

Complaint

16 F. T. C.

IN THE MATTER OF

SANFORD MILLS AND O. F. KENDALL, ET AL., COPARTNERS, DOING BUSINESS AS L. C. CHASE & 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 1587. Complaint, Mar. 22, 1929—Decision, Feb. 25, 1932

Where a corporation engaged in manufacture of an imitation leather so made up as to closely resemble in its numerous grains, finishes, and colors all the leading varieties of leather, and in sale thereof under name "Leatherwove," through sole sales agent to wholesalers, jobbers, and manufacturers for automobile trim, furniture upholstery, and manufacture of novelties, shoes, etc., in competition both with others similarly engaged, and with those engaged in sale of real leather; and aforesaid sales agent; used term "buckskin" in sample books and circulars, and on shipping tags in connection with sale of a particular variety of aforesaid "Leatherwove"; with effect of putting such artificial product into the channels of trade under said false and misleading name, and of thereby suggesting to customers and latter's vendees misrepresentation of said goods as made of leather, and furnishing them with means of so doing, and with tendency and capacity to deceive ultimate purchasers of products made thereof into believing same to be composed in whole or in part of leather, and divert trade from competitors dealing in leather, and in imitation leather without misrepresenting composition thereof, and otherwise injure the same:

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.

Heard, Smith & Tennant, of Boston, Mass., 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 Sanford Mills, a Maine corporation engaged in the manufacture of imitation leather, with head office and principal place of business in Sanford, Me., and respondent individuals, partners, with principal office and place of business in Boston, engaged in sale of said product to manufacturers of automobiles, furniture, etc., who make their products in whole or in part thereof, with naming product 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, as charged, named, designated, branded, and labeled aforesaid imitation leather, consisting of a cotton cloth coated on one

side with a special preparation to give it the appearance of genuine leather, but containing no leather, "Leatherwove," and so advertised same in magazines of general circulation and in circulars, catalogues, price lists, letters, letterheads, and other printed matter circulated generally, and also frequently used the term "buckskin" in price lists and other printed matter in designating various kinds or styles of aforesaid "Leatherwove."

The use, by respondents, as alleged, of aforesaid names and designations, places in (1) hands of their vendees means of committing a fraud upon retail dealers to whom said vendees sell the automobiles, furniture and other products made by them in whole or in part of said imitation leather, and eventually upon (2) "the consuming public by enabling said vendees and said retail dealers to represent and sell the products made by them in whole or in part of said imitation leather to retail dealers and the ultimate consumers of said imitation leather as and for articles made in whole or in part of real leather," and has tendency to and effect of diverting business from and otherwise injuring competitors of respondent, many of whom sell and supply real leather to manufacturers of trunks, etc., correctly represented by said manufacturers to the retail trade as composed in whole or in part of genuine leather, and others of whom sell and supply to such manufacturers artificial leathers without in anywise representing the same as composed either partly or wholly of genuine leather; all to the prejudice of the public and 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, the Federal Trade Commission issued and served a complaint upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act.

Respondents having entered their appearance and filed answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges of said complaint and in opposition thereto. Thereafter this proceeding came on regularly to be heard, and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Sanford Mills is a corporation organized and existing under and by virtue of the laws of the State of Maine, with its principal office and place of business in the town of Sanford, in said State. It is engaged, among other things, in the manufacture of artificial or imitation leather at the city of Reading, in the State of Massachusetts, and in the sale thereof, as hereinbelow set forth.

Respondents O. F. Kendall, W. H. Mertz, J. E. Nelson, James Clemons, Henry C. Hopewell, W. P. Underhill, F. B. Hopewell, and F. C. Hopewell are copartners trading under the name and style L. C. Chase & Co., with their principal office and place of business in the city of Boston, State of Massachusetts. They will hereinafter be referred to as respondents L. C. Chase & Co. Under and by virtue of an agreement with respondent Sanford Mills they have been for many years and are now the sole selling and distributing agents of the artificial or imitation leather referred to above. Since the execution of said agreement, under their said copartnership name they have had and now exercise complete control of the marketing, selling, advertising, and distributing of the product in question, and receive and have received a certain stated commission for such services.

For many years this product has been and it is now sold and advertised under the trade name of Chase Leatherwove. Chase Leatherwove is sold to wholesalers, jobbers, and manufacturers, and is used for the purposes of trimming automobiles, upholstering furniture, and in the making of luggage, novelties, shoes, and other products.

When Chase Leatherwove is sold by respondent, L. C. Chase & Co. to such wholesalers, jobbers, and manufacturers it is packed in rolls by respondent Sanford Mills at its factory at said Reading, in the State of Massachusetts, and shipped from there into and through other States of the United States to the respective places of business of said wholesalers, jobbers, and manufacturers. The said manufacturers make said products in whole or in part of Chase Leatherwove and sell such products to retailers, who in turn sell the same to the consuming public.

PAR. 2. Each and all of the respondents, in the course and conduct of their said businesses, are in competition with other individuals, partnerships, and corporations likewise engaged in the sale of artificial or imitation leather among the several States, and also sell

their said artificial or imitation leather in such competition with real leather, especially with the lower grades of real leather and with leather split and artificially coated and grained to imitate natural grains of leather. Many of these said competitors sell and supply such real leather and artificial or imitation leather to manufacturers for use in the making of automobiles, furniture, luggage, novelties, shoes, and other products. Some of said competitors who manufacture such artificial or imitation leather sell the same under such names as Fabrikoid and Keratol, and these latter in nowise represent that their products are composed in whole or in part of real leather.

PAR. 3. Respondent corporation makes said Chase Leatherwove out of cotton cloth, coated on one side with pyroxylin compound and colored matter so as to give one side the appearance of genuine leather. The various thicknesses of cloth and the various colors and finishes used combine to make the product adaptable for many purposes as a substitute for leather. Its numerous grains, finishes, and colors closely resemble all the leading varieties of leather. The product Leatherwove contains no leather.

PAR. 4. For several years, and until after the filing of complaint herein, respondents in designating a particular style of Chase Leatherwove frequently used the term "buckskin" on samples, in sample books, in circulars, and on shipping tags used in the sale and the promotion of the sale of the product Chase Leatherwove. These samples, sample books, circulars, and shipping tags containing the word "buckskin" as aforesaid were printed and distributed by respondents L. C. Chase & Co. at the expense of the respondent Sanford Mills. These sample books and circulars were distributed in large quantities by respondents L. C. Chase & Co. to said customers—about 2,000 books a year.

The term "buckskin" is understood by the trade and consuming public to mean a leather made from the skin or hide of an animal, usually a deer. Funk & Wagnalls Standard Dictionary defines the term "buckskin" as a soft, strong, pliable, grayish or yellowish oil-dressed or brains-dressed leather, properly made from deerskin but now chiefly from sheepskin.

PAR. 5. The sales of said Chase Leatherwove for the year 1930 were between \$700,000 and \$800,000, and in some years such sales have exceeded \$2,000,000. Over \$250,000 have been expended in advertising Chase Leatherwove. Respondents have between 1,200 and 1,500 customers scattered throughout the several States of the United States.

PAR. 6. The name "buckskin" as so applied to Chase Leatherwove is false and misleading, and by its said use respondents have put their

Order

16 F. T. C.

said artificial and imitation product bearing such false and misleading name into the channels of trade, and have thereby furnished their customers and those dealing with them the means to misrepresent that the goods made from such Leatherwove were made of leather, and the term "buckskin" as so used suggests the use of said term by their said customers and the customers of their said customers, and its said use has the tendency and capacity to deceive ultimate purchasers of products made in whole or in part of Leatherwove into the belief that they are made in whole or in part of leather, and to divert trade to respondents from their said competitors and to otherwise injure them.

CONCLUSION

The above alleged acts and practices are all to the prejudice of the public and to respondents' competitors, and constitute unfair methods of competition in commerce 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 the 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, Sanford Mills and O. F. Kendall, W. H. Mertz, J. E. Nelson, James Clemons, Henry C. Hopewell, W. P. Underhill, F. B. Hopewell, and F. C. Hopewell, copartners doing business under the name and style of L. C. Chase & Co., cease and desist from using the name or term "buckskin," or any other word, term or phrase of like import on samples, in sample books, in circulars, on shipping tags or in any other manner 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, Sanford Mills and O. F. Kendall, W. H. Mertz, J. E. Nelson, James Clemons, Henry C. Hopewell, W. P. Underhill, F. B. Hopewell, and F. C. Hopewell,

copartners doing business under the name and style of L. C. Chase & Co., 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.

ORDER OF DISMISSAL AS TO WORD "LEATHERWOVE"

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 being now duly advised in the premises,

It is ordered, That the complaint herein be, and the same is hereby dismissed as to the use of the word "Leatherwove."

IN THE MATTER OF

JOHN C. HERMAN AND EDWIN S. HERMAN, PARTNERS,
DOING BUSINESS AS JOHN C. HERMAN & COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914.*Docket 1443. Complaint, Mar. 8, 1927—Decision, Feb. 27, 1932*

Consent order requiring respondent partner cigar manufacturers to cease and desist use of word "Havana" in connection with sale of their so-called "Havana Darts" cigars, containing no Havana or Cuban tobacco, or from applying word "Havana" to cigars not composed entirely of such tobacco, or using any other name, statement, etc., falsely implying or importing a Havana or Cuban tobacco content; as in said order set forth and qualified.

Mr. Henry Miller 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 John C. Herman and Edwin S. Herman, partners doing business under the trade name and style John C. Herman & Co., 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:

PARAGRAPHS 1. Respondents are partners doing business under the trade name and style John C. Herman & Co., with their place of business in the city of Harrisburg, State of Pennsylvania. They are engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers located at points in various States of the United States. They cause said cigars when so sold to be transported from their said place of business in the city of Harrisburg, Pa., into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial export product from the island of Cuba and the term "Havana" tobacco has for many years meant, and still means to the cigar tobacco trade, the cigar trade and the consuming