

Complaint

20 F. T. C.

IN THE MATTER OF
HUGH WALLACE COMPANY

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

Docket 2183. Complaint, May 19, 1934—Decision, Dec. 18, 1934

Where a corporation engaged in production and sale of a fabric for use in making and trimming coats and other garments, with cotton back and worsted face of certain long staple wool, and pile which closely simulated or resembled "Persian Lamb Fur", to wit, the fur of certain very young lambs, to which a great good will attached, and for which, or garments made therefrom or trimmed therewith, there was a public demand, at high prices—

Adopted and employed the name "Persian-Laine" for use in the offer and sale of said fabric to wholesalers, jobbers, garment makers, retail dealers, and ultimate purchasers thereof or of garments made therefrom or trimmed therewith, and supplied purchasers thereof with tags to be sewed on or otherwise attached and fastened to said garments, upon which tags there was depicted a ram's head and the words "Wallace Persian-Laine," and thus represented to and assured purchasers of said fabric and of garments made therefrom or trimmed therewith, that the same was the fur skin of said lambs;

With effect of deceiving and misleading the purchasing public into the erroneous belief that said knitted fabric was the fur of such young lambs, and of unfairly diverting trade to itself from competitors who sell the fur of very young lambs or garments made therefrom or trimmed therewith, and from competitors who offer and sell, without misrepresentation, fabrics or products made in simulation or imitation of such fur, or otherwise competitive therewith, to its unfair advantage, and to the injury of competitors and the public, and with capacity and tendency so to deceive, mislead, and divert:

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

Mr. John W. Hildrop for the Commission.

COMPLAINT

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, having reason to believe that Hugh Wallace Company, a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hugh Wallace Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, having and maintaining its office, plant, and principal place of business at 2616 East Grand Boulevard, in the city of Detroit, in the State of Michigan. Respondent has been and is engaged in the production of a certain knitted fabric with a pile in simulation of Persian Lamb fur. Said cloth is made with a cotton back and with a face of worsted composed of long staple Lincoln luster wool or wool of a similar type. Respondent has been and is engaged also in offering for sale and selling said fabric in commerce between and among the several States of the United States and the District of Columbia, and in causing such fabric when so sold to be transported from its said place of production in the State of Michigan into and across the several States of the United States and the District of Columbia to the several purchasers thereof located in said respective States or the District of Columbia.

Said fabric closely resembles Persian Lamb fur and is used for the making or trimming of cloaks, coats, and other garments, for which purposes Persian Lamb fur has also long been, and now is, generally in use.

In the course and conduct of its said business, respondent is, and has continuously been, in competition with other persons, firms, associations, and corporations engaged in offering for sale and selling Persian Lamb fur or knitted fabrics in simulation thereof, or other fabrics in imitation thereof, or other competitive products to be used for the same or similar purposes, in like commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. Respondent refers to and designates its said product by the name of "Persian Laine", said name having been coined and adopted by respondent as the name thereof and to be used as the name of said product in offering for sale and selling the same to and by wholesalers, jobbers, makers of garments, and retail dealers, and to the ultimate purchasers of such fabric or of garments made thereof or trimmed therewith. Respondent furnishes to purchasers thereof certain tags to be sewed onto or otherwise attached and fastened to, said fabric or to garments made of said fabric or trimmed therewith, the same to be used with or attached to the same until it has passed into the hands of the retail purchasers of said garments, which said tags are so used. Each of said tags bears upon its face the picture of a ram's head and the words "Wallace Persian-Laine." Respondent thus causes said product to be designated

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and described as "Persian-Laine" by all persons buying said product, or using the same in the making or trimming garments or in the sale of said product or of garments made thereof or trimmed therewith, down to and including the retail purchaser or consumer thereof.

PAR. 3. "Persian Lamb" is produced principally in Bokhara, Turkestan, and Central Asia. It is the fur skin of a very young lamb. The lamb is usually killed within five days after its birth. At the birth of the lamb its fur has a gloss and curl which rapidly coarsens after five days. The skins of such young lambs, when so killed, are known to the trade and to the public principally as "Persian", "Persian Lamb", "Astrakhan", "Broadtail", "Krimmer", and "Karakul." The use of any of said names to designate a product carries to purchasers thereof, and to purchasers of garments made therefrom or trimmed therewith, the representation and assurance that the same is and are such fur skin of the young lambs above referred to.

Respondent's said name so coined and adopted to designate its said knitted fabric constitutes a representation and assurance to purchasers thereof and to purchasers of garments made thereof or trimmed therewith, that the same is the fur skin of said young lambs. Respondent's said knitted fabric closely simulates "Persian" or "Persian Lamb."

The use of said name "Persian-Laine", has the tendency and capacity to deceive and mislead the purchasers thereof and the purchasers of garments made thereof or trimmed therewith, into the erroneous belief that the said knitted fabric is "Persian" or "Persian Lamb", and will divert trade to respondent from his competitors who are offering for sale and selling in said commerce true "Persian" or "Persian Lamb", or any fabric or product that is to be used for the same or similar purposes or that is otherwise competitive therewith in said commerce.

PAR. 4. In the public mind great good will has attached to "Persian" or "Persian Lamb", to wit, to the fur skin of said very young lambs, and the public seeks after, and is willing to pay high prices for, the same or for garments made thereof or trimmed therewith.

So long as respondent shall so sell its said product under said false and misleading name and designation, and shall deceive and mislead the purchasing public into the erroneous belief that said knitted fabric is the fur skin of said young lambs, respondent will unfairly continue to divert trade to itself from its competitors who offer for sale and sell the fur skin of the skin of said young lambs, or garments made thereof or trimmed therewith, and also from all competitors who offer for sale and sell fabrics or other products

made in simulation of such fur skin of said young lambs, or in imitation thereof or that are otherwise competitive therewith, or who sell garments made thereof or trimmed therewith; all to the unfair advantage of respondent, to the unfair disadvantage of respondent's competitors and to the injury of the public.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in 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.

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 Hugh Wallace Company, a corporation hereinafter referred to as respondent, charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had, and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and counsel for the respondent, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hugh Wallace Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, having and maintaining its office, plant, and principal place of business at 2616 East Grand Boulevard, city of Detroit, in the State of Michigan. Respondent has been and is engaged in the production of a certain fabric with the pile in simulation of "Persian Lamb Fur". Said cloth is made with a cotton back and a face of worsted composed of long staple Lincoln Luster Wool, or wool of a similar type. Respondent has been and is engaged also in offering for sale and selling said fabric in commerce between and among the several States of the United States

and in the District of Columbia, and in causing such fabric when so sold to be transported from its said place of production in the State of Michigan, into and across the several States of the United States and the District of Columbia, to the several purchasers thereof located in said respective States and the District of Columbia.

Said fabric closely resembles Persian Lamb Fur and is used for the making or trimming of coats, cloaks, and other garments for the purpose Persian Lamb Fur has long been, and now is, generally in use.

In the course and conduct of its said business respondent is and has continuously been in competition with other persons, firms, associations, and corporations engaged in offering for sale and selling Persian Lamb Fur or knitted fabrics in simulation thereof, or other fabrics in imitation thereof, or other competitive products to be used for the same or similar purposes, in like commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. Respondent refers to and designates its said product by the name of "Persian-Laine", said name having been coined and adopted by respondent as the name thereof, and to be used as the name of said product, in offering for sale and selling the same to wholesalers, jobbers, makers of garments, and retail dealers, and to the ultimate purchasers of such fabric, or of garments made thereof, or trimmed therewith. Respondent offers the purchasers thereof certain tags to be sewed thereon or otherwise attached and fastened to said fabric, or to the garments made of said fabric or trimmed therewith, the same to be used with or attached to the same until it has passed into the hands of the retail purchasers of said garments, which said tags are so used.

Each of said tags bears upon its face the picture of a ram's head and the words "Wallace Persian-Laine". Respondent thus causes said product to be designated as "Persian Laine" by all persons buying said product, or using the same in the making or trimming of garments, or in the sale of said product or of garments made thereof or trimmed therewith, down to and including the retail purchaser or consumer thereof.

PAR. 3. "Persian Lamb" is produced principally in Bokhara, Turkestan and Central Asia. It is the fur of a very young lamb. The lamb is usually killed within five days after its birth. At the birth of the lamb its fur has a gloss and curl which rapidly coarsens after five days. The fur of such young lambs, when so killed, is known to the trade and public principally as "Persian" or "Persian Lamb", "Astrakhan", "Broadtail", "Krimmer" and "Karakul."

The use of any of said names to designate a product carries to purchasers thereof and to purchasers of garments made therefrom or trimmed therewith the representation and assurance that the same is fur of the young lambs above referred to.

Respondent's said name so coined and adopted to designate its said knitted fabric constitutes a representation and assurance to purchasers thereof, and to purchasers of garments made thereof or trimmed therewith, that the same is the fur of said young lambs. Respondent's said knitted fabric closely simulates "Persian" or "Persian Lamb."

Use of the said name "Persian-Laine" has the tendency and capacity to deceive and mislead the purchasers thereof and the purchasers of garments made thereof or trimmed therewith, into the erroneous belief that the said knitted fabric is "Persian" or "Persian Lamb" and will divert trade to respondent from his competitors who are offering for sale and selling in said commerce true "Persian" or "Persian Lamb" or any fabric or product that is to be used for the same or similar purposes or that is otherwise competitive therewith in said commerce.

PAR. 4. In the public mind great good will has attached to "Persian" and "Persian Lamb", to wit, to the fur of said very young lambs and there is a public demand for, and a willingness to pay high prices for the same, or for garments made thereof or trimmed therewith.

The sale by respondent of its said product under such false and misleading name and designation, deceives and misleads the purchasing public into the erroneous belief that said knitted fabric is the fur of said young lambs, and unfairly diverts trade to itself from its competitors who offer for sale and sell the fur of very young lambs, all garments made thereof or trimmed therewith, and also from all competitors who, without misrepresentations, offer for sale and sell fabric or other products made in assimilation of such fur of said young lambs or in imitation thereof or that are otherwise competitive therewith, all to the unfair advantage of respondent and to the injury of respondent's competitors and of the public.

CONCLUSION

The practice of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to the competitors of respondent and are unfair methods of competition in commerce in 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."

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ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the record, 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, Hugh Wallace Company, a corporation, in connection with the sale or offering for sale in commerce between and among the several States of the United States and within the District of Columbia, of a certain knitted fabric with a pile in simulation of Persian Lamb Fur, said cloth being made with a cloth back and a face of worsted composed of long staple Lincoln Luster Wool, or wool of a similar type, and in the sale or offering for sale of any other fabric or cloth simulating the fur of young Persian lambs, other than the genuine fur of such young lambs, in commerce between the several States of the United States and in the District of Columbia, do cease and desist from using the words "Persian Laine", "Persianlaine", or "Wallace Persian Lamb", "Persian Lamb", or any other word or words which import or imply that the fabrics so designated are made of or from the genuine fur of young lambs, unless the said fabric so sold or offered for sale in commerce as aforesaid, are made of the genuine Persian Lamb Fur.

It is further ordered, That the respondent shall, within 60 days after the service upon it of a copy of this order, file with the Commission its reply in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
FIRST NATIONAL NURSERIES, INC., AND
LELAND C. BROWN

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

Docket 2186. Complaint, May 23, 1934—Decision, Dec. 18, 1934

Where a corporation, and the president and substantial owner thereof, engaged in the sale and distribution of nursery stock, in competition with persons and concerns engaged in the business of growing and selling, or buying and selling such stock, in which business permanence, stability, and responsibility on the part of the sellers is of special importance to customers—Employed the words "Nursery" or "Nurseries" as a trade or corporate name and otherwise, and represented themselves as growers of nursery stock, as inducements to purchase, through such representations and statements in catalogs, and other advertising matter as "First National Nurseries, Growers of Fruit and Ornamental Trees and Plants", etc., "Grown and for sale by First National Nurseries", etc., "* * * 'The Nursery of Quality'," etc., and emphasized in its advertising the idea of purchasing "from a complete nursery carefully handled and fresh shipped stock, inspected and certified first quality, big rooted, vigorous, quick growing, free from disease and injurious insect pests, not off a store counter or from a small grower, or a catalog or mail jobber with a limited assortment and without facilities for growing, digging, storing, handling and packing", etc., and stressed the thought of having planting "backed by a recognized nursery of many years' experience", notwithstanding fact they neither owned, leased, nor controlled ground producing the stock dealt in by them, or grew any of the stock sold by them;

With capacity and tendency to mislead and deceive purchasing public into believing that it actually grew the products sold or distributed by it, and owned, operated, and controlled nurseries and farms on which said products were grown, and was a large concern of long standing and experience in the nursery business, and to induce purchase of its stock, and divert trade from and otherwise injure competitors:

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

Mr. Morton Nesmith for the Commission.

COMPLAINT

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, having reason to believe that First National Nurseries, Inc., a corporation, and Leland C. Brown, have been and are using unfair methods of competition in commerce, as