

Complaint

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IN THE MATTER OF

SCIENTIFIC SHAMEY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2247. Complaint, Nov. 9, 1934—Decision, Sept. 24, 1935*

Where a corporation engaged in the sale and distribution of a cloth fabric to various retail and chain stores—

- (a) Advertised and sold same under trade name and designation "Scientific Washable Shamey", with pronunciation, and in simulation of, name of genuine "chamois" or "shammy", and set forth upon the labels thereof "Directions how to use Scientific Shamey", notwithstanding fact said fabric was not genuine "chamois" or "shammy", frequent phonetic synonym therefore, to wit, a soft leather originally made of the skin of the chamois antelope, for use for manufacture of leather gloves and the polishing of silverware and other metals, or, as more recently used, the inner part of oil-dressed sheepskin; and
- (b) Advertised said product as "manufactured by Scientific Shamey Co., Inc.", notwithstanding fact it had never owned, operated, or controlled a factory or factories in which said product was made;

With result of furnishing its retail and chain store customers an instrumentality having tendency and capacity to deceive and mislead their customers into believing that in purchase of said product, thus named, labelled and advertised, they were purchasing the much more valuable, genuine chamois or shammy, and to divert trade to it from competitors dealing therein, and from those who do not so deal, or so misleadingly advertise their product as a result thereof, and through inducing purchase from it as and for a direct purchase from the manufacturer, as a distinct trade advantage:

Held, That such acts and practices were to the prejudice of the public, and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hilldrop for the Commission.

Mr. Arthur M. Becker, of New York City, for respondent.

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 Scientific Shamey Company, Inc., 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 to the public interest, the Federal Trade Commis-

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sion hereby issues this, its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Scientific Shamey Company, Inc., is a corporation, organized, existing, and doing business, under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, State of New York.

Respondent has been engaged for sometime prior to the filing of this complaint in the sale and distribution of a certain fabric which it advertises and sells under the name of "Scientific Washable Shamey" which is a trade name and designation for said fabric, and in the sale of said fabric respondent ships and causes same to be shipped to various retail and chain stores, from its said place of business in the city of New York, State of New York, to such retail and chain Stores located in divers of the other States of the United States of America, and therefore and thereby, respondent in the sale of said fabric is engaged in interstate commerce. In the conduct of its said business, respondent has at all times been and is now in competition with divers other associations, corporations, firms, and individuals engaged in a similar and like business to that of respondent, and who like respondent are engaged in interstate business.

PAR. 2. Chamois is the name of an antelope, the skin of which is made into a soft leather and is used for the manufacture of gloves and to polish silver and other metals, and now and for some time past the word "chamois" also describes and applies to the inner part of the sheepskin, which, when oil dressed is a very soft and pliable product sold commercially under the name of "chamois" and which is likewise valuable for polishing and cleaning purposes. The only trade name and designation given to the genuine skin of the chamois antelope and to the oiled dressed sheepskin is the word "chamois", which word is often phonetically spelled "shammy"; the two words "chamois" and "shammy" having the same meaning to the retail trade and the purchasing public.

PAR. 3. In the conduct of its said business, the respondent caused labels to be printed and fixed upon its said fabric and which as afore-said it ships in interstate commerce, which said labels bear the words "Scientific Washable Shamey" in large red letters and these words were also stamped on the said product itself.

The labels also contained "Directions How to Use Scientific Shamey", as follows:

1. Wash shamey with soap and water.
2. Stretch shamey to original shape.
3. Dry shamey, then ready for use.

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The letters of the word "shamey" were fancifully arranged on said labels and stamped on the said product in the form of an equilateral triangle, surrounded by the words "Scientific Durable Washable", and which product so stamped and labeled the respondent sold in interstate commerce. Respondent made use of the word "shamey" as simulating the words "chamois" and "shammy" and pronounced the same as said words "chamois" and "shammy", but, its said product was not the skin of the genuine chamois antelope or the inner part of the sheepskin, oil dressed, nor was it a skin at all, but a cloth fabric.

