

Complaint

IN THE MATTER OF

THOMAS KNAPIK AND GEORGE W. ERICKSON, CO-
PARTNERS TRADING AS KNAPIK & ERICKSON

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

Docket 1750. Complaint, Jan. 24, 1930—Decision, Oct. 26, 1931

Where a firm engaged in selling leather to work glove manufacturers, designated as "Muleide" a nonleather fabric one side of which so closely resembled the genuine, mule, horse, or cattle "splits" or "leather glove splits" used by such manufacturers and formerly stamped "mule hide," as to make possible deception of a person with little or no knowledge of leather, when used in manufacture of such gloves, and employed said coined word or trade name and registered trade-mark in referring to said imitation leather or fabric in advertisements, letters, and invoices, and on tags supplied by it to glove manufacturers for attachment by them to each glove made in whole or in part therefrom;

With tendency and capacity to deceive ultimate purchasers of gloves and mittens so manufactured into believing that said articles were made in whole or in part from leather made from the skin or hides of mules, or other leather, and to induce them to purchase the same in such belief, and with result of thereby placing in the hands of retailer buyers of said gloves from aforesaid manufacturer's wholesale or jobber purchasers, the means of committing a fraud, and thereby creating a tendency unfairly to divert trade from and otherwise injure said firm's competitors in the sale of materials used for aforesaid purposes, and also manufacturers of workmen's gloves and mittens made of leather and other materials:

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. E. J. Hornibrook 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 respondents Thomas Knapik and George W. Erickson, partners engaged in the sale at wholesale of leather goods and specializing in the kind of leather used in workmen's gloves, and mittens, and also in the sale of a nonleather fabric finished so as to simulate leather, and with principal place of business in Chicago, with naming product

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misleadingly, 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.

Respondents, as charged, engaged as above set forth, designate aforesaid fabric sold to manufacturers of gloves and mittens as "Muleide", and supply their vendee manufacturers with paper stickers or tags containing the words "Muleide, Non-Slip Patents Pending", to be attached by the latter to the mittens, gloves or other articles made from said product, and aforesaid vendee-manufacturers, as alleged, "sell such gloves, mittens, or other articles manufactured from said product, Muleide, to wholesalers or jobbers, who, in turn, sell the same to retail dealers in various States of the United States, and the said retailers, in turn, resell said articles to the consuming public," with the sticker or tag above described, attached to the gloves, mittens or other articles and plainly discernible.

Respondents' use of such stickers or tags "and their subsequent use by manufacturers, jobbers, wholesalers, and retailers," as above set forth, "have the tendency and capacity to deceive ultimate purchasers of gloves, mittens, and other articles made from such Muleide into the belief that they are made, in whole or in part, from the skin or hide of a mule, or from other leather, and to cause them to purchase the same in such belief, and the respondents, in the manner and form," as above described, "have thereby placed in the hands of said retailers the means of committing a fraud, and have thereby created a tendency unfairly to divert trade from, and otherwise injure" competitors, among whom there are many who sell real leather to manufacturers of workmen's gloves, mittens, and other articles, and among whom there are others who sell to their customers fabrics finished in simulation of and with the appearance of leather, for use in the manufacture of aforesaid products, without in anywise representing said fabric as composed of leather, either in whole or in part, all to the prejudice of the public and of respondents' 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents above named, 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 appearances and filed their answers herein, hearings were had and evidence was thereupon intro-

duced 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 having filed a brief herein, and respondents having filed no brief, and respondents having failed to appear at the time and place set for oral argument and having notified the Commission by letter that they declined to appear, this matter was submitted on the record without argument and the Commission 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. Respondents, Thomas Knapik and George W. Erickson, are copartners trading under the name and style of Knapik & Erickson in and from the City of Chicago, State of Illinois. For more than 16 years last past they have been engaged as such copartners, principally in the business of wholesaling leather suitable for making workmen's gloves to manufacturers of gloves located in the several States of the United States.

Since the latter part of the year 1928, and up until about the 1st of January, 1930, in addition to the business described above, respondents have been engaged in the wholesaling of an imitation leather under the name of Muleide, which imitation leather is used by their said customers in manufacturing workmen's gloves. Muleide is a term coined by respondents and copyrighted by them, and has been used by them as a trade name to designate the said imitation leather in the manner hereinafter shown. Respondents have caused quantities of Muleide to be transported, when so sold, to the respective purchasers thereof from their said place of business in the City of Chicago, in the State of Illinois, through and into various other States of the United States to the various places of business of such respective purchasers, and in the course and conduct of such shipments and sales of said Muleide, have been and are now in active competition with various persons and corporations, and other partnerships engaged in the sale of materials used in the manufacture of workmen's gloves in commerce among the several States of the United States.

PAR. 2. Muleide is made by the Foster Oil Fabrics Co. of Philadelphia, Pa., and is made of canton flannel cloth which is treated with undrying oil and colored and treated in such a manner as to cause one side of such fabric to resemble in appearance a certain grade or tannage of leather used in the manufacture of workmen's

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gloves. Respondents coined the word "Muleide," which word they used to describe such fabric and they caused such coined word to be registered in the United States Patent Office as a trade-mark. After such registration, respondents had tags printed and furnished quantities of such tags to manufacturers of gloves to whom they sold the material described as Muleide, and it was the purpose and instructions of respondents that one of such tags be attached by the manufacturers to each glove made in whole or in part from such material, which tags had printed thereon the words:

MULEIDE

Trade-Mark

Non-Slip

Patent Pending

Respondents circulated among their customers and prospective customers desk pads with calendars for the year 1930 attached, which had printed thereon the words "Treated Muleide Cloth, a Bear for Wear. No Slip Grip." They also had a rubber stamp with which they stamped the word "Muleide" upon samples of the material described in paragraph 2 hereof, which were sent by them to the said customers and prospective customers and prior to October, 1929, letters were written by respondents to their said customers and prospective customers and invoices made to their said customers in which letters and invoices such material was described as Muleide.

PAR. 3. Respondents purchased from said Foster Oil Fabrics Co. about 3,000 yards of the material Muleide and have resold about 2,000 yards of such material to manufacturers of gloves outside of the State of Illinois. Only the palm part of a glove is made of Muleide. The palm parts of 1,500 dozen pairs of gloves could be made from 2,000 yards of such material. Some of the material Muleide has been used by respondents' customers in the making of workmen's gloves and such gloves sold at retail. This material was distributed in rolls, each containing about 50 yards and was 42 inches wide and cost respondents 44 cents per yard, or approximately 4 cents per square foot, and in 1929 the grade of leather which this material resembles in appearance and which was used in the manufacture of workmen's gloves cost approximately 10 cents per square foot.

PAR. 4. The leather usually used in the making of workmen's gloves is produced from the hides of mules, horses, and cattle and is split from the upper part of the hide. This leather is known in the leather industry as "splits" and "leather glove splits." Years ago, when manufacturers made gloves out of "splits" they used to stamp it with the term "Mule Hide." Commission's Exhibit 11 is a sample

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of respondents' Muleide and Respondents' Exhibit 1 is a sample of Splits leather. Respondents' Muleide resembles Splits leather, and when used in the manufacture of workmen's gloves may be mistaken therefor by a person having little or no knowledge of leather.

PAR. 5. The aforesaid manufacturers sell such gloves, mittens, and other articles manufactured from said product Muleide to wholesalers or jobbers who, in turn, resell said articles to retailers who sell the same to the consuming public, with the sticker or tag described in paragraph 2, attached thereto and plainly discernible.

PAR. 6. Respondents' use of the term "Muleide" and its subsequent use by manufacturers, jobbers, wholesalers, and retailers, as described in the preceding paragraphs hereof, had and has the tendency and capacity to deceive ultimate purchasers of gloves and mittens made in whole or in part of such Muleide into the belief that they are made in whole or in part from leather made of the skins or hides of mules, and from other leather, and to cause them to purchase the same in such belief, and the respondents, in the manner and form as described in the preceding paragraphs hereof have thereby placed in the hands of said retailers the means of committing a fraud and have thereby created a tendency unfairly to divert trade from and otherwise injure said competitors and manufacturers of workmen's gloves and mittens made of leather and other materials.

CONCLUSION

The above alleged acts and practices of respondents are all to the prejudice of the public, and of respondents' 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 on the complaint of the Commission, the answer of the respondents, the testimony taken and the record herein, and the Commission having made its findings as to the facts and conclusion that respondents have 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 respondents, Thomas Knapik and George W. Erickson, copartners trading as Knapik & Erickson, cease and

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desist from using the name or term "Muleide" or any other word, term, or phrase of like import in connection with the advertising, sale, or offering for sale, in commerce among the several States of the United States or within the District of Columbia, of a product not made of leather.

It is further ordered, That the respondents, Thomas Knapik and George W. Erickson, shall within 60 days after the service upon them of a copy of this order to cease and desist, 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.

Syllabus

IN THE MATTER OF
FIDELITY HOP & MALT CORPORATION AND WANDER
COMPANY

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

Docket 1936. Complaint, Apr. 7, 1931—Decision, Nov. 10, 1931

Where a corporation engaged in the sale and distribution of malt sirups,

- (a) Sold a sirup flavored wholly with domestic hops in containers labeled, at its request, with such words as "Genuine Saazer Malt," "Famous Saazer Malt Sirup," "Original Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup"; and,
- (b) Made such statements in advertising its aforesaid product in English and foreign language newspapers circulating in the United States, and in trade journals and publications having wide circulation, as "This Old World flavor meets the New World's favor," together with the words "Famous Saazer Malt Sirup," conspicuously, and, in small letters, the words "Bohemian Style";

With the capacity and tendency to mislead and deceive the purchasing public into believing the aforesaid product to have been imported into the United States from the Saazer district of Bohemia or Czechoslovakia, or to contain or be flavored with the genuine, well and favorably known Saazer hops there grown and with the effect of thereby placing in the hands of dealers means enabling them to mislead the purchasing public into aforesaid erroneous belief; and,

Where the manufacturing vendor of the aforesaid malt sirup,

- (c) Supplied to its aforesaid vendee distributor, at the latter's request, cans and containers for the sale of said product bearing such labels as above set forth; with the result of aiding, assisting and promoting said vendor distributor in the sale of its said malt sirup, through furnishing it with the means of putting into the hands of latter's wholesale and retail dealers the means of selling the product in question as and for a malt sirup made or produced in the former Saazer district of Czechoslovakia, and imported into the United States therefrom, or as and for a product made in the United States containing hops grown or produced in said district, or flavored therewith;

With the capacity and tendency to divert trade to said vendor distributor from competitors offering and selling in interstate commerce malt sirup imported to the United States from said district, or made in the United States in whole or in part from imported hops or other imported ingredients, or from domestic ingredients or materials:

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.