with no existence in fact, neither of the respondents is a beauty cosmetician or beauty expert, or qualified to give expert advice in such matters, they have no such person associated with them nor have they associated with them a chemist of wide experience.

Aforesaid representations, as alleged, "have had and do have the tendency and capacity to mislead and deceive members of the public

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into the belief that respondents are manufacturers of products which they sell; that purchases are made direct from the manufacturer; that the customers of respondents are served by a beauty expert who gives and is qualified to give expert advice in individual cases in regard to the selection and use of the various toilet preparations sold by respondents; that the business of respondents is long established and that its products have been used and tested by respondents for years; that the business of respondents is large and world wide in extent; and that respondents have as a member of said firm or in their employ a chemist of wide experience," and also have the further capacity and tendency "to induce members of the public to purchase the products of respondents because of the erroneous beliefs engendered thereby that respondents' firm is sound, substantial, and reliable by reason of it being long established, and that its products are superior to those of competitors for the same reason and also because of extensive patronage and long use and extended tests, and that they as customers are recipients of the superior services of a beauty expert and a chemist of wide experience."

Aforesaid acts and things done by respondent, as charged, "Are all to the injury and prejudice of the public and of 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," the Federal Trade Commission issued and served its complaint upon the respondents, Edward L. Jenkins and Myrtle E. Auten, partners doing business under the firm name and style of Cheri, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed. A brief was filed on behalf of the Commission. No brief was filed by respondents although opportunity for filing the same was duly given and the time therefor expired November 14, 1930.

Thereafter this proceeding came on for final hearing upon the record and the brief of counsel for the Commission, and the Commis-

sion having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Edward L. Jenkins and Myrtle E. Auten, are partners doing business under the firm name and style of Cheri, with their principal place of business at 745 North Lincoln Street, in the City of Chicago, State of Illinois, having conducted said business since about the month of February, 1929. The business of said respondents is the preparation and sale of toilet articles and similar products, which said products are sold to agents for resale to the purchasing public, and to individuals, in the various States of the United States. Respondents, in the sale of said products as aforesaid, have caused and do now cause the same to be transported in interstate commerce from their said place of business in the City of Chicago, State of Illinois, to purchasers thereof as aforesaid located in States other than the State of Illinois. In the course and conduct of their said business, respondents have been, and are now, in competition with other individuals, partnerships and corporations engaged in the preparation of toilet articles and similar products and in the sale thereof in interstate commerce.

PAR. 2. In the conduct of their said business respondents have caused to be printed and distributed in interstate commerce, certain mimeographed circular letters which were sent to customers and prospective customers in various States of the United States, and which contained, among others, representations which state or imply that they are manufacturers of the products which they sell, and that customers in buying their products buy direct from the manufacturers thereof; that they have in connection with said firm a beauty expert or "cosmetician" by the name of "Edmyr Jenaut" or "Miss Jenaut"; that they are conducting an old established business; that their business is world-wide in extent and that they have, connected with said business, a chemist of wide experience.

PAR. 3. Respondent's place of business at the address above given consists of a basement apartment of four rooms, part of which is used as the sleeping and living quarters of the respondent Myrtle E. Auten. Respondents have not at all times since starting in business manufactured or compounded a substantial part of the toilet products which they have offered for sale. In the beginning, only a few of the products offered for sale were compounded by them. There are sixteen items on their price list which they have never compounded or made. At the time of the hearing, both respondents

were engaged in other lines of work which required all their working days, and attention to said business is merely incidental. No working force has been or is employed by said respondents in said business. Their facilities and equipment for manufacturing are meager. "Edmyr Jenaut", or "Miss Jenaut" is a nom de plume of the respondent Myrtle E. Auten, who has never taken a course in beauty culture or had any extended practical experience in such work, or as a "cosmetician." Her training in such work consisted chiefly in answering correspondence from customers of another toilet goods house for which she worked for a number of years. She further had a little private instruction in facial treatments and became familiar with the literature and instructions furnished customers by the toilet goods company for which she formerly worked. Respondents' business was started in the month of February 1929, and had not been in existence before that time; neither had their products been marketed under the name "Cheri" by them or any one else prior to that time. The business of respondents has been confined to the United States. No sales have been made by them direct to any foreign country. Respondents have not had, as a member of said firm or in their employ, a chemist of wide experience. The respondent Edward L. Jenkins, to whom said term applied, is not a chemist and has never pursued any course of study or taken any training in such subject.

