

Complaint

IN THE MATTER OF

HARRY GOTTSAGEN, MAX GOTTSAGEN, MARTIN GOTTSAGEN, ALEXANDER GOTTSAGEN, TRADING AS GOTHAM SALES COMPANY AND AS UNIVERSAL MERCHANDISE COMPANY

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

Docket 2344. Complaint, Mar. 23, 1935—Decision, Nov. 4, 1935

Where a corporation engaged in the sale and distribution of assorted notions and novelties to the purchasing and consuming public throughout the several States, offered and sold large quantities of shoe laces upon the wrapper of each pair of which appeared in bold type "Mercerized Broadway Brand", notwithstanding fact that said laces, thus labeled, were not mercerized, to wit, laces treated with a caustic solution whereby the tensil strength and microscopic appearance thereof were changed, but were cheap cotton laces imported from Japan;

With capacity and tendency to confuse, mislead and deceive members of the public into the belief that said product was in fact mercerized, and induce purchase thereof in such erroneous belief, and with effect of diverting trade to it from competitors, including those who in nowise misrepresent the quality and kind of their products, and with tendency so to divert, to their substantial injury and prejudice:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Jerome L. Greenberg, of New York City, for respondents.

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 Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, co-partners, trading as Gotham Sales Company and Universal Merchandise Company, 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 respondents, Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, co-partners, trading as Gotham Sales Company and as Universal Mer-

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chandise Company, and having their principal office and place of business at 14 E. 17th Street, New York City, are now and have been engaged in business as wholesalers of novelties, toilet articles, drug sundries, and other merchandise. Said respondents have advertised and sold and are advertising and selling, or causing to be sold, throughout the country, shoe laces which are advertised as "mercerized" laces. Also said shoe laces have affixed thereto brands or labels upon which the word "mercerized" is featured. Respondents sell or cause to be sold said shoe laces through the jobbing and other trade to the public residing in various States of the United States. Respondents cause said commodities, when so sold, to be transported from their said place of business in New York City, into and through other States of the United States to said purchasers at their respective locations.

PAR. 2. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships and corporations engaged in advertising, selling, and distributing in interstate commerce shoe laces intended and used for the same purposes as those for which respondents represent their laces, as hereinafter set out, and respondents have been and are now in competition in interstate commerce in the sale of said shoe laces with such other individuals, partnerships, and corporations.

PAR. 3. Respondents, in the course of their business have offered for sale and sold shoe laces represented and labeled as "mercerized" shoe laces. Mercerized shoe laces are those laces which have been subjected to a chemical process which gives to the laces a silky, polished appearance, and which lends added strength, thereby producing a more valuable and desirable shoe lace. In truth and in fact, the laces so represented, labeled and sold by respondents have not been subjected to a process of mercerization, and are not "mercerized" but instead are a cheap cotton lace imported from Japan.

PAR. 4. The representations of respondents have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that the said shoe laces of respondents are mercerized, as advertised on the label, and to induce them to buy and use the same because of such erroneous belief so engendered. Such representations unfairly divert trade to respondents from legitimate competitors who truthfully advertise similar products, and who are engaged in the sale in interstate commerce of products intended for and used for the same purposes as those for which respondents represent their products.

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, 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 complaint upon the respondents, Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, copartners, trading as Gotham Sales Company and as Universal Merchandise Company, charging them with unfair methods of competition in violation of Section 5 of said Act, and respondents duly filed their answer thereto. Thereafter, respondents having entered their appearance, testimony was taken and evidence received in support of the complaint and on behalf of respondents, and duly reduced to writing and recorded and filed in the office of the Commission. Subsequently, this proceeding came on for final hearing on the record, and the Commission having duly considered the record and the brief of counsel for the Commission, 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, are co-partners, trading as Gotham Sales Company and as Universal Merchandise Company. Their principal office and place of business is at 14 East Seventeenth Street, New York, N. Y. They also have branch stores in Chicago, Ill., New Orleans, La., and San Francisco, Calif. Respondents now are, and have been for the past nine years, engaged in the sale and distribution in interstate commerce of assorted notions and novelties to the purchasing and consuming public throughout the several States of the United States, and cause said products, when so sold, to be transported from their place of business in New York City through and into other States of the United States to their said vendees at their respective points of location and residences. In the course and conduct of their said business respondents are in competition with other individuals, and with firms, partnerships and corporations engaged in the sale and distribution of like

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products in commerce between and among the various States of the United States, which products so sold and distributed by such competitors are used for purposes similar to those purposes for which respondents' products are used.

PAR. 2. Respondents, in the course and conduct of their business, as described in paragraph 1 hereof, offered for sale and sold large quantities of "Broadway Brand" shoe laces labeled "mercerized". On the wrapper of each pair of said laces appeared the following in bold type:

MERCERIZED BROADWAY BRAND

A mercerized shoe lace is one which has been treated with a caustic solution, which process increases the tensil strength of the lace and also increases its sensitiveness to dyeing. The microscopic appearance of the fibre is also changed. The public is willing to pay more for mercerized laces than for laces which are not mercerized. In truth and in fact, the said "Broadway Brand" shoe laces labeled "mercerized" by respondents were not mercerized laces, and had not been treated with a caustic solution which increases the tensil strength and changes the microscopic appearance of the laces, but were cheap cotton laces imported from Japan.

PAR. 3. The representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondents' "Broadway Brand" shoe laces labeled "mercerized" are mercerized shoe laces. Said representations of respondents have had and do have the tendency and capacity to induce members of the public to buy and use respondents' laces because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondents from competitors engaged in the sale in interstate commerce of shoe laces.

PAR. 4. There are among the competitors of respondents in the sale of their products, those who in nowise misrepresent the quality and kind of their competing products, and respondents' acts and practices, as hereinbefore set forth, tend to and do divert the business to respondents from their competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are all to the injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, and are in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create

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a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony in support of the charges of said complaint and in opposition thereto, and brief filed by counsel of the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents 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 ordered, That respondents, Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, co-partners, trading as Gotham Sales Company and as Universal Merchandise Company, their officers, directors, agents, representatives, servants and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and in the District of Columbia of shoe laces, cease and desist from representing by express statements or by implication, or otherwise, that any of the said laces are mercerized, when such is not the fact.

It is further ordered, That respondents, within 60 days from and after the date of service upon them of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which they are complying with the order to cease and desist hereinbefore set forth.

Syllabus

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IN THE MATTER OF

MAXWELL STEEL VAULT COMPANY

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

Docket 2160. Complaint, Jan. 26, 1934—Decision, Nov. 5, 1935

Where a corporation engaged in the manufacture and sale of two types of steel burial vaults,

Represented in periodical and newspaper advertisements thereof and in circulars, letters, and other trade literature and in purported certificates of warranty, that one or both of said vaults, as the case might be, were made of rust-resisting metal and would withstand any earth pressure incident to interment and that they were absolutely or positively airtight, waterproof, and vermin-proof, and included in their said purported certificates of warranty an offer to replace without cost to the purchaser any vault failing to meet such "warranties";

The facts being that said supposed warranties were mere sales inducements and false and misleading, in that said products would not withstand any or all earth pressure, were not made of rust-resisting material, but were subject to the pitting or corroding action and resulting rust from the corrosive qualities inherent in varying degrees in all soils and quite common in those in the United States, were not at all times free from defective materials or workmanship, were not positively or at all times waterproof or airtight or watertight or vermin-proof, as understood by the consuming public from a reading of the supposed warranties, and that only under ideal burial conditions, presupposing coincidence of various favorable factors and including, among others, uniformity in temperature and atmospheric pressure, which coincidence in many instances does not prevail, would said vaults endure as waterproof for a great number of years, and said certificates were worthless to a vast majority of the ultimate purchasers of said products, due to infrequency of disinterment and consequent absence of opportunity in which to ascertain whether or not they were fulfilling their terms;

With capacity and tendency to mislead and deceive the public into the belief that said vaults had the qualities claimed for them under all burial conditions, and that they would endure as airtight, etc., as hereinbefore set forth, and to divert trade to it from competitors engaged in manufacturing and selling steel and other vaults for similar purposes and otherwise to injure the same:

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.

Before *Mr. John W. Norwood*, trial examiner.

Mr. E. J. Hornibrook for the Commission.

Coville & Santry, of Oneida, N. Y., and *Waite, Schindel & Bayless*, of Cincinnati, Ohio, for respondent.