

IN THE MATTER OF
F. T. CARY, TRADING AS DIAMOND FUR
INDUSTRIES

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

Docket 2020. Complaint, Mar. 16, 1932—Decision, Sept. 21, 1932

Where an individual engaged in the breeding, buying, and sale of fur-bearing rabbits, made such statements in his advertisements in newspapers and periodicals of general circulation and in letters, circulars, booklets, and other literature as "We agree to buy all the rabbits you raise from stock purchased from us or their descendants and remit promptly * * * your breeding place becomes a branch of ours. We take all the risk * * * Your market is already provided by us * * * We guarantee to buy from you all Chinchilla rabbits you raise from our parent stock or their descendants, under the conditions, that you will find fully explained in the *market agreement and contract*, that accompanies this letter. Read it carefully. You will find it a fair, sound business proposition"; without making clear in same context that his plan, offer, agreement, and guaranty related primarily only to purchase by him of such stock as complied with registration requirements of the American Rabbit and Cavy Breeders Association, and that in accordance with his actual obligation he would pay his customers only market, and not advertised, price for stock not so complying, and that transportation costs from customer's location to his place of business would be a charge against such noncomplying stock; with capacity and tendency to mislead and deceive customers and prospective customers into believing that said individual would buy all rabbits raised from stock purchased from him at prices advertised by him for breeding stock, and to divert trade to him from competitors engaged in sale of fur-bearing rabbits, and with a substantial effect upon said competitors' competition:

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

Mr. Eugene W. Burr for the Commission.

Mr. Mark F. Jones, of Los Angeles, Calif., 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 for a time as United States Fur Farms and thereafter as Diamond Fur Industries, in the breeding and selling of fur-bearing rabbits, and with principal place of business in Inglewood, Calif., with offering deceptive inducements to purchase through nonperformance of contractual undertakings with

customers, 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, sets forth in advertisements in newspapers and periodicals of general circulation, and in letters, circulars, etc., that he guarantees to buy all the rabbits raised by the customer from stock or descendants of stock purchased by him under his market agreement and contract,¹ with effect of misleading and deceiving customers into purchasing fur-bearing rabbits from him in the mistaken belief thus induced and with capacity and tendency so to do.

The facts are "respondent does not carry out, has never carried out, nor did he ever intend to carry out the aforesaid representations made by him in his advertising nor the agreements and guarantees in his contracts hereinabove stated, but respondent always has refused and still refuses, in some cases, to purchase such descendants at any price and in most, if not all other cases, respondent has refused and still refuses to purchase from his customers the descendants of the fur-bearing rabbits which he sells to such customers, unless such customers sell such descendants at prices far lower than the prices respondent agrees and has agreed upon in his contracts to purchase the descendants of rabbits which he sells."

Said representations, advertisements, and contracts of respondent, as alleged, "have had and still have the capacity and tendency to divert trade to respondent from competitors and by such representations, advertisements and contracts, and respondent's refusal to purchase from his customers at the prices stated in such contracts the descendants of the fur-bearing rabbits which he sells to such customers, substantial competition throughout the various States of the

¹ Respondent's general proposition, above referred to and displayed in his advertising, is reduced, as alleged and quoted in the complaint, in the findings infra at page 33.

The contract, alleged and set forth by the complaint as substantially that employed by respondent in dealings with his customers, reads as follows:

"In consideration of your purchase of rabbits we enter into the following market agreement with you, the purchaser:

"(1) We agree to buy from you all stock raised from the stock you purchase from us, and stock raised from their descendants, regardless of sex, and remit promptly.

"(2) We agree to pay you the following prices for all stock purchased for breeding purposes by us from you, raised by you from stock you purchased from us, and stock raised from their descendants under the following terms and conditions:

Junior doe and buck, each weighing not less than 3½ pounds, per pair-----	\$4
Doe and buck, each weighing 5½ to 6¼ pounds, per pair-----	5
Doe and buck, each weighing 6¼ to 7¼ pounds, per pair-----	6
Doe and buck, each weighing 7¼ pounds, per pair-----	12

"Said stock to be standard, sound, healthy, and in good condition. We pay express charges on all shipments of breeding stock from our California herd and on all shipments of senior breeding stock under this contract ordered shipped to the home office."

Complaint alleges that in other contracts prices to be paid ran from \$2 to \$7.50 a pair, according to the weight and breed.

United States has been and is injured by respondent to a substantial extent"; all to the prejudice of the public and competitors, including competitor dealers and breeders, who enter into contracts with customers for purchase at specified prices of descendants of the fur-bearing rabbits sold to such customers and purchase such descendants from customers at prices so agreed upon, and competitor dealers and breeders, who neither advertise nor enter into such contracts or make such purchases.

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 on March 16, 1932, and served a complaint upon the respondent, F. T. Cary, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent entered his appearance and filed answer to said complaint. Thereafter on July 11, 1932, a stipulation of the facts of the case was entered into between the parties, subject to the approval of the Commission, which said stipulation has been duly approved.

And thereupon this proceeding came on regularly for final hearing and the Commission having duly considered the pleadings and the said stipulation and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. T. Cary, is an individual trading as Diamond Fur Industries with his principal place of business at Inglewood, Calif., since March, 1930. From January 1, 1929, to March, 1930, he traded as United States Fur Farms at said named city. Respondent's business has consisted in the breeding, buying, and selling of fur-bearing rabbits. Since September, 1931, he has not sold any rabbits but has maintained his place of business for the purpose of complying with outstanding contracts made prior to said last named time. Prior to September, 1931, respondent has caused such fur-bearing rabbits when sold by him to be transported from his place of business at Inglewood, Calif., to purchasers thereof located in the State of California and to purchasers located in other States of the United States, and for more than 3 years prior to September, 1931, there was a constant current of trade and commerce by respondent in such fur-bearing rabbits between and among various States of the United States. During the said described period

respondent was in competition with other persons and with corporations and partnerships engaged in the sale of fur rabbits, between and among various States of the United States.

PAR. 2. Respondent, from January, 1929, to March, 1930, while trading as United States Fur Farms and from March, 1930, to September, 1931, while trading as Diamond Fur Industries, caused advertisements to be inserted in magazines, newspapers, and periodicals having general circulation between and among various States of the United States; and respondent also during said named periods published and circulated letters, circulars, booklets, and other literature, in order to secure purchasers for his said rabbits, in such advertisements, circulars, letters, booklets, and other literature respondent stated among other things the following:

We agree to buy all the rabbits you raise from stock purchased from us or their descendants and remit promptly.

In effect, your breeding place becomes a branch of ours. We take all the risk of selling.

See our guaranty to purchase all your rabbits.

It is a plain business proposition—you raise the rabbits—we buy all you raise.

Your market is already provided by us under our market agreement and contract.

We guarantee to buy all the rabbits you raise.

Don't think if you start in this business you have to find your own buyers and take a risk. We want you to raise rabbits for us. All we require is that you raise Diamond Chinchillas from our parent stock. This is to protect us in our guaranty to buyers. In order to encourage and assist you to raise rabbits for us, we make you a fair, honest, liberal, absolute guarantee.

We guarantee to buy from you all Chinchilla rabbits you raise from our parent stock or their descendants, under the conditions, that you will find fully explained in the *market agreement and contract*, that accompanies this letter. Read it carefully. You will find it a fair, sound business proposition.

We contract with you to *raise rabbits for us*. We can guarantee to buy *all you can raise* (See our guaranty and contract) for we know that the demand will not be filled for years to come.

PAR. 3. Pursuant to the investigation by the Commission in this proceeding, and after full consideration of the matter, respondent came to the conclusion, and stipulated and the Commission finds, that the aforesaid statement and other representations used by respondent had the capacity and tendency to mislead customers and prospective customers into the belief that respondent would purchase all rabbits raised from stock purchased from respondent at prices advertised by respondent for breeding stock, whereas in truth and in fact respondent was not obligated to pay said prices, or to pay express charges to his place of business for rabbits unless the stock

repurchased qualified as breeding stock under the rules of the American Rabbit and Cavy Breeders Association.

PAR. 4. The said representations by respondent during the said named periods had the capacity and tendency to divert trade to respondent from competitors engaged, as aforesaid, in selling fur-bearing rabbits. Respondent's said advertising and representations had a substantial effect upon said competitors' competition in interstate commerce.

CONCLUSION

The acts and practices of respondent set forth in the foregoing findings as to the facts are all to the prejudice of respondent's competitors and of the public and constitute, under the circumstances therein stated, unfair methods of competition in commerce in violation of 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".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the stipulation of facts, and the Commission having made its findings as to the facts and its 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 the respondent F. T. Cary, his servants, agents, and employees, in connection with the buying and selling of fur-bearing rabbits in interstate commerce, cease and desist from representing by any advertisement, circular, letter, booklet, or other literature used by respondent for securing customers in his said business, as follows:

(a) That respondent agrees or guarantees to, or does or will, buy all the rabbits which respondent's customers raise from stock bought from respondent and from the descendants of said stock;

(b) That the breeding place of respondent's customer becomes in effect a branch of respondent's business;

(c) That the market for customers of respondent is afforded by respondent's agreement with the customer;

(d) That respondent agrees to or does relieve respondent's customers from all the risk of selling the rabbits raised by them; or

(e) That respondent agrees to pay or does pay specified prices for rabbits raised by respondent's customers:

Unless and until respondent shall make it clear in the same context that respondent's plan, offer, agreement and guaranty relates primarily only to the purchase by respondent of such stock as complies with the registration requirements of the American Rabbit and Cavy Breeders Association, and that respondent will pay his customers only the market price for stock which does not comply with the said requirements, and unless and until respondent shall make it clear further that the transportation costs from the customer's location to respondent's place of business, on stock which fails to comply with the said described requirements, are a charge against said customer; so long as such is the respondent's plan, offer, contract and guaranty.

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

IN THE MATTER OF
L. FATATO, INCORPORATED

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

Docket 2029. Complaint, Apr. 28, 1932—Order, Sept. 21, 1932

Consent order requiring respondent, its agents, etc., in connection with the sale in interstate commerce of tomato paste not made in or imported from Italy or other foreign country or made from Italian or other foreign grown tomatoes, to cease and desist from using the word "Posillipo" on brands, labels, containers, or packages, or in advertisements or otherwise; or from using any other word, phrase, picture, etc., importing or suggesting such manufacture, importation or composition for the paste in question; subject to the permitted use of respondent's present wording, designs, etc. (minus word "Posillipo" for paste made from the "Plum-shaped tomatoes" grown in the United States or abroad, as in the order set forth and qualified as to adequate explanatory matter.

Mr. E. J. Hornibrook for the Commission.

Parsons & Constable, of New York City, for respondent.

COMPLAINT

Acting in the public interest and 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 L. Fatato, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent L. Fatato, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of Brooklyn in said State. It is now and for several years last past has been engaged in the wholesale grocery business in said city of Brooklyn. Among other things, it sells a canned tomato paste under the brand "Posillipo Tomato Paste." This paste resembles thick catsup and is made from peeled and crushed tomatoes and is used in making sauces for spaghetti and other edible dishes. This paste is sold to retail customers of respondent and many of such retail customers who buy said tomato paste are in business outside of the State of New York and when orders are received therefor from said retail customers such orders are filled by respondent by