PAR. 4. The use by respondents in their circular letters and advertising matter of statements which represent or imply that they are the manufacturers of the products which they sell and that purchasers buy direct from the manufacturer thereof; that they have, connected with said firm, a beauty expert or "cosmetician," referring to Miss Auten by name or by any nom de plume; that said business is an old established one; that it is world-wide in extent, or that its business extends into foreign countries; or that they have, connected therewith, a chemist of wide experience, are misleading and deceptive, and have the capacity and tendency to mislead and deceive members of the purchasing public into the belief that respondents are manufacturers of substantially all of the products which they offer for sale, and that customers buy direct from the manufacturers thereof; that respondents have, connected with said business, a beauty expert or "cosmetician"; that said business is an old established one; that it is world-wide in extent or extends into foreign countries, and that said respondents have, connected with such business, a chemist of wide experience.

PAR. 5. There are among the competitors of respondents those who in no wise misrepresent the nature and character of the business con-

ducted by them, the time they have been in business, the qualifications or professional status of those connected therewith, or the extent of their business; and respondents' acts and practices as above set forth tend to and do unfairly divert business to respondents from their competitors, to the injury and prejudice of said competitors.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and are 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 respondents, the testimony in support of the charges of said complaint and in opposition thereto, and the brief of counsel for the Commission and his statement in support thereof, and the Commission having made its findings as to the facts with its conclusion that the 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 ordered, that the respondents, Edward L. Jenkins and Myrtle E. Auten, or either of them their representatives, agents, servants and employees, in connection with the advertising, offering for sale or sale of toilet articles and similar products in interstate commerce, cease and desist from:

(1) Representing by statements which state or imply that they are manufacturers of the products which they sell, and that customers buy direct from the manufacturers thereof, unless and until they manufacture a substantial part of the products which they offer for sale.

(2) Representing that they have as a member of said firm, or in their employ, a beauty expert or "cosmetician," unless or until they have a person as a member of or connected with said firm who has pursued a course in, or received adequate training in beauty culture or cosmetics.

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(3) Representing by statements which state or imply that their business is an old established one, unless or until it has been in existence for such a period of time as to warrant such representations.

(4) Representing by statements which state or imply that their business is world-wide in extent, or that they ship orders direct to foreign countries, unless and until they do in fact ship orders direct to foreign countries.

(5) Representing that said respondents have as a member of said firm, or in their employ, a chemist or a chemist of wide experience, unless and until a person of qualifications as such is connected with said firm as a member thereof, or in its employ.

It is further ordered, that the said respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

H. ERNSTBERGER AND CARL ROSENKRANZ, COPARTNERS TRADING AS H. ERNSTBERGER & CO.

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

Docket 1888. Complaint, Dec. 22, 1930—Order Feb. 16, 1931

Consent order requiring respondents to cease and desist from the use of the trade name "Squirrelpelt" or like words or phrases, or depictions of squirrels, in connection with the sale of materials not made from the pelts of squirrels, as in such order set forth.

Mr. E. J. Hornibrook for the Commission.

Mr. Hanns P. Kniepkamp, of New York City, for respondents.

COMPLAINT

Acting in the public interest, 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 charges that H. Ernstberger and Carl Rosenkranz, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent H. Ernstberger and Carl Rosenkranz are copartners doing business under the trade name and style of H. Ernstberger & Company in the City of New York, State of New York. As such copartners they are now and have been for several years last past engaged in the business of selling cloth. Among the products sold by respondents is one which is designated and named by them "Squirrelpelt". This is a fabric made entirely from cotton and wool, having a pile surface and constructed in a manner so as to resemble a material made by sewing together a number of pelts of squirrels. This fabric is used by respondents' customers in the making of wearing apparel, principally ladies' overcoats.

PAR. 2. Respondents sell the product "Squirrelpelt" to makers of wearing apparel who have their factories in the State of New York and other States of the United States, and when so sold, respondents cause the same to be shipped from its principal place of business in said City of New York to the purchasers thereof in the State of New York and into and through other States of the United States to purchasers who reside outside of the State of New York.