

IN THE MATTER OF
EVANS FUR COMPANY, A. L. MELTZER, M. MELTZER,
HERMAN MELTZER, KENT FUR COMPANY, CLARENCE
BONNEM, AND S. KANE

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2227. Complaint, Aug. 30, 1934—Decision, Apr. 24, 1935

Where two corporations, representing a community of interest and engaged under common control in purchase of fur garments from jobbers and/or manufacturers and resale thereof at retail from their place of business to purchasers residing in the various States; in advertising said products in letters and circulars, newspapers and periodicals, and radio broadcasts, respectively, read and heard by persons in other States—

- (a) Falsely represented one of said corporations as the manufacturer of the garments offered and sold by it, and that through purchasing from it, the manufacturer, the customer was saved the middleman's profit and thus effected savings amounting to as much as 50 percent of the price of similar products sold through the usual retail channels;
- (b) Falsely represented that the prices at which they offered and sold said garments represented from 75 percent to 50 percent of their real value, and of the usual selling price of products of equal quality and value, fact being said prices were as high as or higher than usual selling prices of comparable articles; and
- (c) Falsely represented, in the case of one of said corporations, that it sold garments made by it to certain popular motion picture actresses, and that such actresses wore the same, and in its advertising falsely depicted the latter attired in garments represented as its product;

With effect of diverting trade from competitors, including those who manufacture their garments and truthfully represent themselves as so doing, those who do not do so or represent themselves as so doing, and those who do not misrepresent the value or usual selling price of their products, and of deceiving purchasing public into believing they were securing greater value in said garments by purchasing direct from a manufacturer, and were securing the same at from 75 percent to 50 percent of their real value, and of the usual retail selling value of articles of equal quality and value, and with capacity and tendency so to divert:

Held, That such acts and practices, under the 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.

Mr. Eliot C. Lovett, of Washington, D. C., for respondents, along with whom *Mr. Benjamin F. Goldstein*, of Chicago, Ill., also ap-

peared for Evans Fur Co., A. L. Meltzer, M. Meltzer and Herman Meltzer.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Evans Fur Company, a corporation, A. L. Meltzer, M. Meltzer and Herman Meltzer; and the Kent Fur Company, a corporation, Clarence Bonnem and S. Kane, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The Evans Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Chicago in said State. A. L. Meltzer is, and was at all times hereinafter mentioned, its president and treasurer, M. Meltzer its vice president, and Herman Meltzer its secretary, and as such officers said three persons last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged.

PAR. 2. The Kent Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in Chicago in said State. Clarence Bonnem is, and was at all times hereinafter mentioned, its president and treasurer, and S. Kane its secretary, and as such officers said individuals last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged. Said corporation was organized by the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, and said corporation and the said respondents Clarence Bonnem and S. Kane are and have been the agents of the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, in carrying on the business, and doing the acts and things, hereinafter alleged.

PAR. 3. The said respondent corporations are now, and were at all times hereinafter mentioned, engaged in the business of buying fur garments and reselling them at retail. A substantial number of said garments when sold were and are shipped by said respondents from their places of business in Chicago to the purchasers thereof resident in the various States of the United States, and they are thus

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engaged in commerce as defined in said act. In making said sales and in doing the advertising hereinafter alleged said respondents are in substantial competition with other retailers of fur garments, a substantial number of which competitors sell and ship in commerce as hereinabove defined.

PAR. 4. Respondents, Evans Fur Company and Kent Fur Company, solicit such sales by letters and circulars and inserting advertisements in newspapers and periodicals which are mailed or otherwise sent from the place of their publication in Illinois into other States of the United States and are there read by residents of said States. Respondent Evans Fur Company further advertises by broadcasts over a number of radio stations located in the State of Illinois, whose broadcasts may be and are received and heard by persons throughout the midwestern section of the United States. Induced by the statements and representations of said advertisements, persons residing in various States purchase, and have purchased, fur garments from said corporate respondents, in some cases for shipment to them at their respective places of residence and in other cases to be immediately carried by such purchasers into other States. Thus there exists and has existed a constant current of trade and commerce between respondents in Illinois and said purchasers in divers other States.

PAR. 5. That in such newspaper and periodical advertisements and in such radio broadcasts, respondent Evans Fur Company represents that it is the manufacturer of the fur garments it offers and sells; that by purchasing from respondent, a manufacturer, the customer is saved the middleman's profit and that the savings thereby effected amount to as much as 50 percent of the price of similar garments sold through the usual retail channels. In truth and in fact said respondent is not a manufacturer of fur garments but purchases the finished or almost finished garments advertised and sold by it from jobbers and/or manufacturers.

PAR. 6. Respondent Evans Fur Company further states and represents in said advertising that the prices at which its garments are offered are from 75 percent to 50 percent of their real value and/or 75 percent to 50 percent of the usual retail selling price of garments of equal quality and value. In truth and in fact said prices are as high as, or higher than, the usual selling prices of garments of equal or similar quality and value.

PAR. 7. Said respondent further represents in said advertising that it sells to, and garments made and sold by it are worn by, certain popular moving picture actresses, and respondent in said advertising uses pictorial representations of such actresses garbed in fur

garments represented to be the product of said respondent. In truth and in fact said actresses do not purchase, and have not purchased, fur garments from respondent.

PAR. 8. Respondent Kent Fur Company in its newspaper advertising misrepresents the quality and value of the fur garments offered and sold by it by representing that the prices for which they are offered are from 75 percent to 50 percent of their real value and from 75 percent to 50 percent of the usual selling price of garments of equal or similar quality and value. In truth and in fact said prices are as high as, or higher than, the usual retail selling prices of garments of equal or similar value and quality.

PAR. 9. That such false and misleading statements and representations as aforesaid have the capacity and tendency to divert, and have diverted, to said respondents trade from their competitors, both those who are in truth manufacturers of fur garments and truthfully represent themselves as such, and those who do not manufacture the garments they sell but who resell on the same basis as these respondents but do not misrepresent their status, and from those competitors who do not misrepresent the value or usual selling price of the garments sold by them. That such misrepresentations deceive the purchasing public into the belief that they are acquiring a greater value in fur garments by reason of purchasing direct from a manufacturer and that they are purchasing fur garments at from 75 percent to 50 percent of their real value and of the usual retail selling value of garments of that quality and value.

PAR. 10. That said misrepresentations of respondents contained in their respective advertisements result in injury to their competitors and to the prejudice of the buying public and constitute unfair methods of competition within the intent and meaning of Section 5 of the 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 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 the respondents named in the caption herewith, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearances and filed their answers herein and having appeared in their own proper persons and by counsel before Trial Examiner Edward M. Averill in the city of Chicago on April 3,

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1935, that being the time and place on which and at which this proceeding was set for hearing, and on the record entered into a stipulation as to the facts, that said facts might be taken in lieu of any testimony and that the Commission could proceed to find the facts and upon said stipulation draw its conclusion therefrom and make and enter an order requiring the respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, their agents, representatives, officers, servants and employees to cease and desist from the acts of unfair competition set out in the complaint, thereupon this proceeding came on for final hearing, and the Commission having considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom as to respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation; dismissing this proceeding against individual respondents A. L. Meltzer, M. Meltzer, Herman Meltzer, Clarence Bonnem, and S. Kane.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Evans Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Chicago in said State. A. L. Meltzer is, and was at all times hereinafter mentioned, its president and treasurer, M. Meltzer its vice president, and Herman Meltzer its secretary, and as such officers said three persons last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged.

