

Complaint

IN THE MATTER OF

LIMOGES CHINA 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 1912. Complaint, Feb. 5, 1931—Decision, July 7, 1932

Where chinaware made at Limoges, France, had long been imported into the United States and increasingly sold therein, and had come to acquire a favorable reputation in the United States as china of beauty, quality, and utility made at Limoges, and to be in great popular demand and the leading china in the markets of the United States, and was sold in the United States with the word "Limoges" prominently displayed thereon, and was generally so known to and described by the trade and public; and thereafter a domestic corporation engaged in the manufacture of earthenware and pottery and sale thereof to wholesalers, department stores, and other retailers, adopted the word "Limoges" as part of its corporate name and featured said word in its advertising and in brands employed by it, with words, if any, suggestive of domestic manufacture or origin either blurred or illegible or in such small and inconspicuous letters as to fail to give effective notice of said fact;

With capacity and tendency to mislead public into believing aforesaid ware to be that produced at Limoges and imported therefrom and to divert trade from competitors dealing in fact in genuine Limoges china, and competitors dealing in comparable domestic products, without claiming falsely foreign origin therefor, and with effect of placing in the hands of retailers the means of similarly deceiving their customers and purchasers as to the origin of its aforesaid Limoges marked products:

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

Mr. James M. Brinson for the Commission.

Byrnes, Stebbens, Parmelee & Blenko, of Pittsburgh, Pa., *Metzger, McCarthy & McCorkhill*, of Salem, Ohio, and *Barnum, Hammond, Stephens & Hoyt*, of Youngstown, Ohio, 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, an Ohio corporation, engaged in the manufacture of earthenware and pottery, and in the sale thereof to wholesale and retail dealers and department stores, and with principal office and place of business at Sebring, Ohio, with using misleading trade or corporate name, advertising falsely or misleadingly and mis-

Complaint

16 F.T.C.

branding or mislabeling as to source or origin or nature 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, features its corporate name in its advertisements, letterheads, and other stationery and in the marks or brands upon its products, through such statements as "Limoges * * * Fine Dinner Ware Made Especially for Department Stores. Here is a name that stands at the very top of the list, when potters discuss the plant equipment of the world * * * Shapes are constantly being modernized, colors improved * * * The Limoges China Co. * * *", "The Flanders Poppy Table Service in American Limoges Ivory", "peach-blo ware by Limoges, Sebring, Ohio * * *" (with word "Limoges" conspicuously featured), etc., notwithstanding fact products in question thus advertised, marked, or stamped "have not been, were not, and are not, either porcelain or china manufactured at Limoges, France, or porcelain or china of the type or character or quality manufactured there or of the type, character, or quality which has been and is associated with, or identified by, the word 'Limoges' in the minds of the purchasing public."¹

Each of said practices, as alleged, namely, "the adoption and use of the word 'Limoges' as a part of its corporate name, the use of such word in its advertisements to describe or designate its products and its use on such products as a brand, trade mark, or designation thereof has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the products of respondent, particularly those so described, marked, or designated, have been and are porcelain or china manufactured at Limoges, France, and imported into the United States, or porcelain or china of the type, character, and quality, of the porcelain or china manu-

¹ As alleged in the complaint, "There is now, and for more than one hundred and fifty years approximately, there has been manufactured, at Limoges, in France, a vitreous, translucent, and glazed ware which is now, and has been during said period of time, designated, described, and known as porcelain, or as china by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the nineteenth century, porcelain, or china as it gradually came to be called, began to be exported from Limoges in France, into the various countries of Europe and America and particularly into the United States of America and into and through the several States thereof. Such porcelain or china immediately thereupon acquired a favorable reputation in the United States, as porcelain or china of utility and beauty resulting in the establishment of a good will which developed from time to time an increasingly popular demand for the products of Limoges. In 1904, when respondent was incorporated, this porcelain or china manufactured at Limoges in France and imported therefrom into the United States had long been widely and generally known, and the word 'Limoges' had for many years theretofore come to signify and mean, did signify and mean, ever since has signified and meant, and now signifies and means porcelain or china manufactured at Limoges, France, and imported into the United States therefrom."

factured at Limoges, France, and usually signified or represented by the word 'Limoges', and to induce purchase of products of respondent in reliance on such erroneous belief."

Said practices, further as charged, "have placed and place, and each of them has placed and places in the hands of dealers selling products of respondent, the means to mislead and deceive the consuming public into the purchase of respondent's glazed earthenware as and for porcelain or china manufactured at Limoges, France, or as porcelain or china of the type, character, and quality there manufactured," and "have had and have and each of them has had and has the capacity and tendency to divert trade to respondent from individuals, partnerships, and corporations offering for sale and selling porcelain or china manufactured at Limoges, France, from individuals, partnerships, and corporations offering for sale and selling porcelain or china manufactured elsewhere, of the type, character, and quality of the porcelain or china manufactured at Limoges, France, and also from others offering for sale or selling glazed earthenware truthfully described"; 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon Limoges China Co., a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed answer, testimony and documentary evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and evidence, and briefs in support of the complaint and on behalf of respondent, and oral arguments, and the Commission having duly considered the same now makes this its report in writing, and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Limoges China Co. is now, and since 1904 has been a corporation organized and existing under and by virtue of the laws of the State of Ohio with its principal office and

Findings

16 F.T.C.

place of business at Springfield, Ohio. It has been since 1906, and now is, engaged in the business of manufacturing and selling earthenware and pottery in commerce among the various States of the United States. It sells to wholesale and retail dealers, including department stores, and when sold, respondent Limoges China Co. causes its products to be transported from its said place of business at Sebring, Ohio, to purchasers in the various other States of the United States than the State of Ohio. In the course and conduct of such business respondent has been and now is in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of earthenware, china, and other pottery.

PAR. 2. There has been for one hundred and fifty years manufactured at Limoges, in the Republic of France, chinaware which ware has been since the early part of the nineteenth century exported from Limoges into the United States of America where during such period it has been sold in increasing quantities so that it has acquired and now has a favorable reputation in the United States as chinaware of beauty, quality and utility made at Limoges, France. Since 1885 there has been a great popular demand for this china in the United States and since that date it has been the leading china in the markets of the United States. In 1904 the popularity of said china from Limoges, France, had become widespread among the purchasing public and it had become generally known and described by the word "Limoges", the name of the place in France where it was produced. This significance and meaning of the word "Limoges" has continued to prevail with the trade and with the purchasing public and said china has been since its first importation into the United States generally designated by the trade and public as Limoges china.

PAR. 3. In 1904 respondent adopted as part of its corporate name the word "Limoges". It did so because of the signification of this word as descriptive of the china made in Limoges, France, as more particularly mentioned in paragraph 2 hereof. For a period of two years after its organization respondent manufactured china. In 1906 respondent discontinued the manufacture of china and commenced and since has continued the manufacture of earthenware.

Until 1921, or during the period of seventeen years intervening between 1904 and 1921, the ware manufactured by respondent bore no stamp, brand, or mark except either "Limoges China" or "Limoges China Co." and no indication of manufacture in the United States or of domestic origin. In 1921 respondent began to stamp on its ware, in addition to the name of the company, the words "U.S.A."

or "Sebring, Ohio", beneath the words "Limoges China Co.", still without any statement or indication that its product was manufactured in the United States or of domestic origin.

In 1930 respondent discontinued use of its corporate name accompanied by "U.S.A." or "Sebring, Ohio", on its ware and substituted therefor the words "Peach-Blo by Limoges" with the words "Sebring, Ohio", either blurred and illegible in connection with the lower part of the capital L in the word "Limoges", or in letters relatively so small and inconspicuous as to be unnoticeable. At the same time the word "Limoges" itself was featured in large and conspicuous letters. In other words, it was the most prominent word upon the plate. While it had been featured theretofore in the corporate name, respondent began in 1930 to make the word "Limoges" the outstanding or predominating feature of the brand or stamp on the ware sold by it in interstate commerce. In August, 1930, respondent commenced to use and did use, until July, 1931, as the brand or stamp on its ware, the words "Peach-Blo by Limoges" with the words "Sebring, Ohio", below the word "Limoges" in smaller and less conspicuous letters.

In July, 1931, respondent discontinued use of such stamps or brands and commenced the use of a stamp or brand containing the words "Peach-Blo" in the upper part of a circle, with the word "Ware" below them, immediately beneath which appeared the words "By Limoges, Sebring, Ohio", the word "Limoges" expressed in large and conspicuous letters. In such stamp or brand the words "Peach-Blo" and the word "Limoges" are the outstanding, predominating features. In none of such stamps or brands has there appeared or does there appear, any statement or indication of domestic origin.

Respondent Limoges China Co., in soliciting the sale of its products in commerce among and between the various States of the United States, has used in its advertisements such representations as the following:

LIMOGES * * * Giant of Production of Fine Dinner Ware
Made Especially for Department Stores

Here is a name that stands at the very top of the list, when potters discuss the plant equipment of the world * * * With the last word in kilns and machinery for quality and volume production, Limoges offers the buyer whose strong point is the moving of merchandise a vast, and almost unlimited source of supply. But mechanical and technical equipment is not the whole of Limoges service to you. Shapes are constantly being modernized, colors improved. See the "New Belmont", the "New Plaza", the "Kokus", and above all the new "Peach-Blo", a colored body, not a luster or a colored glaze. New! See it at Pittsburgh. Judge for yourself. The Limoges China Co. Donald Sebring Albright, general manager Sebring, Ohio.

Findings

16 F.T.C.

The word "Limoges" is conspicuously featured, in the prominence of its position and by its appearance in larger letters than any other word or words in such advertisements.

PAR. 4. There are various producers of china at Limoges, France, and their products are generally sold in the United States. One or more of them distribute their china through their own agents, who offer for sale and sell it in commerce between the various States of the United States, and others sell to importers who, in turn, sell to the trade in the various States of the United States. All of such china bears the word "Limoges" and on all of it such word is prominently placed. It is offered for sale and sold in the leading establishments of Boston, New York, Chicago, Detroit, Minneapolis, and Kansas City, as well as generally throughout the United States. The respondent, in its answer, acknowledges that its product is sold in competition with certain products manufactured at Limoges, France, known as Haviland China, all of which, the evidence shows, bears the name "Limoges" in prominent letters.

There is also offered for sale and sold throughout the United States, china manufactured by the Lennox China Co. at Trenton, N.J., and by other china companies in various parts of the United States, which china has been for many years last past and now is sold in interstate commerce.

There are many competitors of respondent manufacturing and selling earthenware at approximately the same price as the earthenware of respondent Limoges China Co., in competition with the products of such respondent. The result is that the ware of respondent Limoges China Co. competes in interstate commerce not only with China from Limoges, France, and earthenware from England, but with china and with earthenware of domestic producers.

PAR. 5. The practices of respondent described in paragraph 3 hereof have had and have the capacity and tendency to mislead the public into the belief that the ware offered for sale and sold by the respondent is ware produced at Limoges, France, and imported into the United States.

The aforesaid practices have also had and have the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce china made at Limoges, France, and from competitors who manufacture in the United States products like those of the respondent and who do not represent that said products are made at Limoges, France, or in other foreign countries.

The practices of respondent also result in placing in the hands of retailers the means of deceiving customers and purchasers from

425

Order

said retailers into the belief that the products manufactured by respondent and marked as hereinbefore described are made in Limoges, France.

CONCLUSION

The acts and practices of respondent as described in the foregoing findings of fact have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in interstate 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, upon the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, briefs, and arguments of counsel, and the Commission having filed its report stating its findings as to the facts, with its conclusion drawn therefrom, that respondent has violated the provisions 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",

It is now ordered, That respondent, Limoges China Co., cease and desist, directly and indirectly, in connection with offering for sale or selling in interstate commerce, any china, porcelain, chinaware, or earthenware manufactured in the United States from using the word "Limoges" either in its corporate name or in any trade mark or trade name or in advertisements or advertising matter, or to describe, designate, brand, stamp, or mark such china, porcelain, chinaware, or earthenware, unless accompanied in letters equally conspicuous, either by the phrase "Made in America", or "Made in the U.S.A." or "Made at Sebring, Ohio, U.S.A." or by other apt and adequate words clearly indicating that such product is made in the U.S.A.

It is further ordered, That respondent file within 60 days from and after service of this order a report in writing setting forth in detail the manner and form of its compliance with the order.

IN THE MATTER OF
H. L. METZGER, DOING BUSINESS AS NATIONAL
RAILWAY INSTRUCTION BUREAU

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

Docket 1987. Complaint, Nov. 14, 1931—Decision, July 7, 1932

Where an individual conducting a correspondence school course of instruction designed and intended to train students for various railroad positions such as fireman, brakeman, baggageman, passenger train porter, pullman porter, and pullman conductor.

- (a) Falsely represented himself in advertising his course in newspapers, magazines, and publications circulated among the various States as having railroad positions to offer and the advertisements as those of a railroad, through causing the same to be signed "Railway Bureau", and their frequent insertions in "help wanted" columns or columns containing such advertisements;
- (b) Represented that calls from railroads for men were frequent and that those who bought and pursued his courses of study would be assured of jobs, facts being students had no such assurance, calls from railroads for men were not frequent, vacancies were very few and the railroads generally pursued the policy of filling positions by advancement, or from former employees or experienced men in other lines, and did not generally give preference to graduates of said individual's school or to those of other schools;
- (c) Represented that he had close connection with leading railroads and great influence with the officials thereof, and was thereby enabled to place students, and displayed copies of purported letters or extracts therefrom in which railroads or railroad officials inquired for men to fill positions, facts being he had no such connections, and letters in question were written many years ago and in many cases incident to strikes or threatened strikes and did not reflect existing or recent employment conditions;
- (d) Falsely represented in form letters to prospective students that certain offers there made were limited as to time and were special offers to the addressee; and
- (e) Represented that the school owned its own building devoted exclusively to school uses, facts being portions of the building were so used only at times or incidentally, and portions thereof were used as living quarters for said individual and the janitor of the building;

With capacity and tendency to mislead and deceive members of public and to induce them to purchase such courses in erroneous beliefs thus induced, and with effect of unfairly diverting business to said individual from competitors who in no wise misrepresent their business status, their connection with railroads, or facilities for securing places for their students, or such special offers as may be made, and with tendency so to do:

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

Mr. Harry D. Michael for the Commission.