

IN THE MATTER OF
WESTERN LEATHER CLOTHING 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 1820. Complaint, May 3, 1930—Decision, May 24, 1932

Where a corporation engaged in manufacture and sale of horsehide and cowhide leather coats, labeled garments of latter leather "genuine horsehide, front quarter" and sold same thus labeled to wholesale and retail dealers, by whom said coats were displayed and sold to consuming public as and for horsehide; with result that purchasers were misled and with tendency and capacity to mislead and deceive public and purchasers and prospective purchasers into believing such garments to be made of the preferred and similar appearing, but more expensive horsehide, and induce purchase thereof in reliance upon such belief, and truth and accuracy of aforesaid labels, and thereby divert trade to it from competitors dealing in horsehide and cowhide coats without such misrepresentation:

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. Robert H. Winn for the Commission.

Greensfelder & Grand, of St. Louis, Mo., 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, a Missouri corporation engaged in the manufacture and sale of leather clothing and with principal office and place of business in St. Louis, with 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; in that respondent, engaged as aforesaid, sold certain of its products, not made from the hide of the horse, with labels attached by it reading "Genuine Horsehide"; with capacity and tendency to mislead and deceive the purchasing public as to the composition of said products; to the prejudice of the public and competitors.

Upon the forgoing 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 respondent herein, Western Leather

Clothing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed. Thereafter counsel for the Federal Trade Commission and counsel for the respondent having submitted briefs the case was submitted to the Commission upon the briefs and the record without oral argument, oral argument having been waived by counsel for the Commission and counsel for the respondent. Thereupon this proceeding came on for final consideration and the Commission having duly considered the record and 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. Respondent, Western Leather Clothing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal office and factory located in the city of St. Louis in the State of Missouri. The respondent is now and for more than seven years last past has been engaged in the business of manufacturing and selling clothing, including leather coats and other leather garments.

PAR. 2. The leather garments manufactured by respondent when sold have been shipped from the place of business of respondent in St. Louis, Mo., to purchasers located in various States of the United States other than the State of Missouri. In the course and conduct of its business respondent is in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of leather coats and other leather garments. In the course and conduct of its business respondent has manufactured coats of cowhide and has also manufactured coats of horsehide. When these leathers are tanned for use in the manufacture of coats very few people are able to distinguish between tanned horsehide and tanned cowhide. This difficulty is shared by persons in the trade engaged in the manufacture of garments from such cowhide or such horsehide.

PAR. 3. In the course and conduct of its business respondent has caused labels bearing the words "genuine horsehide, front quarter" to be affixed by sewing into the lining of certain coats manufactured by it from cowhide and which coats made from cowhide and labeled "genuine horsehide, front quarter" respondent sold and shipped

from its place of business in the city of St. Louis, State of Missouri to the retail dealers and wholesale dealers who were the purchasers thereof located in other States of the United States.

PAR. 4. The cowhide garments so sold by the respondent in interstate commerce and bearing the labels "genuine horsehide, front quarter" were resold by the wholesale dealers, to whom respondent sold such garments to retail dealers and in some instances were resold by the said wholesale dealers direct to the consuming public. The said garments were exposed for sale and sold in either case as and for horsehide garments and with the said labels affixed upon them. The said garments were exposed for sale and sold by the retail dealers to whom the said garments came in the usual course of trade, to the consuming public as and for horsehide garments and with the said labels affixed upon said garments. The said labels which had been affixed to the garments by the respondent and which were on the garments when they were exposed for sale and sold to the consuming public, led purchasers thereof to believe that the said cowhide garments, manufactured and labeled by the respondent as aforesaid, were in fact made of horsehide.

PAR. 5. The consuming public in the purchase of leather garments prefers garments made of horsehide to those made of cowhide. The average cowhide coat can be manufactured for from 50 cents to 75 cents less than the average horsehide coat.

PAR. 6. There are in this country competitors of the respondent engaged in the manufacture and sale in interstate commerce of leather garments, including cowhide coats and horsehide coats. Certain of these competitors do not label cowhide garments with horsehide labels. At least one of these competitors has not been able to sell cowhide coats because purchasers preferred garments with the horsehide label.

PAR. 7. Respondent since and including its "1930 season" has ceased labeling the cowhide garments manufactured by it as "horsehide".

PAR. 8. The labeling by respondent of cowhide garments with labels bearing the words "genuine horsehide, front quarter" as set forth herein is false and misleading and the use of such labels by respondent, Western Leather Clothing Co., on garments not made of front quarter horsehide in the manner and form above alleged, has the tendency and capacity to mislead and deceive the public and prospective purchasers and purchasers of such garments into the erroneous belief that the said garments are manufactured of front quarter horsehide and to induce prospective purchasers of such garments to

178

Order

purchase such garments in reliance upon and by reason of their belief in the truth and accuracy of such labels and thereby to divert trade to respondent, Western Leather Clothing Co., and from its competitors.

CONCLUSION

The acts and practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's 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."

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 respondent, the testimony taken and the briefs filed herein and the Commission having made its findings as to the facts and conclusion that 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 respondent, Western Leather Clothing Co., a corporation, its officers, agents, representatives, and employees cease and desist, directly or indirectly in connection with the offering for sale or sale in interstate commerce or in the District of Columbia of garments not made from the tanned hide of the horse:

From using the word "horsehide" as a brand name, or on labels or other markings or otherwise to represent, advertise, or describe such garments.

It is further ordered, That respondent, within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

Complaint

16 F. T. C.

IN THE MATTER OF
METAL TILE CONSTRUCTION COMPANY, 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 1955. Complaint, June 1, 1931—Decision, May 31, 1932

Where a corporation engaged in importing a Belgian wall and ceiling covering composed of zinc plates so enameled, stamped, and made as to imitate different colors, and mortar lines of genuine tile, and exact appearance thereof installed in place, and in sale of said product to jobbers, contractors, builders, and public generally, described same as "Belgian Tile" or "Belgiantile" in advertisements in periodicals of national circulation, and in catalogues, circulars, leaflets, etc., circulated among trade and general public; with tendency and capacity to deceive purchasers into believing said product to be that kiln baked, clay tile installed and set by tile setters, and generally understood from the word, and to divert to it trade of competitors engaged in sale of genuine imported Belgian, or domestic tile, as the case might be:

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

Mr. Max Wittenberg, of Brooklyn, N. Y., for respondent.

Mr. Sol A. Herzog, of New York City, for Associated Tile Manufacturers, Inc., intervenor.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation long engaged in the importation from Belgium of a zinc covered sheet so prepared as to imitate tiling, and in the sale of said tile and tiling substitute to jobbers, contractors, builders, and the general public for walls and ceilings of bathrooms, kitchens, breakfast rooms, as well as in hospitals, shops, and hotels, and with principal place of business in New York City, with 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 in its advertising catalogues, circulars, leaflets and other like literature it falsely and misleadingly designates aforesaid product as "Belgian Tile"; with tendency and capacity to deceive purchasers thereof into believing same to be tile, and to divert to it trade of competitors engaged in sale of similar products, truthfully advertised and