

IN THE MATTER OF

ISIDOR WETCHLER AND SOLOMON WETCHLER, TRADING UNDER THE FIRM NAME AND STYLE L. WETCHLER & SONS—OLD GOLD COMBINATION WHITE LEAD & COLOR CORPORATION, AND ISIDOR AND SOLOMON WETCHLER AS OFFICERS THEREOF—CAMEL LEAD COLOR & CHEMICAL PRODUCTS MANUFACTURING CORPORATION, AND ISIDOR WETCHLER AND SOLOMON WETCHLER AS OFFICERS THEREOF

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

Docket 1829. Complaint, May 10, 1930—Decision, June 17, 1931

Where partners dealing in paint and painters' supplies; in engaging upon the manufacture of such products through two companies, which (1) were incorporated by them as Old Gold Combination White Lead & Color Corporation and Camel Lead Color & Chemical Products Manufacturing Corporation, respectively, (2) were caused by them to register, respectively, as trade-marks the words "Old Gold," and the word "Camel," and conspicuously, the words "Lead" and "Color," and, inconspicuously, the words "& Chemical Products Manufacturing Corporation," and (3) were owned and operated by them without disclosing that said companies were merely their corporate instrumentalities,

- (a) Employed aforesaid corporate names or portions thereof as trade-marks in advertising, designating, and describing paints and painters' materials which they caused to be made, offered, and sold by said corporations as products of said Camel Lead Color, etc., Corporation, and upon the labels and containers thereof, so as to feature through position, manner, color, and size the words "Old Gold" and "White Lead," with the word "combination" in smaller letters, notwithstanding the fact that product so described contained no more than 1 per cent of lead mixed with approximately 89 per cent of other pigment; and
- (b) Employed the same arrangement of words as aforesaid in offering and selling a product in containers bearing the corporate name Old Gold Combination White Lead & Color Corporation and featuring the words "Zinc Lead," so placed in relation to said corporate name as to signify a combination consisting of white lead and zinc without other ingredients, and captioned the circular included with the product Old Gold Combination White Lead, conspicuously displaying the first two and last two words, notwithstanding the fact that said product contained no more than a negligible amount of lead and an unsubstantial amount of zinc;

With capacity and tendency to mislead and deceive the purchasing public into believing that the products so offered and sold consisted of white lead, or of a predominant white lead, or zinc and lead, combination, as the case might be, and with effect of furnishing wholesale and retail dealers with the means enabling them to mislead and deceive their respective customers into the erroneous belief that former product trade-marked Old Gold Combination White Lead & Color Corporation was composed as above set forth, and

that captioned "zinc lead" consisted of a combination of zinc and white lead, and to induce the purchase of said products in reliance upon such erroneous beliefs, and with capacity and tendency to divert trade to them and their corporations from competitors offering and selling materials for paints and painters' supplies truthfully described:

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.

Mr. George Rosenberg, of Brooklyn, N. Y., 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 respondents Isidore and Solomon Wetchler, partners, dealing as L. Wetchler & Sons, in paints and painters' materials and supplies, at wholesale, and engaged, through their respondent corporate instrumentalities, in manufacture and sale of paints and aforesaid materials and supplies, and with place of business in New York City, and respondents Old Gold Combination White Lead and Color Corporation and Camel Lead Color and Chemical Products Manufacturing Corporation, two New York corporations, their aforesaid instrumentalities, organized, owned, and operated by them, and with principal place of business in the same premises, in Brooklyn, with using corporate names, instrumentalities, and trade-marks misleadingly, misbranding, or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents Wetchler, as charged, engaged as above set forth, following their organization of the aforesaid corporations, caused said corporations to register, respectively, (1) the words "old gold", and (2) the words "camel", "lead", and "color" in conspicuous letters on each side of the depiction of a camel, and in inconspicuous letters, the words "& Chemical Products Manufacturing Corporation", as their respective trade-marks, and so to employ their corporate names as trade-marks and on labels and in advertising as to appear to describe the products (which they caused said corporations to manufacture) as "white lead", or "zinc lead" products made and offered for sale by said Camel, etc., Corporation, and respondent corporations, in pursuance of aforesaid policy, have made it their practice, acting at the instance of and under the direction and control of said individual respondents and/or in conjunction and co-operation with each other, to offer and sell said materials and sup-

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plies for paints and painters as and for "white lead" and "zinc lead" through advertising matter distributed among purchasers and prospective purchasers, and labels on the containers of their products, in or on which respondent Camel Lead, etc., Corporation, appears or purports to offer the products for sale, and in or on which the corporate name of respondent Old Gold Combination White Lead and Color Corporation appears or purports to be a part of the trade-mark and a description of the commodity offered,¹ and to conceal their connection with said individual respondents.

Respondents, further, as charged, in the course and conduct of their aforesaid business, "have offered for sale, and offer for sale, in commerce through respondent Camel Lead Color & Chemical Products Manufacturing Corporation, among and between the various States of the United States, a product which they falsely describe on advertising matter and other literature distributed by them among purchasers and prospective purchasers, as shellac camel."

"In truth and in fact" as alleged, "the product offered for sale and sold by respondents as and for white lead has consisted of and contained, and consists of and contains no more than approximately 1 per cent of lead, and the product offered for sale and sold by respondents as and for zinc lead has consisted of and contained, and consists of and contains no more than 51 per cent of zinc, 1 per cent of lead, and 48 per cent of lead and zinc substitutes, and neither of them has been, or is, either white lead or a combination white lead or zinc lead or combination zinc and lead as such terms have been and are generally understood by the trade and the purchasing public, and in truth and in fact their product offered for sale and sold as shellac camel was not and is not manufactured wholly of genuine

¹ The practice employed is further alleged in detail in the complaint as follows:

"As an aid to such end, in such trade-mark and other advertising matter so distributed by respondents among purchasers and prospective purchasers, as well as on the containers of their products, such corporate name (Old Gold Combination White Lead and Color Corporation) is so arranged in color, size of letters and background that the words 'white lead' are conspicuous and outstanding. On such labels and advertising matter appear the representation of a sunburst with the word 'old' on one side of it and the word 'gold' on the other side. Beneath the sunburst appear the words 'old—gold—white' in smaller letters, and below this in still smaller letters, relatively, the word 'combination,' beneath which appear the words 'White Lead' in letters so large and conspicuous that they appear as the prominent and outstanding words on the label and other advertising matter. On posters and other advertisements so distributed by respondents among purchasers and prospective purchasers, appear at the right of the label the words 'lift up this label,' and beneath the label, when lifted, appears the representation of a camel with the word 'camel' appearing above such representation, the word 'lead' on its left, and the word 'color' on its right in large and conspicuous letters, while below and in less conspicuous letters appears the remainder of the corporate name of said respondent, and the word 'lead' appears as an outstanding and prominent word on such posters and other advertising matter."

shellac gum dissolved in alcohol as understood by the trade and the purchasing public to be the constituent elements or formula of which shellac is composed, but was and is manufactured or compounded so as to contain in varying quantities, elements, ingredients, or substitutes other than those contained in the product known to the trade and the purchasing public as shellac."

"The above and foregoing methods and practices of respondents," as alleged, "have had and now and still have, and each of them has had and now and still has, the capacity and tendency to mislead the purchasing public into the belief that their several products so offered for sale and sold consist respectively of white lead, of a combination of zinc and lead, and of shellac, and have furnished and furnish, and each of them has furnished and furnishes wholesale and retail dealers with the means by which they have been and are enabled to mislead and deceive their respective customers into the belief that the product described by respondents with the corporate name of respondent Old Gold Combination White Lead & Color Corporation as a trade-mark consists of white lead, that the product described as zinc lead consists of a combination of zinc and lead, and that the product described as shellac—camel, consists of shellac, and to induce the purchase of one or more of said several products in reliance on one or more of said erroneous beliefs.

"Wherefore, said acts and practices of respondents are all to the prejudice of the public 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, 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 Isidor Wetchler and Solomon Wetchler, trading under the firm name and style of L. Wetchler & Sons—Old Gold Combination White Lead & Color Corporation, and Isidor and Solomon Wetchler as officers thereof—Camel Lead Color & Chemical Products Manufacturing Corporation, and Isidor Wetchler and Solomon Wetchler as officers thereof, 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 documentary evidence were received and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Com-

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mission on the complaint, answer, testimony and evidence, brief in support of the complaint by counsel for the Commission, respondents having submitted no brief or argument, 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 as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Isidor Wetchler and Solomon Wetchler are now, and for several years last past have been engaged in the operation of a paint and painters' supply store in the city of New York and State of New York, under the trade name and style of L. Wetchler & Sons, and in the sale of materials and supplies for paints and painters at wholesale and retail.

In September, 1928, they caused to be organized and incorporated under and by virtue of the laws of said State of New York, respondents Old Gold Combination White Lead & Color Corporation and Camel Lead Color & Chemical Products Manufacturing Corporation, and each of said corporations ever since has been, and now is a corporation duly existing and doing business under the laws of said State and occupying as their principal place of business the same premises in the city of Brooklyn and State of New York.

Respondents Isidor Wetchler and Solomon Wetchler after the said organization of respondent corporations commenced, and since then have continued the manufacture of materials and supplies for paints and painters, by and through the instrumentality or agency of the above named respondent corporations, both of which have offered for sale and sold material and supplies for paints and painters, in commerce among and between the various States of the United States, causing such products, when sold, to be transported from their place of business in the State of New York to purchasers thereof in the various States of the United States other than the State of New York. In the course and conduct of such business, respondents have been and are, and each of them has been, and is in competition with individuals, partnerships, and corporations engaged in the sale of materials and supplies for paints and painters in interstate commerce.

Respondents Isidor Wetchler and Solomon Wetchler are now and have been since their incorporation of Old Gold Combination White Lead & Color Corporation and of the Camel Lead Color & Chemical Products Manufacturing Corporation, owners of said corporations and of their corporate stock. They have created, formed and instituted, and have maintained and directed the policies, methods, and practices of said respondent corporations and of each of them, and have at all times hereinafter mentioned, dominated, controlled,

directed, and been responsible for, and now dominate, control, direct, and are responsible for the representations, transactions, sales, and other activities of said respondent corporations and of each of them in commerce among or between the various States of the United States.

The said individual respondents Isidor Wetchler and Solomon Wetchler have failed and neglected to cause said respondent corporations to disclose that they have been and are their corporate instrumentalities, or that the said corporate respondents in the course and conduct of their business have cooperated with each other, and by concert of action, have reflected the policies and effectuated the purposes of said individual respondents.

PAR. 2. On September 18, 1928, there were registered in the United States Patent Office the words "Old Gold" as a trade-mark. These words were so registered on a statement which individual respondents Isidor Wetchler and Solomon Wetchler caused to be made through respondent Old Gold Combination White Lead & Color Corporation. Such statement contained the representation, among other things, that the trade-mark had been adopted and used by respondent Old Gold Combination White Lead & Color Corporation since January 23, 1928, for certain paints and painters' materials, including white lead and zinc lead, and the said individual respondents caused the name of said respondent corporation Old Gold Combination White Lead & Color Corporation to be subscribed thereto by respondent Isidor Wetchler as well as his own signature, and he was therein described as president of said respondent corporation.

On April 23, 1928, there was registered in the United States Patent Office as a trade-mark the representation of a camel, with the word "camel" appearing above it, the word "lead" in large and conspicuous letters on the one side, and the word "color" in large and conspicuous letters on the other side of it, while beneath it, in relatively small and inconspicuous letters, appeared the words "& Chemical Products Manufacturing Corporation." The trade-mark was so registered on a statement caused to be made by the Camel Lead Color & Chemical Products Manufacturing Corporation through respondent Solomon Wetchler. Such statement contained the representations, among other things, that the trade-mark had been adopted and used since January 1, 1928, for certain paints and painters' materials, including white lead and combination white lead by such respondent corporation.

PAR. 3. Respondents Isidor Wetchler and Solomon Wetchler after the organization of said respondent corporations and the registration of the trade-marks described in paragraph 2 hereof, caused said respondent corporations to manufacture and offer for sale, and they

have manufactured and offered for sale, and now manufacture and offer for sale as products of respondent Camel Lead Color & Chemical Products Manufacturing Corporation, certain material and supplies for paints and painters, and have adopted and used, and still adopt and use as their method in advertising, designating, and describing their products, employment of the corporate names or portions of them of respondent Old Gold Combination White Lead & Color Corporation and respondent Camel Lead Color & Chemical Products Manufacturing Corporation as trade-marks, and on containers of their products, or on labels affixed thereto in such position, manner, color, and size of letters, that the words "old gold" and the words "white lead" are the conspicuous and predominating features of advertisements and labels, with the word "combination" in smaller letters preceding the words "white lead." Such arrangement of the corporate name of respondent Old Gold Combination White Lead & Color Corporation, depending on observation of the word "combination," signifies a product consisting of white lead entirely, or a product containing white lead as its principal and predominant ingredient.

Respondents have also offered for sale and sold a certain product in cans or containers bearing the said corporate name of respondent, Old Gold Combination White Lead & Color Corporation, with the same arrangement of the words composing such name as hereinabove described both on the body and on the top of the can or container of the product but with the words "zinc lead" in large and conspicuous letters so placed relative to the said corporate name Old Gold Combination White Lead & Color Corporation as to signify and mean a combination consisting of white lead and zinc without other ingredients.

Respondents have also placed or caused to be placed in every can or container of its product offered for sale or sold, as herein described, a circular in several languages including the English which is headed in the English version Old Gold Combination White Lead. The words "old gold" and the words "white lead" are conspicuous.

In truth and in fact the product so advertised and labeled by respondents as to appear to designate or describe it as "white lead" or "combination white lead" has not contained and does not contain more than 1 per cent of lead which has been and is mixed with approximately 89 per cent of other pigment. An analysis of such product by the United States Bureau of Standards is as follows:

Color, white; consistency, paste; pigment percentage by weight, 90.9; figure percentage by weight, 9.1; nature of pigment, contains approximately 1 per cent white lead (0.96 per cent total lead expressed as PbSO_4).

The product offered for sale and sold by respondent in cans or containers bearing on their top the words "zinc lead" in conspicuous letters together with the name Old Gold Combination White Lead & Color Corporation have not contained and do not contain more than a negligible amount of lead and an unsubstantial amount of zinc. Analysis of such product by the United States Bureau of Standards is as follows:

	Per cent
Lead sulphate -----	0.6
Lithopone -----	35.8
(10 per cent zinc sulphide—25.8 per cent barium sulphate)	
Additional barium sulphate -----	52.6
Silicious matter -----	0.7
Zinc oxide -----	9.4

PAR. 4. The acts and practices of respondents described in paragraph 3 hereof have had and have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that of the products so offered for sale and sold, one consists of white lead, or of a combination of white lead with such lead predominating, and the other consists of a combination of zinc and lead, and have furnished, and furnishes wholesale and retail dealers with the means by which they have been and are enabled to mislead and deceive their respective customers into the erroneous belief that the product described by respondent with the corporate name of respondent Old Gold Combination White Lead & Color Corporation as a trade-mark consists of white lead or a combination with white lead predominating, and that the product described as zinc lead consists of a combination of zinc and white lead, and to induce the purchase of said products in reliance on such erroneous belief or beliefs.

PAR. 5. The aforesaid practices of respondents have had and have, and each of them has had, and has, the capacity and tendency to divert trade to respondents from competitors offering for sale and selling materials for paints and painters' supplies truthfully described.

CONCLUSION

The acts and practices described in the above and foregoing findings as to the facts, have been and are all to the prejudice of the public and of respondents' competitors, and have constituted unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents, Isidor Wetchler and Solomon Wetchler, trading under the firm name and style L. Wetchler & Sons; Old Gold Combination White Lead & Color Corporation, and Isidor and Solomon Wetchler as officers thereof; Camel Lead Color & Chemical Products Manufacturing Corporation, and Isidor and Solomon Wetchler as officers thereof, answers thereto, testimony and documentary evidence, brief and argument of counsel for the Commission, and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that 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, Isidor Wetchler and Solomon Wetchler, trading under the firm name and style L. Wetchler & Sons—Old Gold Combination White Lead & Color Corporation, and Isidor and Solomon Wetchler as officers thereof—Camel Lead Color & Chemical Products Manufacturing Corporation, and Isidor Wetchler and Solomon Wetchler as officers thereof, their agents and employees cease and desist directly or indirectly (a) from using or causing to be used in connection with any product offered for sale or sold in interstate commerce a firm or corporate name, trademark or other designation in advertisements of such product or on containers thereof, in such position, manner, form or color, that the words "lead," "white lead" or "combination white lead" designate or describe or appear to designate or describe the product, unless when the words "lead" or "white lead" are so used the pigment of the product is composed entirely of white lead; or when the words "combination white lead" are so used the pigment of the product actually consists of white lead as its principal and predominant ingredient, to the extent of not less than 50 per cent by weight of the product. (b) From using the words "zinc lead" in advertisements or on containers of any product offered for sale or sold in interstate commerce or on labels affixed thereto unless the pigment of such product actually consists of zinc and lead.

It is further ordered, That respondents and each of them shall within 60 days from and after service hereof file with the Commission a report in writing stating the manner and form in which it has complied with the terms of this order.

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IN THE MATTER OF

STRAUSS BROS. WHOLESALE TAILORS, INC., DAVIS-ROGERS TAILORING CO., INC., AND S. A. AND W. W. STRAUSS

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

Docket 1941. Complaint Apr. 27, 1931—Order, June 26, 1931

Consent order requiring respondents to cease and desist from using the words "tailors" or "tailoring" in their corporate or trade names, or from representing that the ready-made clothing made and dealt in by them is cut and made to the individual tailoring measurements of the respective purchasers, or is composed entirely of wool or of wool and silk, when such is not the case; all as in said order set forth and qualified.

Mr. James W. Nichol for the Commission.

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 Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, 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 the said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Strauss Bros. Wholesale Tailors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Chicago, in said State, said respondent is owned and controlled by said individual respondents, and is now and for more than one year last past has been engaged in the manufacture and/or purchase of men's ready-made clothing, and in the sale and distribution thereof in commerce between and among various States of the United States, through the instrumentality of a number of distributing companies, including respondent Davis-Rogers Tailoring Co., Inc., Howard Tailoring Co., Hudson Tailoring Co., Mills & Hall, Strauss Bros., and United American Tailors, all of which are owned, controlled, and operated by said individual respondents and have their offices and principal