

Complaint

IN THE MATTER OF
MAX DORF AND DORF & COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1968. Complaint, Aug. 31, 1931—Decision, Mar. 14, 1932*

Where an individual engaged in the manufacture and sale of umbrellas to jobbers and retailers in the various cities, and a corporation through which as his selling agent said individual thus sold said articles, designated and described as "Servisilk" and "imported Swiss taffeta" the fabric covering thereof, in circulars, advertising matter and sample advertisements employed and furnished for promoting sale of said products, notwithstanding fact fabric in question was composed of 90 per cent cotton; with capacity and tendency to deceive dealers and ultimate purchasers into believing such covering to be made entirely of silk, and divert trade from competitors dealing in umbrellas actually so covered or with silk and cotton coverings as the case might be:

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

Mr. Alfred M. Craven and Mr. J. Butler Walsh for the Commission.

Mr. Benjamin H. Saxen, of New York City, 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 Max Dorf, an individual engaged as Liberty Umbrella Co. in manufacture of umbrellas and respondent Dorf & Co., a New York corporation officered and principally owned by him and engaged in sale of said umbrellas to jobbers and retailers throughout the various States, and with principal place of business in New York City, with naming product misleadingly, using misleading brand or trade name, advertising falsely or misleadingly and misbranding or mislabeling as to composition of product, 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, designate and describe said umbrellas, and the fabric covering thereof by the brand or trade name "Servisilk," and said covering as "the finest silk-mixed imported Swiss taffeta" in advertisements, in newspapers, and periodicals of national circulation, in letters, circulars and other like literature distributed among the trade and general public and in advertising

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matter, leaflets, and other like literature furnished to aforesaid wholesale or retail dealers for printing in newspapers and periodicals, or for circulation among the trade and general public as the case may be; the facts being, term "Servisilk" denotes a fabric made of silk, product of the cocoon of the silkworm, and term "taffeta" denotes a fabric woven of silk in the taffeta weave, whereas fabric concerned is composed of 91.4 per cent cotton and 8.6 per cent silk.

Said acts and practices, as alleged, have capacity and tendency to deceive dealers and ultimate purchasers into belief that said umbrellas are covered with a fabric made entirely of silk, product of the cocoon of the silkworm, and to divert to respondents trade of competitors, whose products are made of the same kind and nature of fabric as their own, but truthfully advertised and represented, and also trade of competitors, coverings of whose umbrellas which are made entirely of silk, product of the cocoon of the silkworm; 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 31st day of August, 1931, issued and thereafter served its complaint against the respondent Max Dorf and Dorf & Co. (a corporation), charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed an answer to said complaint, a hearing was had before a trial examiner therefore duly appointed, and testimony and evidence received in support of the charges stated in the complaint. Thereafter, this proceeding was submitted to the Commission for decision, without briefs or oral argument, it appearing that the respondents had, in writing filed herein, waived the filing of brief, and oral argument. And the Commission having now considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Dorf & Co. is a corporation organized and existing under the laws of the State of New York. Respondent Max Dorf is now, and has been for several years last

past, engaged in the business of manufacturing umbrellas, at New York City, N. Y., and in the sale thereof through respondent Dorf & Co. as a selling agent, to jobbers of, and retail dealers in umbrellas located throughout the various cities of the United States. Respondents, in the course and conduct of said business, make distribution of the umbrellas sold, by the transportation of same in interstate commerce from the place of business in New York to and through most of the States of the United States, to the purchasers thereof at their various points of location.

In the course and conduct of their aforesaid business, respondents are and have been for several years last past, in competition with other individuals, partnerships, and corporations located and doing business in the United States, and engaged in the sale in interstate commerce between and among the several States of the United States, (a) of umbrellas, coverings of which are made and manufactured from fabrics composed of cotton and silk, and (b) of umbrellas the coverings of which are made and manufactured of silk, the product of the cocoon of the silkworm.

PAR. 2. The respondents, in the course and conduct of their said business, and for the purpose of promoting the sale of their umbrellas, circulate among the trade and general public letters, circulars, and other like literature, and also furnish free of cost to dealers purchasing from them, advertising matter and sample advertisements to be inserted in newspapers and periodicals, and also furnish to said dealers leaflets and other advertising matter descriptive of their merchandise, for circulation by the dealers among the general public. In such advertising matter, and on tags attached to the umbrellas themselves, the said respondents designate and describe the fabric used in the covering of said umbrellas as "Servisilk," and also in said advertising matter describe said fabric as being "imported Swiss taffeta."

The fabric thus designated and described as "Servisilk" and "imported Swiss taffeta" is composed of about 10 per cent silk and 90 per cent cotton.

PAR. 3. The word "silk" means to the public at large, as well as to the trade, a fabric made entirely from the product of the cocoon of the silkworm. The coined word "Servisilk" does not affect the meaning of the word "silk" as above given.

The word "taffeta," when used as descriptive of the content of a fabric, denotes to the public as well as to the trade, that the material thus described is entirely silk.

PAR. 4. The designations and descriptions used by respondent, as mentioned in paragraph 2 hereof, are false and misleading and hav

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the capacity and tendency to deceive dealers in, and ultimate purchasers of, said umbrellas, into the belief that the said umbrellas manufactured and sold by said respondents are covered with a fabric made entirely of silk, the product of the cocoon of the silkworm; and the sale in interstate commerce by the respondents of umbrellas so designated and described has the capacity and tendency to divert trade from the competitors of respondents, to the injury of such competitors.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and of respondents' 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 respondents and the testimony and evidence introduced, brief and oral argument having been waived, and the Commission having made its findings as to the facts and its 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 the respondents, Max Dorf, and Dorf & Co., its officers, agents, and employees, in connection with selling or offering for sale of its merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from: (1) Using in their advertising the coined word "Servisilk" as descriptive of an umbrella or its covering, unless said covering be entirely of silk; (2) Using in their advertising the word "taffeta," or "Swiss taffeta," as descriptive of the material constituting the covering of the umbrellas manufactured and sold by respondents, unless said coverings are entirely of silk.

It is further ordered, That the said respondents shall, within 30 days after the service upon it of a copy of this order, 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.

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IN THE MATTER OF
NATIONAL DAIRY UNIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1988. Complaint, Nov. 18, 1931—Decision, Mar. 28, 1932*

Consent order requiring respondent corporation, its agents, etc., to cease and desist from representing, publishing, etc., in aid or furtherance of production, sale, and distribution of butter in interstate commerce, (a) any false and defamatory statements purporting to describe manufacture, sale, or composition of oleomargarine; (b) matter or information stating said product, or coconut oil contained therein, is foul, insanitary, etc., or unfit for human consumption; or (c) that sale of said product is a rich man's graft or false information concerning cost of materials used in manufacture thereof; all as in said order more specifically set forth.

Mr. PGad B. Morehouse 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 National Dairy Union, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, National Dairy Union, exists as a corporation organized in 1903 under the laws of the State of Illinois and has its office and principal place of business at No. 630 Louisiana Avenue NW., Washington, D. C. Said corporation is now and for more than two years last past has been engaged in the dissemination of information of interest to a large mailing list of dairy and creamery companies, its members, as well as nonmembers; the annual solicitation of funds from members and the continual solicitation of new memberships.

Respondent's officers, members, and prospective members are persons and companies engaged in the production, sale, and distribution, among other dairy products, of butter, which, when manufactured or produced, is shipped and transported from their respective places of business in the State thereof in, into, and through various other States of the United States to retailers, produce dealers, and other customers located therein for delivery and retail to the ultimate con-