

Complaint

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IN THE MATTER OF

S. BENSON STUDIOS, INC., DOING BUSINESS AS BENSON
STUDIO AND BENSON'SCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2533. Complaint, Aug. 30, 1935—Order, Oct. 1, 1935*

Where a corporation engaged in the sale and distribution of women's coats and furs; in advertising and soliciting the sale thereof through circulars and circular letters sent to various persons in the different States and through newspaper advertisements of wide interstate circulation and through the radio—

- (a) Represented that it sold at its place of business genuine fur coats and scarfs and beautiful cloth coats which had been slightly used for posing and fashion work only at an extraordinarily low price and for a fraction of what purchasers and potential purchasers intended spending, facts being commodities thus advertised and represented did not consist wholly or substantially of "sample" or "model" coats and furs, but mainly of garments which had never been worn, and prices charged therefor were no lower than those at which other dealers sold comparable garments never worn or used as samples or models;
- (b) Represented that magnificent genuine fur coats of exceptionally beautiful, selected skins, guaranteed never to have been worn on the street, could be bought from it for as little as \$39.50 and that lovely fur scarfs in silvers, reds, pointed, brouns, and all the new shades could be bought from it for \$10, and that such garments would be guaranteed in writing by it for five years and free repairs and free storage given with every purchase, facts being genuine fur coats of the newest advance models and made of selected skins could not be purchased for as little as \$39.50, nor "lovely fur scarfs" in all the new shades and in the variety of furs named for \$10;

With tendency to mislead and deceive the buying public by causing said public to believe that it could purchase from such corporation fur garments slightly used for sample or model purposes at a price greatly less than the market price thereof, and that genuine fur coats of exceptionally beautiful selected skins could be bought from it for as little as \$39.50, and with tendency and capacity unfairly to divert trade to it from other individuals and concerns engaged in similar business, but honestly and truthfully advertising and representing their goods:

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

Mr. John W. Hildrop for the Commission.

Kaye, Scholer, Fierman & Hays, of New York City, for respondent.

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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 S. Benson Studios, Inc., a corporation, trading and doing business also as Benson Studio and as Benson's, has been, or is, using unfair methods of competition in commerce as "commerce" is defined in said act, by false and misleading advertisements of certain goods, wares, and merchandise sold by it, said S. Benson Studios, Inc., a corporation, trading and doing business also as Benson Studio and as Benson's, in manner and form as hereafter set out, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, S. Benson Studios, Inc., is a corporation chartered, 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, in the State of New York. It is now, and for more than one year last past has been engaged, under its corporate name of S. Benson Studios, Inc., and also under the trade names and styles of "Benson Studio" and "Benson's", in the sale and distribution of women's coats and furs in commerce between and among various States of the United States of America; causing its said products, when sold, to be shipped from its place of business located in the State of New York to purchasers thereof located in the different States of the United States of America, other than the State of New York; and in the course and conduct of its business, said respondent was at all times, herein referred to, and is now, in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the said respondent, S. Benson Studios, Inc., in advertising and soliciting the sale of its products, by means of circulars and circular letters sent through the mails to various persons in the different States of the United States other than New York, by advertisements in newspapers having a wide interstate circulation, and by radio, represented and held out to the buying public as an inducement to buy its products that it, the said respondent, could and did sell at its place of business genuine fur coats and scarfs and beautiful cloth coats at an extraordinarily low price and for a fraction of what purchasers and potential purchasers had intended spending; that these garments had been slightly used, just for posing and fashion work; that magnificent genuine fur coats of exceptionally beautiful, selected skins could be bought from respondent for as low as \$39.50, and were guaranteed never to have

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been worn on the street; that lovely fur scarfs in silvers, reds, pointed, brouns, and all the new shades, could be bought from respondent for \$10; that said garments would be guaranteed in writing by respondent for five years, and that free repairs and free storage would be given with every purchase.

In truth and in fact, the commodities so advertised and represented by respondent did not wholly consist of, nor did a substantial part thereof consist of, "sample" or "model" coats and furs, but the greater part thereof consisted of garments which had never been worn; and likewise, in truth and in fact, the prices charged therefor were no lower than the prices at which other dealers sold and offered for sale similar garments which had never been worn nor used as "samples" or "models"; it was and is not true that genuine fur coats of the newest advance models and made of selected skins could, or can be, purchased for as little as \$39.50, nor that "lovely fur scarfs" in all the new shades and in the variety of furs named in said advertisements can, or could be, purchased for \$10.