PAR. 2. The Kent Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in Chicago in said State. Clarence Bonnem is, and was at all times hereinafter mentioned, its president and treasurer, and S. Kane its secretary, and as such officers said individuals last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged. Said corporation was organized by the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, and said corporation and the said respondents Clarence Bonnem and S. Kane are and have been the agents of the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, in carrying on the business, and doing the acts and things, hereinafter alleged.

PAR. 3. The said respondent corporations are now, and were at all times hereinafter mentioned, engaged in the business of buying

fur garments and reselling them at retail. A substantial number of said garments when sold were and are shipped by said respondents from their places of business in Chicago to the purchasers thereof resident in the various States of the United States, and they are thus engaged in commerce as defined in said act. In making said sales and in doing the advertising hereinafter alleged said respondents are in substantial competition with other retailers of fur garments, a substantial number of which competitors sell and ship in commerce as hereinabove defined.

PAR. 4. Respondents, Evans Fur Company and Kent Fur Company, solicit such sales by letters and circulars and inserting advertisements in newspapers and periodicals which are mailed or otherwise sent from the place of their publication in Illinois into other States of the United States and are there read by residents of said States. Respondent Evans Fur Company further advertises by broadcasts over a number of radio stations located in the State of Illinois, whose broadcasts may be and are received and heard by persons throughout the midwestern section of the United States. Induced by the statements and representations of said advertisements, persons residing in various States purchase, and have purchased, fur garments from said corporate respondents, in some cases for shipment to them at their respective places of residence and in other cases to be immediately carried by such purchasers into other States. Thus there exists and has existed a constant current of trade and commerce between respondents in Illinois and said purchasers in divers other States.

PAR. 5. In such newspaper and periodical advertisements and in such radio broadcasts, respondent Evans Fur Company represents that it is the manufacturer of the fur garments it offers and sells; that by purchasing from respondent, a manufacturer, the customer is saved the middleman's profit and that the savings thereby effected amount to as much as 50 percent of the price of similar garments sold through the usual retail channels. In truth and in fact said respondent is not a manufacturer of fur garments but purchases the finished or almost finished garments advertised and sold by it from jobbers and/or manufacturers.

PAR. 6. Respondent Evans Fur Company further states and represents in said advertising that the prices at which its garments are offered are from 75 percent to 50 percent of their real value and/or 75 percent to 50 percent of the usual retail selling price of garments of equal quality and value. In truth and in fact said prices are as high

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as, or higher than, the usual selling prices of garments of equal or similar quality and value.

PAR. 7. Said respondent further represents in said advertising that it sells to, and garments made and sold by it are worn by, certain popular moving picture actresses, and respondent in said advertising uses pictorial representations of such actresses garbed in fur garments represented to be the product of said respondent. In truth and in fact said actresses do not purchase, and have not purchased, fur garments from respondent.

PAR. 8. Respondent Kent Fur Company in its newspaper advertising misrepresents the quality and value of the fur garments offered and sold by it by representing that the prices for which they are offered are from 75 percent to 50 percent of their real value and from 75 percent to 50 percent of the usual selling price of garments of equal or similar quality and value. In truth and in fact said prices are as high as, or higher than, the usual retail selling prices of garments of equal or similar value and quality.

PAR. 9. Such false and misleading statements and representations as aforesaid have the capacity and tendency to divert, and have diverted, to said respondents trade from their competitors, both those who are in truth manufacturers of fur garments and truthfully represent themselves as such, and those who do not manufacture the garments they sell but who resell on the same basis as these respondents but do not misrepresent their status, and from those competitors who do not misrepresent the value or usual selling price of the garments sold by them. Such misrepresentations deceive the purchasing public into the belief that they are acquiring a greater value in fur garments by reason of purchasing direct from a manufacturer and that they are purchasing fur garments at from 75 percent to 50 percent of their real value and of the usual retail selling value of garments of that quality and value.

CONCLUSION

The acts and practices of respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors and constitute unfair methods of competition 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."

