

IN THE MATTER OF
JOSEPH B. BRANDLER

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

Docket 1921. Complaint, Feb. 27, 1931—Decision, Feb. 29, 1932

Where an individual dealing as manufacturer's agent in a knitted Astrakhan cloth fabric, imitating Persian lamb fur on the outer or wool Angora pile side thereof, and in the sale of a large part thereof to a cloak manufacturer for latter's use in manufacture of garments (1) sold by him in competition with genuine Persian lamb fur coats, and Astrakhan coats resembling the appearance thereof, and (2) so lined and made up as not to permit purchasers and prospective purchasers of said manufacturer's retail dealer vendees to see the reverse side of the fabric in question without tearing or ripping the lining of the garment,

Adopted the phrase "Persian pelt" as a name for said fabric and furnished aforesaid manufacturer labels displaying words "Persian pelt—registered U. S. A.," in gold colored letters on black, for latter's use in labeling garments made by him thereof as aforesaid, and made such statements in advertising garments above referred to in a women's wear trade periodical, and in rotogravure circulars as "excellent copy of the Persian lamb fur. The difference can hardly be detected at sight. Feature in the ensemble—coat and beret of Persian pelt consigned to us exclusively," and "cold days would prove welcome to a smart coat and beret of Persian pelt, a fabric that is a remarkable reproduction of Persian lamb," and featured words "Persian lamb" in circulars distributed among retail dealers by said manufacturer under said individual's instructions;

With tendency and capacity to deceive and mislead purchasing public into believing said coats to be of Persian lambskin, induce the purchase thereof in reliance on such belief, and with effect of placing in the hands of retailers, through manufacturers and other thus supplied with aforesaid labels, means of consummating a fraud upon the purchasing public, and with capacity and tendency to divert trade from and otherwise prejudice and injure competitors, and operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the fabric coat, and fur coat, businesses:

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

Mr. Robert H. Winn for the Commission.

Mr. Maxwell E. Sparrow, Mr. Herman Levy, and Mr. William Michaels, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission act, the Commission charged

respondent individual, engaged in sale and distribution of a knitted fabric with a wool pile, and with principal place of business in New York City, 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; in that respondent designates aforesaid product "Persian pelt" and supplies garment manufacturer vendees with labels bearing said words, notwithstanding fact product in question was not made from pelt of the Persian lamb or of any other animal; with capacity and tendency to mislead and deceive purchasing public into believing garments fabricated or made thereof and labeled as aforesaid, were made from the pelt of some animal, and with effect of inducing purchase thereof in reliance on such erroneous belief, and with capacity and tendency so to do, and to divert trade from and otherwise injure competitors; all to the prejudice of the public and 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 Joseph B. Brandler, an individual, hereinafter referred to as respondent, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent having entered his appearance and having filed his answer herein, hearings were had, and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the brief and oral argument of counsel for the Commission (counsel for the respondent having failed to file a brief or to appear at the oral argument although duly notified thereof), and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph B. Brandler is an individual doing business under that name, with his principal place of business located in the city of New York in the State of New York.

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For more than one year last past he has been engaged as a manufacturer's agent in the sale and distribution of a knitted fabric with a wool and Angora pile in commerce between and among various States of the United States. Respondent caused this product when sold to be shipped from the factory or plant of the Tingue Manufacturing Co., Seymour, Conn., manufacturer thereof, to the purchaser or purchasers thereof located in a State or States of the United States other than the State of origin of such shipment.

In the course and conduct of his business the respondent was at all times herein referred to in competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution in interstate commerce of similar and competitive products.

PAR. 2. The fabric above referred to is an astrakhan cloth, an imitation of Persian lamb fur. During the year 1930 the respondent sold this product to manufacturers of coats to be made by such manufacturers into coats and sold to the purchasing public in that form. Respondent also sold the said fabric to department stores to be sold by the yard over the counter. About 75 per cent of this product sold by respondent was sold to coat manufacturers and about 25 per cent to department stores.

PAR. 3. Respondent has adopted the phrase "Persian Pelt" as a name for the said fabric product. Under that name respondent has offered for sale and sold the said fabric as aforesaid. Practically all of said fabric, sold as aforesaid, has been sold by the respondent to the firm of Sisselman & Cohan, a cloak and suit manufacturer at 501 Seventh Avenue, New York City. When this fabric was sold by respondent to Sisselman & Cohan it was usually shipped from the manufacturing plant of the Tingue Manufacturing Co. at Seymour, Conn., direct to Sisselman & Cohan upon orders secured by respondent. In some instances the fabric was shipped first to the respondent and then from the respondent's place of business in New York City to Sisselman & Cohan.

PAR. 4. In connection with the sale of this fabric to Sisselman & Cohan the respondent had made and furnished the said firm of Sisselman & Cohan with more than one thousand coat labels. These labels were marked with the words "Persian Pelt." The wording on the labels was in gold colored letters upon a black background surrounded by a gold colored border, and was as follows: "Persian Pelt—Registered U. S. A." These labels were sewed into coats manufactured of the said fabric by Sisselman & Cohan and were sold by Sisselman & Cohan to retail dealers in various States of the United States other than the State of New York.

PAR. 5. As an inducement to purchasers and prospective purchasers of coats manufactured by Sisselman & Cohan and labeled "Persian Pelt" as above, the respondent inserted advertisements in the Women's Wear Daily, a trade paper circulated generally throughout the United States and sold to the women's wear trade. One such advertisement appeared in the Women's Wear Daily for Thursday, September 4, 1930, on page 23 of section 1. This advertisement included a picture of a young woman wearing a "Persian Pelt" coat and is worded as follows:

Black, most excellent copy of the Persian lamb fur. The difference can hardly be detected at sight. Feature in the ensemble—coat and beret of Persian Pelt consigned to us exclusively.

The firm of Sisselman & Cohan acting under instructions from respondent Brandler distributed to retail dealers a circular prepared by respondent Brandler, which circular features Persian Pelt as the nearest imitation to Persian lamb, and as being sold exclusively in the United States by the firm of Sisselman & Cohan, Inc. Respondent also advertised the product which he called Persian Pelt in roto-gravure advertising circulars. One such advertisement read in part as follows:

Cold days will prove welcome to a smart coat and beret of Persian Pelt, a fabric that is a remarkable reproduction of Persian lamb.

PAR. 6. The coats manufactured by the firm of Sisselman & Cohan of the product called Persian Pelt by the respondent were sold by the said firm of Sisselman & Cohan to retail dealers in various States of the United States, particularly in the Northern States. These retailers in turn resold the said coats with the label above referred to sewed therein to individual consumers. These coats were sold to the individual consumers under the name Persian Pelt. The coats were fully lined and the lining was sewed so that purchasers and prospective purchasers were unable to see the reverse side of the product called Persian Pelt without tearing or ripping the lining.

PAR. 7. The fabric termed by respondent Persian Pelt is an imitation and reproduction of the fur of the Persian lamb on the outer or pile side of the fabric.

PAR. 8. The word "Persian" is used in the fur trade to designate, mean, and refer to the skins of the Persian lamb or coats made of such skins. The word "pelt" means and is generally understood to mean the fur covered skin of an animal. Coats made of the product sold by the respondent under the name Persian Pelt are sold in competition with Persian lamb coats and with coats manufactured of other astrakhan fabrics which closely resemble in appearance Persian

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lamb fur. The use by the respondent of the name Persian Pelt or of the word "Persian" or of the word "Pelt," to label, describe or refer to the said astrakhan fabric has the tendency and capacity to deceive and mislead the purchasing public into the belief that coats manufactured thereof and so advertised, labeled and referred to as Persian Pelt are in fact manufactured of the skin of the Persian lamb, and to induce the purchase of such coats in reliance upon such belief and thereby to divert trade from and otherwise injure competitors of respondent.

PAR. 9. The respondent in furnishing coat manufacturers or others with labels bearing the words "Persian Pelt" to be used or which may be used in coats manufactured of the said astrakhan fabrics as sold by the respondent places in the hands of the coat manufacturers or others and through the coat manufacturers places in the hands of retail dealers a means of consummating a fraud upon the purchasing public.

PAR. 10. The use by respondent of the name Persian Pelt to label, describe, or refer to the said astrakhan fabric, or to coats manufactured of the said astrakhan fabric, and placing in the hands of others a means whereby they may so label coats made of the said fabric has the capacity and tendency to divert trade from and otherwise prejudice and injure the competitors of respondent and to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the fabric-coat business and in the fur-coat business.

CONCLUSION

The practices of respondent, Joseph B. Brandler, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the 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 the respondent and the testimony taken and brief filed therein, and the Commission having made its findings as to the facts with its conclusion that the respondent has 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 the respondent, Joseph B. Brandler, his agents, representatives, and employees, in selling and/or offering for sale in commerce among the several States of the United States, or in the District of Columbia, the knitted fabric or textile described in the findings as to the fact herein, and any similar knitted fabric or textile and/or in selling and offering for sale any such knitted fabric or textile for manufacture into wearing apparel to be sold or offered for sale in the commerce aforesaid, cease and desist from:

1. Labeling, representing, advertising such fabrics or textiles as Persian Pelt.

2. Labeling, advertising, representing such fabrics or textiles as Persian.

3. Labeling, advertising, representing such fabrics or textile as Pelt.

4. Furnishing or causing to be furnished to purchasers of such fabrics or textiles labels, tags, or other markers bearing the word "Persian" or bearing the word "Pelt," or bearing the phrase "Persian Pelt," in order that the said purchasers may place said labels, tags, or other markers in garments manufactured for resale by said purchasers of the said fabrics or textiles.

It is further ordered, That respondent shall within 30 days from the date of the service upon it of the order herein file with the Commission a report in writing setting forth in detail the manner and form in which the order has been complied with and conformed to.

IN THE MATTER OF
H. H. BROOTEN & SONS, INC.

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

Docket 1927. Complaint, Mar. 16, 1931—Decision, Feb. 29, 1932

Where a corporation engaged in the distribution and sale in both liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, for external and internal use, and in the operation of a sanitarium for treatment based on application and use of aforesaid product,

- (a) Represented aforesaid so-called Brooten's Kelp Ore in circulars, leaflets, labels, and other advertising media as a remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, asthma, and arthritis, and as of substantial benefit to sufferers therefrom, facts being said product was of no particular therapeutic value nor of any substantial benefit for diseases and afflictions specified;
- (b) Falsely represented said product as effective for treatment of pain, inflammation, and catarrhal conditions in the body and "in treatment and elimination of glandular, follicular, and fibroid tumors," and as a "healing power," facts being said product had little effect, if any, on conditions specified, or in the treatment thereof;
- (c) Falsely represented said product as a "time-tried remedy" and a "remarkable combination of chemical essentials, compounded in the laboratories of Mother Nature," "used and recommended by thousands of sufferers from digestive, skin and constitutional diseases," and as "proving of inestimable value in hundreds of cases where the digestive and eliminative organs are at fault," and unexcelled as a local antiseptic, facts being it had little if any beneficial effect for aforesaid conditions and ailments or uses, and was not a time-tried remedy; and
- (d) Falsely represented said product as having magnetic healing powers, and vibration as the fundamental, creative vital force, and main agent in said Kelp Ore, and latter as so charged with vibration that it overpowered and corrected in users thereof alleged results of harmful vibrations, fact being product had no magnetic, vibratory healing properties;

With effect of operating to mislead and deceive public and particularly sufferers from various ailments into believing that through purchase and use of aforesaid product as directed, or through becoming patients at said corporation's sanitarium, they would be benefited, remedied or cured of the various diseases and ailments specified, and with tendency and capacity so to do, and thereby divert trade to said corporation from its competitors dealing in mineral salts, drugs, remedies, and other medicaments of therapeutic value:

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

Mr. Ellis Debruler for the Commission.

Mr. George P. Winslow, of Tillamook, Oreg., for respondent.