

IN THE MATTER OF
LOUIS FARBER, TRADING AS FARBER BROS.

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

Docket 2024. Complaint, Apr. 1, 1932—Decision, Oct. 10, 1932

Where an individual engaged in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware, and other hollow ware and clocks and other novelty jewelry, and in the sale and distribution thereof to wholesale and retail dealers, adopted and used the trade name "Silvercraft" for his said products and featured the same in his advertisements and in catalogs, circulars, etc., and stamped and branded dials and backs of clocks and other products which neither contained silver nor were silver plated, but resembled silver in appearance, "Silvercraft"; with capacity and tendency to mislead and deceive purchasing public into believing said articles to contain some silver or to be silver plated, and induce the purchase thereof in reliance on such erroneous belief and divert trade from and otherwise injure competitors:

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.

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 in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware, and other hollow ware and clocks and novelty jewelry, and in the sale of said products to wholesale and retail dealers, and with factory and principal place of business in New York City, with using misleading trade name, advertising falsely or misleadingly, and 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.

Respondent, as charged, employs and features as a trade name for his products, the word "Silvercraft", displaying said word prominently in advertising, advertising matter, catalogs, circulars, folders, letterheads, and business cards (many of which are used by retailers as an aid in selling the products to the consuming public), and causes said products to be stamped and branded with the afore-said word, notwithstanding fact that many of the products so

advertised, sold, distributed, stamped and branded contain no silver and are not silver plated.¹

"The false, misleading, and deceptive statements and representations and stamping hereinbefore referred to," as alleged, "have the capacity and tendency to deceive and to mislead the consuming public into the belief that the products advertised for sale and sold with the word 'Silvercraft' stamped thereon are composed of silver or are silver plated," and "use by respondent of the false, misleading, and deceptive statements and representations and stamping as heretofore set forth constitutes practices or methods of competition which tend to and do prejudice and injure the public and unfairly divert trade from and otherwise prejudice and injure respondent's competitors"; 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 (38 Stat. 717) the Federal Trade Commission issued and served a complaint upon the respondent, Louis Farber, trading as Farber Bros., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to the complaint herein, a stipulation as to the facts in lieu of testimony was entered into by the respondent and by counsel for the Federal Trade Commission and approved and accepted by the Federal Trade Commission as a stipulation of facts in lieu of testimony. Thereupon, this proceeding came on for final hearing on the brief of counsel for the Commission, counsel for respondent having

¹ The complaint alleges use of said word by respondent in catalogs, circulars, etc., as follows:

(a)

"SILVERCRAFT

Dependability—Durability

Sterling Quality

(b) " * * * Today the House of Silvercraft is nationally known as being the leading manufacturer of quality 'Silver Plated Hollow Ware.'

(c) "Each piece of Silvercraft Hollow Ware bears our imprint, and can be sold with a positive assurance that quality has been the first consideration in its manufacture.

(d) " * * * In the manufacture of articles having the Silvercraft quality trade mark nickel silver is the base metal used.

(e)

"Futura

The Hollow Ware of Tomorrow

It Will Not Tarnish

By the Makers of Silvercraft

(f)

"At Last! FUTURA

The Hollow Ware of Tomorrow

A silverlike tarnish-proof 'butler' finish hollow ware that fits perfectly into any silver table service . . ."

Findings

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waived the filing of brief and the presentation of oral argument to the Commission. And the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Louis Farber is an individual trading under the name and style of Farber Bros., with his factory and principal place of business located in the city of New York, in the State of New York. He is now and for more than one year last past has been engaged in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware and other hollow ware, and clocks and novelty jewelry, and in the sale and distribution thereof in commerce between and among the various States of the United States, causing his said products when sold to be shipped from his place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York.

In the course and conduct of his business, Louis Farber was at all times herein referred to in competition with other individuals, and with firms, partnerships, and corporations engaged in the manufacture and in the sale and distribution in interstate commerce of similar products. Respondent confines the sale of his said products to wholesale dealers and to retail dealers and does not sell direct to the consuming public.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent adopted as and for the trade name of his products the word "silvercraft", and caused said word to appear prominently displayed in his advertisements and advertising matter distributed in interstate commerce, including catalogs, circulars, folders, letterheads, and business cards, many of which are to be used and are used by retail dealers as an aid in selling respondent's products to the consuming public.

PAR. 3. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent has caused catalogs, circulars, folders, letterheads, and business cards to be published and has distributed and caused to be distributed such catalogs, circulars, folders, letterheads, and business cards to retail dealers and to the consuming public. Such catalogs, circulars, folders, letterheads, and business cards are to be used and are used by retail dealers and by respondent as an aid in selling respondent's products to the consuming public.

PAR. 4. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused his products to be stamped and branded with the word "silvercraft", and so stamped and branded respondent offered for sale and sold and distributed said products to purchasers thereof located in various States of the United States other than the State of New York. The said products, so stamped and branded "silvercraft", are subsequently offered for sale and sold by retail dealers who have purchased them from respondent or wholesale dealers, to the consuming public.

PAR. 5. Many of the said products so advertised, sold, and distributed and stamped and branded with the word "silvercraft" contain no silver and are not silver plated, but resemble silver in appearance.