PAR. 4. In the sale of the said product by respondent, it labeled and advertised said product as "Manufactured by Scientific Shamey Company, Inc.", when in truth and in fact the said respondent did not nor has it ever manufactured said product, does not own, operate or control the factory of factories in which said product is made, but filled orders for said product which was manufactured in factories which respondent as aforesaid, does not or did not own, operate nor control.

PAR. 5. In the labeling and selling in interstate commerce of its said cloth fabric under the name of "shamey" having the same sound and pronunciation as "chamois" and "shammy" the respondent furnishes its customers, to wit retail and chain stores, with an instrumentality which has the capacity and tendency to deceive and mislead the customers of said retail and chain stores, by causing them to believe that in the purchase of respondent's product labeled and advertised as "shamey" it is purchasing real and genuine "chamois" and "shammy" hereinbefore described, a much more valuable product than the said product of respondent, and also the actions of respondent in the labeling and advertising of its said product as herein set out has the tendency and capacity to divert trade from competitors of respondent, who sell in commerce genuine chamois or shammy and those competitors who sell in interstate commerce a product similar to the product of respondent but who do not advertise same as "shamey" or any other names having the same pronunciation and sound of "chamois" or "shammy", to respondent.

PAR. 6. The advertisement and labeling by respondent of its said product as "Manufactured by Scientific Shamey Company, Inc." likewise has a capacity and tendency to divert trade from the competitors of respondent to respondent, as said labeling and advertising carries with it the statement and implication that a purchaser when ordering said product is buying and dealing directly with the manufacturer, which has a distinct trade advantage.

PAR. 7. The foregoing acts and practices of respondent are all to the prejudice of the public and 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon respondent Scientific Shamey Company, Inc., charging it with unfair methods of competition in violation of Section 5 of said Act, and respondent duly filed its answer thereto. Thereafter testimony was taken and received in support of the complaint and duly reduced in writing and recorded and filed in the office of the Commission, the respondent having waived the introduction of the testimony in defense of the allegations of the complaint. Thereafter the proceeding came on for final hearing on the record and on the brief in support of the complaint, respondent having waived the filing of brief and oral argument. And the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Scientific Shamey Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, State of New York.

Respondent had been engaged in the sale and distribution of a certain fabric which it has advertised and sold under the name of "Scientific Washable Shamey" which is a trade name and designation for said fabric, and in the sale of said fabric respondent has shipped and caused the same to be shipped to various retail and chain stores, from its said place of business in the city of New York, State of New York, to such retail and chain stores located in divers of the other States of the United States of America, and therefore and thereby respondent in the sale of said fabric has been engaged in interstate commerce. In the conduct of its said business, respondent has been

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in substantial competition with other corporations and with firms, partnerships and persons engaged in commerce between and among the various States of the United States in articles used for the purposes for which, as hereinafter described, respondent has represented its said fabric to be adapted.

PAR. 2. Chamois is the name of an antelope, the skin of which is made into a soft leather and is used for the manufacture of gloves and to polish silver and other metals, and now and for some time past the word "chamois" also has described and applied to the inner part of the sheepskin, which when oil dressed, is a very soft and pliable product sold commercially under the name of "chamois" and which is likewise valuable for polishing and cleaning purposes. The only trade name and designation given to the genuine skin of the chamois antelope and to the oiled dressed sheepskin is the word "chamois", which word is often phonetically spelled "shammy"; the two words "chamois" and "shammy" having the same meaning to the retail trade and the purchasing public.

PAR. 3. In the course and conduct of its said business, the respondent has caused labels to be printed and affixed upon its said fabric sold in interstate commerce, which said labels have included the words "Scientific Washable Shamey" in large red letters and these words have also been stamped on the said product itself.

Such labels have also contained "Directions How to Use Scientific Shamey", as follows:

1. Wash Shamey with soap and water.
2. Stretch Shamey to original shape.
3. Dry Shamey, then ready to use.

The letters of the word "shamey" were fancifully arranged on said labels and stamped on the said product in the form of an equilateral triangle, surrounded by the words "Scientific Durable Washable". Respondent has made use of the word "shamey" as simulating the words "chamois" and "shammy" and has pronounced the same as said words "chamois" and "shammy", but its said product has not been the skin of the genuine chamois antelope or the inner part of the sheepskin oil dressed nor has it been a skin at all, but a cloth fabric.

PAR. 4. In the sale of the said product by respondent, it has labeled and advertised said product as "Manufactured by Scientific Shamey Company, Inc." when in truth and in fact respondent has never owned, operated, or controlled the factory or factories in which said product has been made.

PAR. 5. In the labeling and selling in interstate commerce of its said cloth fabric under the name "shamey" having the same sound

and pronunciation as "chamois" and "shammy" the respondent has furnished its customers, to wit, retail and chain stores, with an instrumentality which has the tendency and capacity to deceive and mislead the customers of said retail and chain stores, by causing them to believe that in the purchase of respondent's product labeled and advertised as "shamey" they were purchasing real and genuine "chamois" and "shammy" as hereinbefore described, a much more valuable product than the said product of respondent, and also the actions of respondent in the labeling and advertising of its said product as herein described has had the tendency and capacity to divert trade to respondent from competitors of respondent, who sell in interstate commerce genuine chamois or shammy and those competitors who sell in interstate commerce but who do not advertise their products as "shamey" or by any other name having the pronunciation and sound of "chamois" or "shammy."

PAR. 6. The advertisement and labeling by respondent of its said product as "Manufactured by Scientific Shamey Company, Inc.", likewise has had the tendency and capacity to divert trade from the competitors of respondent to respondent, as said labeling and advertising carried with it the statement and implication that a purchaser when ordering said product was buying and dealing directly with the manufacturer, which has a distinct trade advantage.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors 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 heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, the testimony and evidence, the brief in support of the complaint (respondent having waived filing of the brief and oral argument) and the Commission having made its report in which it stated 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"—

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Now, therefore, it is hereby ordered, That the respondent, Scientific Shamey Company, Inc., its officers, agents, and employees in connection with the sale or offering for sale in interstate commerce of a product heretofore designated by it as "Scientific Washable Shamey" forthwith cease and desist from:

(a) Labeling, advertising, describing, designating, or representing its said product as "Scientific Washable Shamey", "shamey" or by any word or words, phrases, terms or names, having a pronunciation or spelling simulating the words "chamois" or "shammy."

(b) Using the phrase "Manufactured by Scientific Shamey Company, Inc." or any other phrase or words of similar tenor, import or substance, until and unless respondent owns, operates or controls a factory or factories in which its said product is manufactured.

And it is hereby further ordered, That the respondent shall within 30 days after the service upon it of this order file with this 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.

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IN THE MATTER OF
MORTIMER KAUFMAN, TRADING AS WILSHIRE
WOOLEN COMPANY

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

Docket 2347. Complaint, Mar. 25, 1935—Decision, Sept. 24, 1935

Where an individual engaged in the sale and distribution of men's clothes among the various States—

- (a) Represented in advertising that suits sold and offered by him were 100 percent virgin wool, 100 percent pure wool, and 100 percent pure worsted, notwithstanding fact that such suits were not thus composed, but were made of a large admixture of shoddy or reworked wool; and
- (b) Represented that such suits were made to the measure of the particular person or persons to whom they were sold or offered, and that orders therefor would be filled by his furnishing to the customer or prospective customer the particular style and material selected, facts being such suits were not made to the measure of the particular person to whom sold or offered, but were ready-made garments purchased by him from a manufacturer of ready-made clothing, and he did not send to customers style or material selected, but suits which differed in such respects from the customer's selection;

With capacity and tendency to deceive and mislead purchasing public into erroneous belief that such suits were composed as represented, made to measure of particular purchaser, and supplied in style and of material selected, and induce purchase thereof in such erroneous beliefs, and thereby divert trade to himself from competitors selling men's suits by fair and truthful representations, to the substantial injury of substantial competition in interstate commerce:

Held, That such acts and practices were to the prejudice and injury of the public and competitors within intent and meaning of Section 5.

Before *Mr. Edward M. Averill*, trial examiner:

Mr. John W. Hilldrop for the Commission.

Mr. Irving D. Lipkowitz, of New York City, for respondent.

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 Mortimer Kaufman, trading as Wilshire Woolen Company, hereinafter referred to as respondent, 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