

Complaint

IN THE MATTER OF
JOSEPH TOBIAS, AN INDIVIDUAL TRADING AS
NATIONAL IMPORTING 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 2005. Complaint, Feb. 4, 1932—Decision, Jan. 25, 1933

Where an individual engaged in sale of dress goods, wash fabrics, draperies, and other similar products to the consuming public through agents or canvassers,

- (a) Displayed and featured trade name containing the words "Importing Company" on swatch cards, circulars, letterheads and envelopes supplied for agents' use in selling said products, notwithstanding fact dress goods, wash fabrics, and draperies offered and sold by him were of domestic origin, and linens and handkerchiefs purchased from importers represented less than 10 percent of merchandise dealt in by him; and
- (b) Used such designations on swatch cards as "Silk Finish", "Sylkiana", "Foulard", "Shantung", "Silksheen", "Superay Taffeta", "Shantora Crepe" or "Shanteen Crepe", notwithstanding fact fabrics referred to contained no silk, product of the cocoon of the silkworm;

With capacity and tendency to mislead purchasing public as to composition of said products and trade status of said individual as an importer and induce purchase of his said products in such erroneous beliefs, and divert trade from and otherwise injure (1) competitors in fact importing dress goods, fabrics, wash goods and similar products, preferred to the domestic by a substantial portion of the consuming public, for resale to jobbers, wholesalers and retailers, and (2) competitors manufacturing, wholesaling, and retailing the domestic products under correct labels without describing themselves as importers or importing companies:

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.

Mr. Henry Halpern, of Brooklyn, N.Y., 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 as National Importing Co. in the sale direct to the consuming public, through house to house canvassers, of dress goods, wash fabrics, drapings, and other similar products, and with principal office and place of business in New York City, with using misleading trade name as to business status, misbranding or mislabeling as to composition of product, and

Findings

17 F.T.C.

advertising falsely or misleadingly in said respects, 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, employs, features, and displays his trade name containing the word "Importing" in advertisements, swatch cards, circulars, letterheads, etc., and sets forth upon the sample cards supplied to his said canvassers the words "Silk Finish, Sylkiana, Foulard, Shantung, Silksheen, Superay Taffeta, Shantora Crepe or Shanteen Crepe", notwithstanding fact that he does not import products dealt in by him, and products represented by aforesaid designations on their swatch cards, contain no silk, product of the cocoon of the silkworm; with capacity and tendency to mislead and deceive purchasing public into believing aforesaid products to have been imported and to be composed wholly of silk, product of cocoon of the silkworm, and to induce and with the effect of inducing the purchase of said products in reliance on such belief, and thereby divert trade from and otherwise injure competitors, many of whom as manufacturers, dealers, and distributors of products concerned, market same under truthful representations to the purchasing and consuming public, and do not use such false or misleading representations.¹

The use by respondent, as charged, of such "false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth, constitutes practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the dress goods, wash fabrics, and draping business"; and "Said false, misleading, and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful and constitute unfair methods of competition in 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Joseph Tobias, an

¹ As alleged in the complaint, the various designations are generally understood by the purchasing public to mean products composed wholly of silk, the product of the cocoon of the silkworm, and the word "Importing", as used by respondent, is understood by said public to mean a firm "engaged in the business of importing product from foreign countries for resale."

individual trading as National Importing Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and upon behalf of the respondent before a trial examiner of the Commission duly appointed thereto. The said trial examiner heretofore filed his findings of fact herein and the counsel; for the respondent thereupon filed his exceptions thereto. Thereupon this proceeding came on for final hearing on the record and briefs of counsel for the Commission and for the respondent. Oral argument having been waived by counsel for the Commission and counsel for the respondent and the Commission having duly considered the matter 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. Respondent, Joseph Tobias, is an individual trading under the name and style of The National Importing Co. His office and place of business is located in the city of New York in the State of New York. He is engaged in offering for sale and selling dress goods, wash fabrics, draperies and other similar products. In the sale of respondent's products, sales are made and orders taken from the consuming public by agents or personal representatives of the respondent. Such agents or representatives are located in the several States of the United States. Such orders are forwarded to the respondent in New York, and the materials so ordered are shipped by the respondent to the said personal agents or representatives (sometimes called dealers) from respondent's place of business in New York City into and through other States of the United States to the several places of residences of said agents or personal representatives in the several States of the United States. The agents or personal representatives in turn make deliveries of said products to those of the consuming public who have purchased them. In the course and conduct of his business respondent is in competition with other individuals and with firms, partnerships, and corporations engaged in offering for sale and selling dress goods, draperies, wash fabrics, and other similar articles in interstate commerce.

PAR. 2. Respondent obtains his agents and representatives by inserting advertisements for such agents or representatives in such magazines as True Romances, True Story, Physical Culture, and McCall's. Such agents or representatives, after having been ap-

Findings

17 F.T.C.

pointed by respondent as agents or representatives, are furnished by respondent with swatch cards and supplies. Respondent has approximately three thousand agents or representatives operating in the various States of the United States. Not all of these agents or representatives are active at all times. Approximately 50 percent of them are on respondent's active list at any given time. These agents or representatives make sales of respondent's products direct to the consuming public, deduct 25 percent of the selling price as commission and remit the balance to the respondent. Respondent sells his merchandise in this manner in every State of the United States and also in Hawaii, the Philippines, Cuba, Canada, and Alaska.

PAR. 3. Respondent began business in 1907 under the trade name The National Importing Co. In the years immediately following his start in business respondent did some importing of goods from foreign countries, but during the progress of the World War the channels of importing being uncertain, respondent ceased to import his merchandise from foreign countries and has never resumed such importations. Since 1918 all dress goods, wash fabrics, and draperies offered for sale and sold by respondent have been manufactured in the United States. Respondent is now, and since 1918 has offered for sale and sold linens and handkerchiefs which are purchased by the respondent in the United States from importers who have imported such linens and handkerchiefs from foreign countries. The said linens and handkerchiefs represent less than 10 percent of the goods, wares, and merchandise offered for sale and sold by respondent.

PAR. 4. The respondent causes the trade name The National Importing Co. to be featured and displayed on the swatch cards, circulars, letterheads, and envelopes which he furnishes to his agents and representatives for the purpose of assisting them in making sales of respondent's fabrics, draperies, dress goods, and other similar products. The said agents or representatives use the said swatch cards, circulars, letterheads, and envelopes which are furnished by respondent to the said agents and representatives throughout the various States of the United States, in connection with the offering for sale and sale of respondent's products to the consuming public by displaying to members of the consuming public the said swatch cards and other advertising media.

PAR. 5. The said swatch cards furnished by respondent to his agents and representatives and used by them as aforesaid, have attached to them various samples of certain fabrics offered for sale and sold by respondent. In addition to the samples attached to the said swatch cards, respondent causes to be printed on certain of such cards one or more of the following words or phrases: Silk Finish,

Sylkiana, Foulard, Shantung, Silksheen, Superay Taffeta, Shantora Crepe or Shanteen Crepe. The said fabrics on said swatch cards are composed entirely of a product other than silk, and contain no silk, the product of the cocoon of the silkworm. The words Sylkiana, Foulard, Shantung, Silksheen, Superay Taffeta, Shantora Crepe, Shanteen Crepe, and the words Taffeta and Crepe each and all of them when unqualified, are understood by the purchasing public to describe fabrics composed wholly of silk. The words silk finish mean when unqualified that the fabric to which it is applied is, so far as the finish of the fabric is concerned, composed of silk.

PAR. 6. The word "importing" when used as a part of a trade name as it is used by respondent, is understood by the purchasing public to designate a firm engaged in the business of importing products into the United States from a foreign country for resale.

PAR. 7. There are in the United States many firms, partnerships, individuals, and corporations engaged in importing into this country from foreign countries, dress goods, fabrics, wash goods, and similar products. These importing organizations in turn resell in interstate commerce such imported products to jobbers, wholesale dealers, and to retail dealers who afterwards resell to the consuming public such imported dress goods, fabrics, wash goods, and similar products. Imported dress goods, fabrics, wash goods and similar products are preferred over domestic dress goods, fabrics, wash goods and similar products by a substantial portion of the consuming public. There are in the United States many manufacturers, wholesale dealers and retail dealers who sell and distribute in interstate commerce domestic dress goods, wash fabrics, draperies, and similar products, who market such dress goods, fabrics, and similar products to the consuming public under labels that are descriptively correct, and who do not call themselves importers or importing companies.

PAR. 8. In the latter part of 1931 respondent discontinued the use of the words "Silk Finish", "Foulard", "Shantung", "Silksheen", "Sylkiana", "Superay Taffeta", and "Shanteen Crepe" to designate fabrics containing no silk, the product of the cocoon of the silkworm.

PAR. 9. The use by the respondent of such words and phrases as above set out in connection with or as designating and describing his products and his trade status has the capacity and tendency to mislead the purchasing public into the belief that his said products and his said trade status so represented, designated, described, and referred to are as represented, designated, described, and referred to, and tends to induce the purchase of respondent's products in reliance upon such erroneous belief or beliefs and to divert trade from and otherwise injure competitors of respondent.

Order

17 F.T.C.

CONCLUSION

The practice of the respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in 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 respondent thereto, the testimony, evidence, and briefs of counsel, 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 Joseph Tobias, his agents, representatives, servants, and employees in connection with the offering for sale and sale in commerce among the several States of the United States of dress goods, wash fabrics, draperies, and other similar products, cease and desist from directly or indirectly:

(1) Using the terms "Sylkiana", "Foulard", "Shantung", "Silksheen", "Superay Taffeta", "Shantora Crepe", "Shanteen Crepe", or the word "Taffeta" or the word "Crepe", as descriptive of fabrics not composed entirely of silk.

(2) Using the term "Silk Finish" as descriptive of fabrics the finish of which is not composed of silk.

(3) Representing, either by the use of the word "importing" in a trade name, or in any other way, that the respondent is an importer, unless and until a substantial part of the products sold by respondent is imported.

It is further ordered, That the respondent, Joseph Tobias, shall within 30 days after 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 it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

MORRIS HELLER, INDIVIDUALLY, AND TRADING AS
VENICE IMPORTING 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 2074. Complaint, Oct. 25, 1932—Decision, Jan. 25, 1933

Where olive oil from Italy had come to be known among a substantial number of users and consumers and merchants and dealers as superior in quality and flavor to all other, and that from the world olive oil center, Lucca, had similarly become known for its fine quality and delicate flavor; and thereafter an individual engaged in sale and distribution of said product to retail grocers, advertised same as "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil", notwithstanding fact it had no Italian origin; with capacity and tendency to mislead and deceive substantial numbers of dealers and consuming public into purchasing said oil as and for one imported from Italy:

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

Mr. Henry C. Lank for the Commission.

Mr. Charles F. Murphy, of New York City, 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 as Venice Importing Co., in the sale and distribution of olive oil to retail grocers in States other than New York, and with principal office and place of business in Brooklyn, with advertising falsely or misleadingly as to source or origin of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent sells olive oil having no Italian origin, under the designations "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil"; with the capacity and tendency to mislead and deceive substantial numbers of retail grocer dealers and the consuming public into buying such oil as and for olive oil imported from Italy, preferred for its superior quality and flavor and especially in the case of that from the great olive oil center—Lucca—to other oils, and with the further tendency to and effect of prejudicing and injuring the public, unfairly diverting trade from and otherwise prejudicing and injuring competitors, and operating as a restraint upon and a detriment to