PAR. 6. The use of the unqualified word "silvercraft" by respondent as a stamp or label on hollow ware containing no silver and not being silver plated but resembling silver in appearance has the capacity and tendency to deceive and mislead the purchasing public into the belief that the said hollow ware so stamped or labeled is silver or is silver plated.

PAR. 7. Respondent has labeled certain of his clocks with the word "Silvercraft" or the unqualified words "Silvercraft Alarm", such words being etched on the dial thereof. On the back of such clocks is stamped the word "Silvercraft." The frame, stand and back of such clocks are composed of a metal other than silver and not being silver plated, but resembling silver in appearance. The said clocks contain no silver and are not silver plated.

PAR. 8. The use of the unqualified word "Silvercraft" or of the unqualified phrase "Silvercraft Alarm" by respondent as a stamp or label on clocks containing no silver, and not being silver plated, but having frames, stands or backs which resemble silver in appearance, has the capacity and tendency to deceive and mislead the purchasing public into the belief that certain portions of said clocks so stamped or labeled contain silver or are silver plated.

PAR. 9. Respondent has stamped and branded certain of his toilet ware, candy boxes and sandwich trays with the word "Silvercraft." The said toilet ware, candy boxes and sandwich trays are gold plated and contain no silver and are not silver plated.

PAR. 10. Respondent has labeled certain of his pewter hollow ware and pewter novelties with the word "Silvercraft" accompanied by the word "pewter" in letters equally as large and conspicuous. The said pewter hollow ware and pewter novelties contain no silver and are not silver plated.

PAR. 11. Respondent has not since prior to April 1, 1932, the date of issuance of the complaint herein, stamped or labeled any

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of his chromium-plated hollow ware with the word "Silvercraft". The chromium-plated hollow ware he is now manufacturing is stamped and labeled "Krome-Kraft."

PAR. 12. The acts and things done by respondent in representing, designating, and describing his merchandise composed of a metal resembling silver in appearance but containing no silver, and not being silver plated, as "Silvercraft", unqualified by any word or words to designate the metal or metals of which such merchandise is composed as hereinabove set forth, have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that such merchandise resembling silver in appearance, but containing no silver and not being silver plated and stamped or labeled with the unqualified word "Silvercraft", contains some silver or is silver plated, and tends to induce the purchase of respondent's products in reliance on such erroneous belief and to divert trade from and otherwise injure competitors of respondent.

CONCLUSION

The said practices of respondent as described in paragraph 12 of the foregoing findings and under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in interstate commerce and constitute a violation 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 on the complaint of the Commission, the answer of the respondent thereto, the stipulation entered into in lieu of testimony and the brief of counsel for the Commission, the filing of brief and the presentation of oral argument having been waived by counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that respondent has been using unfair methods of competition in interstate commerce in violation of the provisions of section 5 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, Louis Farber, his officers, agents, representatives, and employees in connection with the adver-

tising and offering for sale and sale in commerce between and among the various States of the United States of hollow ware, clocks, and novelty jewelry offered for sale and sold by respondent do cease and desist from directly or indirectly:

(1) Labeling, stamping, or advertising hollow ware resembling silver in appearance or clocks having frames, stands, or backs resembling silver in appearance but containing no silver and not being silver plated, as "Silvercraft", unless the word "Silvercraft" is accompanied by a word or words equally conspicuous in type and position, stating the metal or material of which the said hollow ware or clock frames, stands or backs are composed.

It is further ordered, That the respondent Louis Farber shall within 60 days after service upon him of a copy of this order 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
THE SINCLAIR MANUFACTURING CO. AND PACKARD
SHIRT MANUFACTURING CO.

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

Docket 2062. Complaint, July 20, 1932—Decision, Oct. 10, 1932

Where a corporation engaged in sale of men's shirts not made by it, directly to consuming public through house-to-house canvassers.

- (a) Included word "Manufacturing" in its corporate name and represented itself through booklets and other advertising and verbally through its salesmen as a manufacturer making the shirts sold by it, causing depictions of large buildings, with its name thereon conspicuously to be exhibited to purchasers and prospective purchasers as its factories, and also photographs of purported interiors of said buildings, showing shirt-manufacturing operations in process;
- (b) Represented in connection therewith that it was the exclusive manufacturer of the shirts in question, and that "A large factory output" made it possible for it to offer "the greatest assortment of exclusive patterns and styles" to the members of the public, the users and wearers thereof, "at factory prices, the lowest prices possible", and that purchasers in buying shirts in question from it were thereby saved a middleman's profit; and

Where said corporation, and a manufacturing concern, maker of the shirts in question, which were ready made, and not made to order, in selling same directly to the consuming public through canvassers as aforesaid,

- (c) Represented that said shirts would be tailored or custom made, or made to the measure of the particular purchaser and supplied their salesmen and agents with order blanks with spaces for recording various measurements of the respective purchasers as purportedly necessary for making to order the shirts in question, and so constructed and worded as to signify and imply to the purchasers to whom they were displayed, that shirts purchased would be made to order in accordance with the measurements of the particular purchaser;

With tendency and capacity to deceive and mislead purchasing public into believing that same were made to their order and measure, and that said corporation was the manufacturer thereof and purchaser from it saved a middleman's profit, and with effect of causing members of the public to buy shirts from them in reliance on such erroneous belief in preference to competitive products and thereby divert trade from them to competitors, and with capacity and tendency so to do:

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. Edward E. Reardon for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged