

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.

Order

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PAR. 3. In the course and conduct of said business, respondents are in competition with other individuals and corporations engaged in the sale of cloth, furs and other materials from which wearing apparel is made, which corporations and individuals sell and ship said commodities to customers residing in States other than the States in which such corporations and individuals reside.

PAR. 4. Respondents in soliciting the sale of their aforesaid product advertise the same in periodicals having circulation in several States of the United States, and in such advertisements designate and describe said fabric as "Squirrelpelt" and cause the following to appear:

Squirrelpelt is the genuine and original importation of the squirrel effect in fabrics;

This is accompanied by a picture of a squirrel and a picture of the label of respondents, underneath which is printed the language: "This label identifies the genuine."

For the purpose of attaching them to the garments made from said "Squirrelpelt", respondents deliver to their said customers with shipments of said fabric labels which bear the legend "Hyerco Imported Squirrelpelt". These labels are attached by such customers to such garments in such manner as to reach their retail customers with said label attached and eventually the ultimate purchasers of such garments buy the same with said label attached thereto.

PAR. 5. Said advertising and the use of said labels as aforesaid have the capacity and tendency to induce the public to purchase garments made from said "Squirrelpelt" in the belief that the same are made from the pelts of squirrels, and to divert trade to respondents from competitors engaged in the sale, in interstate commerce, of cloth, furs, and other materials from which wearing apparel is made.

PAR. 6. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of said act of Congress.

ORDER TO CEASE AND DESIST

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 on the 22nd day of December 1930, issued its complaint against H. Ernstberger and Carl Rosenkranz, copartners trading as H. Ernstberger & Company, respondents herein, and caused the same to be served upon said respondents as

required by law, in which complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. On January 31, 1931, the said respondents filed herein a written answer to said complaint wherein they and each of them expressly elected to refrain from making a defense to the complaint herein and consented that the Commission might make, enter, and serve upon respondents an order to cease and desist from the alleged violations of the law set forth in said complaint; and the Commission having accepted and considered such pleading, and being fully advised in the premises,

It is now ordered, That respondents, H. Ernstberger and Carl Rosenkranz, copartners trading as H. Ernstberger & Company, their agents, representatives, employes or successors do cease and desist from doing directly or indirectly any and all of the acts hereinafter designated and set forth in connection with the offering for sale, or sales, in interstate commerce, or in the District of Columbia, of materials not made from the pelts of squirrels, as follows:

PAR. 1. (1) From using the trade name "Squirrelpelt" or other words or phrases of like import with which to brand, label, represent, advertise or describe such materials;

(2) From using a picturization of a squirrel or squirrels in advertisements, upon brands, or labels of such materials;

(3) From furnishing purchasers of such materials or others with labels which bear the trade name "Squirrelpelt" or other word or words of like import;

(4) From using any word or words or pictorial device or characterization in advertising or otherwise which import that said materials are made from the pelts or skins of squirrels.

PAR. 2. *It is further ordered*, That respondents, within 60 days from and after the date of the service upon them of this order shall file with the Commission a report, or reports, in writing, setting forth in detail the manner and form in which they are complying with the order to cease and desist herein above set forth.

Complaint

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IN THE MATTER OF
AMERICAN POULTRY SCHOOL AND T. E. QUISENBERRY

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

Docket 1508. Complaint, Apr. 3, 1928—Decision, Feb. 17, 1931

Where a corporation engaged in conducting correspondence course in poultry raising and in sale of books, poultry feed and remedies, and its president and manager; in its advertisements in poultry and farm journals and other magazines, and in enrollment blanks, circular letters and other matter,

(a) Stated and represented certain things including baby chicks, books, life scholarships and bulletins were furnished free, fact being that compensation therefor was at all times included in price charged and received for said course; and

(b) Stated and represented that said course was offered at a special and lower price than that usually received, to a representative poultry raiser in each community (to be appointed as its local representative), through elimination of usual large advertising appropriation and the passing on of such saving or benefit, facts being that such pretended special offer was made to all prospective pupils indiscriminately and supposed special price was its usual and ordinary price;

With capacity and tendency to deceive public and induce persons to enroll as students and pay tuition specified in reliance upon truth and accuracy of such representations and thus to divert trade from competitors to them:

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

Mr. Alfred M. Craven 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 American Poultry School, a Missouri corporation engaged in the sale of courses of instruction by correspondence in poultry culture to persons in various States, and also of articles incidental and accessory thereto, together with baby chicks, and with principal place of business in Kansas City, Mo., and respondent T. E. Quisenberry, president of said corporation and actively engaged in the management and control of the business activities thereof, with advertising falsely or misleadingly as to free products or things, and prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.