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, and the stipulation of facts entered into by and between the respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, on the record, before Trial Examiner Edward M. Averill on the 3rd day of April, 1935, when this proceeding came on to be heard before said trial examiner, the Commission having made its findings as to the facts and conclusion that respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, have 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 this proceeding be and it is hereby dismissed as to individual respondents A. L. Meltzer, M. Meltzer, Herman Meltzer, Clarence Bonnem, and S. Kane; and

It is further ordered, That respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, their agents, representatives, officers, servants, and employees, in connection with the sale and offering for sale in interstate commerce of their fur garments cease and desist from advertising and representing, either by advertising in newspapers, magazines, journals, by radio, circular letters or otherwise—

(a) That said respondents are manufacturers and that they manufacture the garments they sell, except as to such items as are manufactured by them;

(b) That by purchasing from said respondents, as manufacturers, the purchasers of said garments are thereby saved a middleman's profit amounting to as much as 50 percent of the price of similar garments sold through the regular retail channels;

(c) That the prices at which their said garments are offered are less than the usual retail selling price of garments of equal or similar value and quality, unless, in truth and in fact, such prices are less than the usual selling price of garments of similar or equal quality and value;

(d) That the said respondents sell to, and that the garments made and sold by them are worn by, certain popular moving picture actresses, and/or representing by pictorial advertisements and representations that such actresses are garbed in fur garments made or sold by respondents or that such fur garments worn by such actresses

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are the products of respondents, unless, in truth and in fact, such actresses wear fur garments made or sold by respondents.

It is further ordered, That the Evans Fur Company and Kent Fur Company shall within 60 days after the service upon them of this order, file with this Commission a report or reports in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
MORTON SALT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2150. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935*

Where a corporation engaged in the manufacture and sale of a salt product, first made by it by mixing ordinary salt with other ingredients, including burnt sugar and refined concentrate of pyroligneous acid, secured through destructive distillation of wood in the practical absence of air, and, later, by also passing the salt through a long tube, through which wood smoke was propelled in the opposite direction—

Described said product as "smoke salt" or "Morton's Smoke Salt" and so marked the containers thereof and advertised the same in magazines and newspapers of general circulation in the United States, and in booklets and pamphlets distributed by it among purchasers and prospective purchasers in various States, and by radio broadcasting, and represented that said product possessed the quality of having been smoked, and that through use thereof meats could be cured and smoked by one operation, so that the smokehouse was no longer necessary, and in a booklet called "Meat Curing Made Easy" represented said "smoke salt" as a "wonderfully improved meat curing product", and as one "that does the whole job of curing, sugar-curing, and smoking at the same time", and included in some advertisements, in relatively small and inconspicuous letters, such phrases as "refined condensed wood smoke" and "highly concentrated and condensed refined wood smoke";

The facts being that such destructive distillation of wood does not result in a substitute for natural smoke produced through combustion of said substance and no such substitute is known to science, said tube process, as employed by it, did not and could not result in more than a negligible amount of smoke in quantity and effect, at most, adhering to the salt, and in a genuine smoke salt as made by competitors through electrical precipitation in which a sufficient amount of smoke is made to adhere to the salt so as to give the same the properties and qualities of smoke sufficiently for use in curing and flavoring meats;

With effect of misleading and deceiving the purchasing public into the belief that its aforesaid "smoke salt", to which said sugar had given the dark, or honey, brown color of the genuine product, had been subjected to the action and effect of, or treated or impregnated with smoke of burning wood during combustion, and had acquired from such source alone all of its smoke and smoke effects, and had had more than mere contact with smoke, and that through use thereof meats could be cured and smoked by one operation, etc., and into the purchase thereof in reliance upon such erroneous belief, and of diverting trade to it from competitors offering or selling in interstate commerce salt for curing meats, and from competitors offering and selling genuine smoke salt or smoked salt for said purposes, truthfully described, advertised or represented, and with capacity and tendency so to mislead, deceive, and divert: