

Complaint

IN THE MATTER OF

BEACON MANUFACTURING 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 1873. Complaint, Nov. 3, 1930—Decision, June 28, 1932

Where a corporation engaged in manufacture of colored blankets patterned after the design of the American Indian, hand-made blanket, and in sale thereof to retail dealers under such distinguishing grade names as "Wigwam," "Sachem," etc., supplied said dealers with window display "cut-outs" for their use in depicting an Indian, with its so-called Beacon blanket, in said dealers' window displays, in act of weaving such a blanket on an Indian loom, and in various characteristic Indian scenes with such blankets, together with such descriptive captions as "Beacon Blankets," "Beacon Indian Blankets," "The Pueblo Marriage," "The Pueblo Indian announces his marriage by slipping his blanket around his mate," and thus supplies said dealers with the means of deceiving persons into believing such blankets to be genuine Indian made blankets, and trespassed upon the rights of the sellers of such blankets, to their prejudice and injury and that of the Indian makers and sellers thereof, and the substantial industry therein established by them:

Held, That such acts and practices were to the prejudice of the consuming public and Indian makers and sellers of the genuine Indian made blanket, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Hinckley, Allen, Tillinghast, Phillips & Wheeler, of Providence, R.I., 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 Massachusetts corporation engaged in the manufacture of blankets, shawls, bath robes and other similar napped fabrics, and in the sale and distribution thereof among various States, and with mills in New Bedford, Mass., and Swannanoa, N.C., and executive officers in New Bedford and salesrooms in New York and Chicago, with advertising falsely or misleadingly and misbranding or mislabeling as to nature of manufacture of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, in its catalogs describes certain blankets not made by American Indians, but made, woven, or knit by machinery in mills or factories as "Indian Blankets", "Ombre Indian Blankets", "Wigwam Blankets",

"Sachem Blankets", "Agawam Blankets", "Mingo Blankets", and "Casco Blankets", and sells said blankets labeled with such trade names as "Wigwam", "Sachem", "Huron", "Agawam" and/or "Mingo", with capacity and tendency to deceive and mislead purchasing public into buying same as and for blankets made or woven by American Indians.¹

Respondent further, as charged, "furnishes to retail dealers advertising matter consisting of Indian cut-outs, show cards, newspaper cuts, and photographs of window displays, which advertising matter depicts Indians in the act of weaving blankets and Indian group scenes for use of the retail dealer in selling the said blankets to the public and the said advertising matter when so used has the capacity and tendency to deceive and mislead the public into buying said blankets in the belief that the said blankets were made or woven by American Indians when in truth and in fact the said blankets were not made by American Indians."

Such acts and things, as charged "are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5."

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 respondent, Beacon Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The complaint was filed in November, 1930, and charged the respondent, Beacon Manufacturing Co., with unfair methods of competition in connection with sales and advertisements of its blankets in the failure to discriminate sufficiently between its manufactured blankets and blankets made by American Indians.

The respondent entered its appearance and filed its answer to said complaint, denying the deceptive character of its representations. Thereafter hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondent.

¹As alleged, "there are in the United States several tribes of Indians who make a product designated as 'Indian Blankets' and said product is sold in interstate commerce under the aforesaid designation to the trade and the purchasing public. These tribes include the Hopi, Leupp, and Navajo Indians in Arizona, and the Pueblo Bonita, San Juan, and Southern Pueblo Indians of New Mexico. The value of their output is substantial, and their blankets, so designated, have acquired a reputation for wearing qualities, and there is a valuable good will in the word 'Indian' as applied to the same."

Thereupon, this proceeding came on for final hearing on the briefs and oral argument, and the Commission, being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Beacon Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and has been, since about 1905, engaged in the manufacture of blankets and the sale and shipment thereof throughout the various States of the United States. Its principal place of business and executive office is located at New Bedford, Mass. It maintains sales offices at New York City, and Chicago, Ill., and owns and operates manufacturing mills at New Bedford, Mass., and at Swannanoa, N.C. The respondent, during all the times herein mentioned, has been and still is engaged in selling, distributing, and shipping to its customers throughout the United States blankets, which selling and shipping is done at and from the said offices or manufacturing mills of respondent. The preponderant part of its sales of blankets is made direct to the retail trade, which in turn resells said blankets to the ultimate consumers. A comparatively small part of its sales is made to "concession" jobbers, who resell to buyers such as fairs and bazaars for resale to the public. The respondent publishes catalogs for use in soliciting and making sales of its blankets to the retail trade, and it also employs traveling salesmen who call on the retail trade for said purpose.

PAR. 2. The respondent in 1912 began the manufacture and sale of a blanket of Indian colors and design. The design was patterned after that of hand-made blankets of the American Indian. The respondent designated this type of blanket in its catalogs, "Beacon Indian Blanket." About 1922, the respondent began the manufacture of Indian-design blankets of different grades and quality, and in order to distinguish the different grades, gave to each grade of blanket an Indian name, such as "Wigwam," "Sachem," "Agawam," "Huron," "Casco," and "Mingo." These blankets appear in the catalogs as "Beacon Indian Blankets," "Wigwam," "Beacon Indian Blanket," "Sachem," etc. The respondent, in connection with sales to retail dealers, affixes to each Indian design blanket a label. The blankets are resold to the consuming public with the label attached. This label is approximately 4 inches by 7 inches in size and contains a picture of a manufacturing plant or factory and carries the word "Beacon" in large type; in smaller

type the words "Beacon Blankets Make Warm Friends," and the Indian name to designate the particular quality, such as "Sachem," "Wigwam," etc. The sale and distributing of Indian design blankets by respondent in its business as above described extend to all the States of the United States. Respondent's annual sales of Indian design blankets in the United States for the year 1930 amounted to \$85,000, and said sales represent between 30,000 and 35,000 Indian-design blankets.

PAR. 3. The respondent furnished its retail dealer customers books containing instructions and suggestions regarding newspaper advertising and store and show window display advertising of its blankets. Among the material furnished retail dealers for newspaper advertising there were "mats" or "cuts" which, when reproduced, were pictures of Indians, Indian blankets, and Indian scenes which carried the words "Beacon Blankets" and "Beacon Indian Blankets" (Com. Ex. 22, p. 41; Com. Ex. 13, pp. 39, 44, 47, 52, 55). In addition to the furnishing of books containing suggestions regarding store and show window display advertising of its blankets, the respondent furnishes the material for store and window display advertising, among which are various pictures depicting and representing Indians, Indian blankets, Indians weaving blankets, looms on which Indian blankets are woven, and various Indian scenes. Some of these pictures are on heavy pasteboard and are in the shape or outline of the things pictured; they are made to stand alone and are referred to as "cut-outs." Some of the picture display advertising carries the words "Beacon Blankets", and a few of the display advertising pictures carry the words "Beacon Indian Blankets"; some of the pictures, in addition to the above-mentioned words, carry the words, "Beacon Blankets Make Warm Friends." One of the pictures, which depicts an Indian marriage, has on it in addition to the words "Beacon Blankets Make Warm Friends", the following: "The Pueblo Marriage." "The Pueblo Indian announces his marriage by slipping his blanket around his mate." No other words or markings appear on the above-described pictures (Com. Ex. 13, pp. 4, 33, 66, 72; Com. Ex. 22, pp. 14, 15, 18, 19, 23; Com. Exs. 7, 8, 8a, 9, 9a, 9b, 10, and 11).

Commission's Exhibits 8 and 8a are cut-outs which, when assembled according to directions of respondent, form a single display and depict a blanket being woven on an Indian loom by an Indian child guided by an elderly Indian. These exhibits are in natural colors, but an assembled picture of this display appears in respondent's advertising book furnished dealers, and in this book respondent

describes this picture as "The Indian Blanket Weavers" (Com. Ex. 22, p. 15). The top portion of this picture is a true representation of the top of a Navajo Indian loom on which Indian blankets are woven by the Navajo Indians. The only words appearing on this assembled picture when displayed according to respondent's instructions are the words "Beacon Blanket." The instructions for assembling and displaying these exhibits direct the user to place one of respondent's blankets so as to hang directly below the warp of the loom and to have the Indian's hands at the point where the weaving operation takes place.