PAR. 3. The false and misleading advertisements and representations of respondent, as hereinbefore set out, had and have a tendency to mislead and deceive the buying public by causing it to believe that it could and can purchase from respondent fur garments, which had been slightly used for sample or model purposes, at a price greatly less than the market price thereof, and that genuine fur coats of exceptionally beautiful, selected skins could and can be bought from respondent at a price as low as \$39.50, when such were not the facts; and said advertisements and representations also had and have a tendency and capacity to unfairly divert trade to respondent from other individuals, firms, corporations, and associations engaged in a similar business to that of respondent, but who honestly and truthfully advertise and represent their goods.

PAR. 4. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate 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 its complaint upon the respondent herein, S. Benson Studios, Inc., a corporation, trading and doing

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business also as Benson Studio and as Benson's, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondent, after the filing of its answer in this proceeding, filed an amended and supplemental answer in which it admitted as true the allegations of paragraphs 1, 2, and 3 of the complaint, and in said amended and supplemental answer the respondent waived the taking of any further testimony or the receiving of any further evidence in this proceeding other than the allegations in the complaint and the admissions contained in said amended and supplemental answer, and also consented that the Federal Trade Commission might make its findings as to the facts and draw its conclusion therefrom and proceed to enter and serve on respondent an order to cease and desist from the acts of unfair competition alleged in the complaint, and the Commission having duly considered the same, 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. The respondent, S. Benson Studios, Inc., is a corporation chartered, 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, in the State of New York. It is now, and for more than one year last past has been engaged, under its corporate name of S. Benson Studios, Inc., and also under the trade names and styles of "Benson Studio" and "Benson's", in the sale and distribution of women's coats and furs in commerce between and among various States of the United States of America; causing its said products, when sold, to be shipped from its place of business located in the State of New York to purchasers thereof located in the different States of the United States of America, other than the State of New York; and in the course and conduct of its business, said respondent was at all times herein referred to, and is now, in competition with other corporations, individuals, firms and partnerships engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the said respondent, S. Benson Studios, Inc., in advertising and soliciting the sale of its products, by means of circulars and circular letters sent through the mails to various persons in the different States of the United States other than New York, by advertisements in newspapers having a wide interstate circulation,

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and by radio, represented and held out to the buying public as an inducement to buy its products that it, the said respondent, could and did sell at its place of business genuine fur coats and scarfs and beautiful cloth coats at an extraordinarily low price and for a fraction of what purchasers and potential purchasers had intended spending; that these garments had been slightly used, just for posing and fashion work; that magnificent genuine fur coats of exceptionally beautiful, selected skins could be bought from respondent for as low as \$39.50, and were guaranteed never to have been worn on the street; that lovely fur scarfs in silvers, reds, pointed, brouns, and all the new shades, could be bought from respondent for \$10; that said garments would be guaranteed in writing by respondent for five years, and that free repairs and free storage would be given with every purchase.

In truth and in fact, the commodities so advertised and represented by respondent did not wholly consist of, nor did a substantial part thereof consist of, "sample" or "model" coats and furs, but the greater part thereof consisted of garments which had never been worn; and likewise, in truth and in fact, the prices charged therefor were no lower than the prices at which other dealers sold and offered for sale similar garments which had never been worn nor used as "samples" or "models"; it was and is not true that genuine fur coats of the newest advance models and made of selected skins could, or can be, purchased for as little as \$39.50, nor that "lovely fur scarfs" in all the new shades and in the variety of furs named in said advertisements can, or could be, purchased for \$10.

PAR. 3. The false and misleading advertisements and representations of respondent, as hereinbefore set out, had and have a tendency to mislead and deceive the buying public by causing it to believe that it could and can purchase from respondent fur garments, which had been slightly used for sample or model purposes, at a price greatly less than the market price thereof, and that genuine fur coats of exceptionally beautiful, selected skins could and can be bought from respondent at a price as low as \$39.50, when such were not the facts; and said advertisements and representations also had and have a tendency and capacity to unfairly divert trade to respondent from other individuals, firms, corporations, and associations engaged in a similar business to that of respondent, but who honestly and truthfully advertise and represent their goods.

CONCLUSION

The foregoing alleged acts and practices of respondent, S. Benson Studios, Inc., a corporation, trading and doing business also as "Ben-

son Studio" and as "Benson's", are each and all to the prejudice of the public, and to the competitors of the respondent, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the original and amended and supplemental answers of the respondent, and the respondent having, in its amended and supplemental answer, admitted as true the allegations contained in paragraphs 1, 2, and 3 of the complaint and consented therein that the Federal Trade Commission may, without introducing further testimony or receiving further evidence, make its findings as to the facts and draw its conclusion from the allegations in the complaint contained and the admissions contained in said amended and supplemental answer and proceed to enter and serve on respondent an order to cease and desist from the acts of unfair competition alleged in the complaint, and the Commission having made its findings as to the facts and its conclusion that said 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"—

Now, therefore, it is hereby ordered, That respondent, S. Benson Studios, Inc., a corporation, trading and doing business also as "Benson Studio" and as "Benson's", in connection with the sale and the offering for sale of women's coats and furs in interstate commerce, forthwith cease and desist from:

(a) By advertisements in newspapers, magazines, journals, and over the radio, and by any other form of advertising, representing, and holding out to the buying public as an inducement to buy its products that it, the said respondent, could and does sell at its place of business genuine fur coats and scarfs and beautiful cloth coats at an extraordinarily low price and at a fraction of what purchasers and potential purchasers had intended spending.

(b) Representing and advertising that the garments sold and offered for sale by respondent are or have been slightly used, just for posing and fashion work, unless in truth and in fact

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such garments so advertised and represented have been slightly used and used just for posing and fashion work.

(c) Representing and advertising that magnificent genuine fur coats of exceptionally beautiful, selected skins, could or can be bought from respondent for as low as \$39.50, and that said garments were and are guaranteed never to have been worn on the street.

(d) Advertising and representing that lovely fur scarfs in silvers, reds, pointed, brouns, and all the new shades, could or can be bought from respondent for \$10, or for any other sum less than the true and actual market price of such commodities.

(e) Advertising and representing that said garments sold and advertised for sale by respondent would be or are guaranteed in writing by respondent for five years, and that free repairs and free storage would be or are given with every purchase, unless in truth and in fact respondent does guarantee said garments in writing for a period of five years and does in truth and in fact give free storage and free repairs with every purchase.

And it is hereby further ordered, That the said respondent, S. Benson Studios, Inc., a corporation, trading and doing business also as "Benson Studio" and "Benson's", shall within 60 days after the service upon it of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which it shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

FRANK A. SCERVINI, TRADING AND DOING BUSINESS
AS F. & S. MANUFACTURING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2537. Complaint, Aug. 30, 1935—Order, Oct. 1, 1935*

Consent order requiring respondent individual, his agents, etc., in connection with the sale or offer in commerce among the several States and in the District of Columbia, of certain pharmaceutical and druggists' supplies, including gelatin capsules containing various preparations and compounds of a medicinal character, to cease and desist from—

- (a) Representing himself or his company directly or indirectly by advertisements, stationery, radio broadcasts, or in any manner or means as a manufacturer of pharmaceutical and druggists' supplies as above set forth, until he owns, operates and controls a factory or factories in which said products are made; or
- (b) Using the word "Manufacturing" as a part of or in connection with any trade name under which he carries on the aforesaid business, or the words "Makers of", independently or in connection with any other word or words or in any way having the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that he owns, operates or controls a factory or laboratory in which the pharmaceutical and druggists' supplies sold and distributed by him are made and compounded, until he in fact owns, operates and controls a factory or factories making said products.

Mr. J. T. Welch 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 Frank A. Scervini, doing business under the trade name and style of F. & S. Manufacturing Company, hereinafter designated as respondent, is now and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Frank A. Scervini, is an individual who is now, and has been at all times mentioned herein, doing business under the trade name and style of F. & S. Manufacturing Company, at 100 Fifth Avenue, New York, N. Y. Respondent is now, and has