Commission's Exhibits 9, 9a, and 9b are cut-outs which, when assembled according to directions of respondent, depict a blanket being woven on an Indian loom by an adult Indian squatting in front of the loom. These exhibits are in natural colors, but an assembled picture of this display appears in respondent's advertising book furnished to dealers, and in this book respondent describes this exhibit as "The Weaver" (Com. Ex. 22, p. 23). The instructions direct that a Beacon blanket be inserted in this loom at the point where the warp ends, and the combined exhibit so arranged and the hands of the Indian are raised to the point where the weaving operation takes place.

The respondent furnishes to its dealers other Indian cut-outs and they are shown in respondent's book of suggestions to dealers and are described by respondent in the following language:

Large Indian cut-outs in full color. Made to stand alone. So realistic are these cut-outs when displayed with Indian blankets that they compel instant attention to your window. (Com. Ex. 13, pp. 62, 63.)

The respondent conducts on a large scale advertising of the above nature and character. Such advertising is displayed to the public by means of these pictures. The instructions of respondent to its retail dealers to insert a Beacon blanket in the above cut-outs of Indian looms (Exs. 8, 8a, 9, 9a, and 9b) result in the respondent's blankets being exhibited and displayed to the public in these looms, and show or depict Indians hand-weaving one of respondent's machine-made blankets. These picture representations made by respondent in connection with sales of its blankets are false.

PAR. 4. There are in the United States American Indians belonging to the Navajo Tribe who weave a product which is used mostly for floor coverings and for decorative purposes, such as couch covers and throws over beds. A considerable number are used as tapestries and for pillowtops and wall decorations. This product is referred to and designated as "Indian blankets" and "Navajo rugs." The

two terms are used interchangeably. They are too heavy for ordinary personal or bed wear of the white race. Two of these blankets or rugs have been placed in evidence (Com. Ex. 26 and Resp. Ex. 4).

The Navajo Tribe is located in Arizona and New Mexico, and has a population of approximately 40,000. Their livelihood is gained principally from the raising of sheep, from the wool therefrom, and from the making of blankets from the aforesaid wool. The wool which the Indians use comes from their flocks and is carded, spun, and dyed by them. The loom which they use for the weaving of blankets consists of two horizontal bars, one hung above the other, and the warp is stretched between. A very small loom is in evidence as Commission's Exhibit No. 28. The said blankets have acquired a reputation for wearing qualities, and there is a valuable good will in the word "Indian" as applied to the same.

The United States Indian Office, Department of the Interior, supervises the development of industries among the Indians. The art of making blankets is taught by the Indian Office in fourteen schools located on the reservations. These schools are operated by the United States Government.

The making of blankets by Navajos is a substantial industry, and, with the moneys gained thereby, constitutes one of their principal sources of livelihood. Between \$500,000 and \$750,000 worth of blankets are woven and sold annually by the Navajo Tribe, principally to the traders licensed by the Government and located in Arizona and New Mexico. These Indian traders carry stores of clothing and food supplies which are sold or traded to the Indians for their products. The traders sell the blankets at wholesale to dealers, such as art, curio, and specialty shops. They also sell, to a limited extent, to department stores located in the principal cities; also at retail, to tourists, and by catalog to persons residing throughout the different States of the United States. The art, curio, and specialty shops are located throughout the United States, usually in the principal cities, and sell at retail to the public. The annual retail value of blankets made by Navajo Indians amounts to between \$1,000,000 and \$1,500,000.

PAR. 5. The retail dealer buyers of respondent's Indian design blankets know the origin of the said blankets. The words "Beacon Blankets", or the words "Beacon Indian Blankets", signify to such buyers blankets made by the respondent. The use of the word "Indian" and the use of Indian pictures therewith do not deceive this class of buyers. The question is, What do the members of the consuming public understand by the representations made to them by the respondent by means of the term "Indian Blanket", and by

means of pictures of Indians and Indian scenes, and pictures of genuine Indian blankets and Indian blanket looms, and Indians weaving blankets?

PAR. 6. The evidence shows that respondent's blankets of Indian design are sold by respondent to retail dealers and are resold in retail stores in every State of the United States. The evidence shows that there is a class of the consuming public to whom the name, designation, or representation "Indian", when applied to blankets, means blankets made by Indians. The evidence shows that there is a class of the consuming public which does not know what tribe or tribes of Indians weave blankets. The respondent produced testimony which shows a class of ultimate buyers who have heard of blankets made by Indians and have heard blankets designated "Indian blankets", but that such ultimate buyers know nothing about the construction, quality, appearance, or price, and cannot distinguish between a blanket made by an Indian and a machine-made blanket of Indian design. One Indian trader who handled Navajo blankets as well as machine-made blankets testified as follows:

Q. Does the average person you deal with in the East know an Indian blanket when he sees it?

A. No; not always; very rarely.

Q. It is very rare for them to know it?

A. Yes, sir.

Q. On numerous occasions have you had any difficulty convincing them it was a genuine Indian blanket?

A. I have often had to convince them. I can always convince a person (tr. p. 498).

Another witness called by the respondent testified on cross-examination:

Q. In selling them curios and Indian blankets do you have numerous occasions to explain to them the weave and the material of which the Indian blanket is made?

A. Yes, sir.

Q. Have you not as a result of your seven years' experience been able on numerous occasions to determine whether or not the prospective customer is familiar with Indian blankets?

A. Yes; conversation with them; yes.

Q. Is it unusual for customers coming in not to know, or to show that they do not know, or to indicate their lack of knowledge, rather, of an Indian blanket.

A. No.

Q. By that do you mean that it is not unusual.

A. It is not unusual; no.

Q. Isn't that true in a large number of cases where a customer indicates they are from the East, or not from this section of the country?

Findings

16 F.T.C.

A. Yes; I would say so.

Q. You have traveled extensively in the East?

A. Yes, sir.

Q. Have you discussed the subject matter of Indian blankets in the East?

A. Yes; on occasion.

Q. Do you find the lack of knowledge as to what an Indian blanket is composed of, or how it is woven, quite general throughout the East?

A. Yes (Tr. 524).

Another witness called by the respondent testified on cross-examination as follows:

Q. Do you come in contact with prospective customers who come into your place of business?

A. Yes; I do.

Q. Are they made up, to a certain extent, of tourists that are from other parts of the country, other than New Mexico and Arizona?

A. Yes; almost entirely.

Q. Have you had occasion to explain to your prospective customers the details of the weaving of Navajo blankets?

A. Yes; very frequently.

Q. Have you, as a result of coming in contact with such prospective customers, been able to ascertain their knowledge or lack of knowledge of the product woven by the Indians?

A. Yes.

Q. Is it a fact that a substantial number of prospective customers that come into your place of business are not sufficiently familiar with the Navajo product to determine its genuineness at the time they first come into your store?

A. Yes; I think the majority are quite ignorant of what constitutes a piece of handcraftsmanship of any kind (Tr. p. 564).

PAR. 7. The respondent called a number of witnesses from the larger and more representative department and dry goods stores of the country which handle its blankets. They testified as to the knowledge of the public of the term "Beacon" as applied to blankets. These witnesses testified that respondent's Beacon blanket is one of the best-known cotton blankets in America, and that it is well and favorably known to the buying public, and that respondent's Beacon blankets meant to a portion of the public a line of manufactured blankets.

The evidence establishes that to many of the public the word "Beacon" means a manufactured blanket. They could not and do not take the word "Beacon" to mean a blanket made by the Beacon Manufacturing Co., for even respondent's label fails to disclose this fact. The evidence of this class of witnesses proves no more than that there is a class of buyers who know Beacon blankets and know they are manufactured blankets.

The word "Beacon", in connection with respondent's show cards carrying the word "Indian", and respondent's Indian "cut-out" pictures, does not convey to a portion of consumer buyers the understanding that the blankets are not made by Indians. One witness, a member of the consuming public and an associate editor of a well-known women's magazine, testified that respondent's cut-out displays (Com. Exs. 9, 9a, and 9b, and 8 and 8a) would convey to her the impression and understanding that the blankets were made by Indians. Commission's Exhibits 8 and 8a, and 9, 9a, and 9b are true representations of Indians making blankets, and when one of respondent's blankets is inserted in either of these combined exhibits, is a representation of Indians hand weaving respondent's machine-made blankets. The witness referred to above testified, in answer to the following inquiries:

Q. * * * I am going to direct your attention * * * to an exhibit which we have here. For the purpose of identifying it in the record it is Commission's Exhibits Nos. 9, 9a, and 9b, and it has also in it Commission's Exhibit No. 24. What representation, if any, does that exhibit, as now set up, give to you?

A. Why that is an Indian blanket being made by a North American Indian.

Q. And what does the term "Indian blanket" mean to you?

A. A blanket made by Indians.

Q. If you saw that exhibit in a reliable department store window, what impression, or what would you expect to find offered for sale?

A. Blankets made by Indians.

Q. And on those two exhibits I direct your attention to the words "Beacon blankets." What, if anything, do these words carry to you?

A. Well, then I realized that it was undoubtedly intended as a trade name. My business training would tell me that. I probably would not have particularly noticed it. It is rather in my mind secondary to the impression of the Indian; the impression I first got.

Q. Are you familiar with Beacon blankets?

A. I do not happen to be (Tr. pp. 1944-1980).

Another woman witness, member of the consuming public, conducting an art school and engaged in teaching fine arts, testified (R. pp. 1933-2011) that the term "Indian blanket" meant to her a blanket made by the Indians, and testified that respondent's pictures representing Indians conveyed to her the same meaning, and that the word "Beacon" did not correct this impression. This witness testified with respect to the impression conveyed to her by Indian pictures carrying the word "Beacon", "I would think that that was their form of manufacture, and that they were Indian blankets and that they employed the Indians to do the work" (R. p. 2000).

Another witness, engaged in the real-estate business, testified (R. pp. 2013-2037) that respondent's Indian cut-outs carrying the word "Beacon" conveyed to him the impression that the blankets were made by Indians. This witness testified in response to such inquiry, "Well, I should think it was a blanket made by the Indians and distributed by somebody named Beacon. I would think they were distributors for the Indian blankets" (R.2018).

On Commission's exhibits 6 and 6a and exhibit 10 there are representations of an Indian smoke signaling with a blanket. The word "Beacon" itself suggests the outdoor life of the Indian and the activities of the Indian. It was a custom of the Indian tribes to set out beacon signals as warnings and to convey other information. The word "Beacon" is more indicative of Indian life and industry than of a manufacturing plant or mill, and to those not acquainted with Beacon blankets the word "Beacon" on Indian pictures accentuates the impression given by the pictures themselves.

The word "Beacon" as exhibited to the purchasing public on respondent's pictures does not mean to a portion of such buyers that the blankets are manufactured by others than Indians. The evidence is that the word "Beacon" has no such universal meaning. The word itself appearing on pictures of Indian blankets and Indians weaving blankets conveys the understanding to those whom the word has no definite meaning or understanding, that Beacon is a seller or distributor of genuine Indian blankets. It is at least more reasonable that the word "Beacon" would convey this meaning than an understanding that the blankets are manufactured by others than Indians.

PAR. 8. The cut-out pictures of Indians weaving their blankets are true pictorial representations of Indians and Indians weaving their blankets; and when one of respondent's blankets is inserted according to the directions of respondent into the proper opening on Commission's Exhibits 8 and 8a and 9, 9a, and 9b, the representation is that blanket of respondent is woven or being woven by Indians. To those of the public who know and understand the term "Beacon" to mean a manufactured blanket, the cut-out pictures would not be misleading or deceptive, but to members of the public who do not attribute such meaning to the word "Beacon", no other meaning can be attributed to the picture cut-outs than a representation that the blankets so advertised are made by Indians. Such pictures, in connection with the sale of respondent's blankets, and when respondent's blankets are inserted therein according to the instructions of the respondent, are palpably false, and their use in connection with

the sale of such blankets is a trespass upon the rights of sellers of Indian blankets. If the respondent is allowed to continue the use of the cut-out pictures depicting Indians weaving blankets and pictures of Indian looms, substantial injury to the Navajo Indians and sellers of their blankets will result.

The representation by means of pictures that the blankets are made by Indians is as complete as if made by adequate words, and is more impressive and lasting. To those who purchased respondent's blankets, the label attached to the blanket might have corrected the deception created by the pictures. Even here there is the chance that some would not see the label, and the likelihood of some who did inspect the label to be deceived or left in doubt and confusion. The use of the label carrying the word "Beacon" and a picture of a manufacturing plant or mill, even though it is assumed, contrary to the evidence, that all who purchased the blankets saw the label and understood that the blankets were not made by Indians, does not justify the false representation of respondent by means of pictures that its blankets are made by Indians. Having created the false impression that the blankets are made by Indians, it is immaterial that a true representation was made to buyers in another manner.

The use of pictures of Indians and Indian scenes and the use of the words "Indian blankets" and the words "Beacon Indian blankets", without clearly showing in connection therewith that the blankets are not made by Indians, will work injury to sellers of Indian blankets, and this, irrespective of whether or not the public may or may not buy respondent's blankets under its label as and for blankets made by Indians. The said false pictures and words offer the chance of deception, and provide retailers with the means of deception, and will cause confusion in the minds of the public who are not acquainted with the Indian blankets, and create in the minds of the public doubt and distrust as to the genuineness of Indian blankets when offered for sale, and will work injury to the industry of the Navajo Indians.

PAR. 9. The blankets made by respondent and the blankets made by the Navajo Indians do not precisely fill the same commercial wants. The evidence shows that the purpose of respondent's use of the false pictures is not to injure the sale of the Indian blankets but to increase its own sales through the use of the advertising described. The practice of respondent is, nevertheless, a competitive practice in the course of commerce as defined in the Federal Trade Commission Act and does result in injuriously affecting the blanket industry of the Navajo Indians.

PAR. 10. The evidence shows that the Pendleton Woolen Mills, of Pendleton, Oreg., manufacture and sell a woolen blanket of Indian design. The Pendleton company uses two labels in connection with sales of its blankets—one a paper card label approximately 6 inches by 4 inches, carrying the words in clear type, "Pendleton Indian Blanket, Pendleton Woolen Mills, Pendleton, Oregon"; the other is a silk label which is sewed on each blanket and carries the words, "Warranted to be a Pendleton, Pendleton Woolen Mills, Pendleton, Oregon". The Esmond Mills also manufacture and sell a cotton Indian-design blanket. This blanket carries two labels—one a paper card approximately 2 inches by 5 inches carrying the trade mark, picture of a rabbit, and the words, "Esmond blanket soft and warm as rabbit fur Indian blanket". On the reverse side of this card label appears the following words: "Esmond blankets are made that way in the peace and quiet of an old New England village, Esmond, Rhode Island." The record contains no evidence that the Pendleton Woolen Mills or the Esmond Mills used pictures such as are used by the respondent, or used the words "Indian blanket" without clearly indicating that said blankets are made by Pendleton Woolen Mills, or Esmond Mills, respectively.

CONCLUSION

The representations and practices of the respondent as set forth in the findings as to the facts herein are to the prejudice of the consuming public and the Navajo Indians and sellers engaged in selling Navajo blankets, 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 upon the complaint of the Commission, the answer of the respondent and the testimony and evidence introduced and briefs and oral argument, and the Commission having made its findings as to the facts and 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, Beacon Manufacturing Co., its officers, agents, and employees, in connection with selling, advertising, or offering for sale its blankets in interstate commerce

between and among the several States of the United States, do cease and desist from:

(1) Using pictures depicting, portraying, or representing Indians weaving blankets, looms on which Indian blankets are made, and Indian blankets, and using pictures depicting, portraying, or representing Indians, or Indian camping or marriage scenes, or other Indian scenes, unless such pictures have thereon appropriate language, such as Beacon Manufacturing Co. Indian blankets, or Beacon Indian design blankets, or Indian design blankets, or other words or phrases clearly indicating that the blankets thus advertised are not woven by American Indians but are manufactured by respondent.

(2) Furnishing retail dealers of respondent with such pictures as just above described for the purpose of advertising respondent's blankets, unless appropriate language appears on said pictures clearly representing or showing that respondent's blankets are not made by American Indians but are manufactured by respondent.

(3) Using the word "Indian", or the words "Indian blankets", or the words "Beacon Indian blankets", in advertising by means of show cards, display cards, and the like, or otherwise, unless accompanied by appropriate words such as "Beacon Manufacturing Co. Indian blankets", or "Beacon Indian design blankets", or "Indian design blankets", or other words or phrases clearly indicating that respondent's blankets are not made by American Indians, but are manufactured by respondent.

(4) Furnishing respondent's retail dealers with advertising material such as show cards, display cards and the like, or otherwise, bearing the word "Indian", or the words "Indian blankets", or the words "Beacon Indian blankets", unless such advertising material bears thereon apt words such as "Beacon Manufacturing Co. Indian blankets", or "Beacon Indian design blankets", or "Indian design blankets", or other words or phrases clearly indicating that respondent's blankets are not woven by American Indians, but are manufactured by respondent.

It is further ordered, That respondent shall, within 60 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 this order has been complied with and conformed to.

IN THE MATTER OF
BROWN FENCE & WIRE 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 1929. Complaint, Mar. 19, 1931—Decision, June 28, 1932

Where a corporation engaged in the sale, on mail order, direct to the consuming public through advertisements in farm journals, and approximately a million catalogues distributed annually to customers and prospective customers in the farming communities, principally, and dealing in (1) wire fencing, fence posts, gates, fence stretchers, and other fencing accessories, manufactured chiefly in one of its three plants; (2) a considerable amount of wire fencing and fence anchors, made in and purchased from mills neither owned nor controlled by it, shipped upon order direct from place of production to consumer, and made, in case of said anchors, with tools and pursuant to designs developed by it for the manufacture thereof; (3) paints, varnishes, and enamels made for it according to its own special formulae in a factory in which it owned no interest; and (4) tires and tubes, baby chicks and poultry supplies, nursery stock, stoves and stove supplies, cream separators, roofing and shingles, nails, shrubs, storage tanks, water heaters, lamps, gas engines, hog troughs, and incubators; some of which merchandise was made for it by the manufacturers in their dull season under contracts pursuant to which it advanced funds for materials and bought the products at cost thereof, plus manufacturing expense, and thereby through its volume of business and considerations of overhead and seasonal losses sometimes obtained said products at cost and less and was thus able to resell same at a very low price, and all of which merchandise, excepting only that made by it as aforesaid, or for it under said contracts, it purchased from manufacturers in 35 distributing centers in various States under arrangement by which the merchandise was sent from the factory direct to the consumer upon receipt of its order at a price including two separate profits;

Represented in its catalogues that it sold direct from factory to consumer and that its prices for the articles there advertised were low because the customer did not have to pay anything for middlemen's profits and expenses, and were lower than competitors' prices because its customers paid only actual cost of manufacturing plus one small profit and described its prices as "direct from factory prices", and implied that all its goods were made by it, through such statements as "Forty years ago I started my straight line selling plan. Now I have over a million customers and the largest direct from factory fence business in the world! * * *", "My prices are so low because you don't pay a cent for middlemen's profits and expenses. No dealer, salesman, or jobber comes between us. You get the saving in cash and better quality", "My direct from factory plan of dealing is the most economical way of buying goods", "Every middleman who handles the goods on its way from the factory to you must add his profit and expense and include it in his selling price.