

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 14, 1936, TO JULY 9, 1936

IN THE MATTER OF

JAMES McCREERY & COMPANY

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

Docket 2318. Complaint, Mar. 7, 1935—Order, Jan. 14, 1936

Where a corporation engaged in the operation of a large department store, advertised and sold as "Toyo Panamas" hats made from rice pulp paper twisted and woven by hand or loom into a product resembling a Panama straw hat, facts being that said products were not genuine Panama straw hats, as understood from word by trade and public, to wit, imported from Central or South America and woven by hand from the leaf of the paja toquilla or jipajapa plant in a saturated condition, or under water in the case of the better quality product, and it was not popularly known that word "toyo" meant paper; with tendency and capacity to mislead and deceive public by causing it to believe that said articles were genuine Panama hats made as hereinbefore set forth, and with effect of diverting trade from competitors dealing in the genuine product and those dealing in the imitation article and truthfully advertising and describing the same, and with capacity so to mislead:

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

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

Mr. John W. Hildrop for the Commission.

Gould & Wilkie, of New York City, for respondent.

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

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reason to believe that James McCreery & Company, a corporation, has been and is now 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. Respondent, James McCreery & Company is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business in the city of New York, N. Y., and is the owner and operator of a large department store in which it sells among other articles of merchandise a certain hat which it advertises and sells under the name of Toyo Panamas, and which said Toyo Panama hats it ships in interstate commerce from its said store in the city of New York, N. Y., into and through various of the States of the United States of America, and is in competition with divers other individuals, firms, associations and corporations engaged in the sale of imitation Panama hats in interstate commerce as well as those engaged in the sale of genuine Panama hats in interstate commerce.

PAR. 2. The hats sold and shipped in interstate commerce by respondent under the name of Toyo Panama are made from a paper derived from rice pulp after which it is twisted and woven by hand or loom into a product resembling a Panama straw hat; and while the word "Toyo" means paper, this fact is not known to the buying public.

PAR. 3. The word "Panama", as applied to straw hats, has a definite geographical meaning both to the trade and public. A straw hat to be a Panama must be imported from Central or South America, and made from the leaf of the *paja toquilla* or the *jipajapa* plant. Genuine Panama hats are woven by hand in a saturated condition and the better quality Panama hats are woven while under water. There is no paper used in the manufacture of genuine Panama hats and any process, geographical location or material used other than as hereinbefore set out in this paragraph, is foreign to what the trade and the public have come to understand the word "Panama" hat to mean.

PAR. 4. The respondent in the advertising of its said hats for sale in interstate commerce and in the distribution thereof in interstate commerce, omitted any words or phrases qualifying the said Toyo hats so that the buying public would know the same were not genuine Panama but made of paper as aforesaid, but inserted and cause to be inserted in various newspaper published in New York and elsewhere, and especially the New York Journal, a certain advertisement in the following words:

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Saturday Special!

Toyo Panamas \$1.79

A Grand Group of Brimmed Favorites for Summer!

Many Styles in the Group with Different Bands.

All size brims. One day only at \$1.79.

McCreery's—Fifth Ave.—34th St.

PAR. 5. The advertising, designating and describing by respondent as set out in paragraph 4, its said Toyo hats and using in connection therewith the word "Panama" or "Panamas" is misleading and deceptive and has a tendency and a capacity to mislead and deceive the public by causing it to believe that the said Toyo hats so advertised were genuine Panama hats, made of the material and by the process set out herein in paragraph 3; and has a capacity to and does divert trade from the competitors of respondent who are engaged in the sale in interstate commerce of genuine Panama hats and those competitors of respondent engaged in the sale in interstate commerce of imitation Panama hats who truthfully advertise and describe same.

PAR. 6. The above acts and things done by respondent are to the injury and prejudice of the public and of respondent's competitors in commerce within the 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, on the 7th day of March, 1935, issued and served its complaint in this proceeding upon the respondent, James McCreery & Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Gould & Wilkie, attorneys for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, brief of counsel for the Commission

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in support of the complaint, no brief being filed for respondent, nor did counsel for the respondent appear and argue the proceeding for respondent; and the Commission having duly considered the same, 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, James McCreery & Company, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business in the city of New York, N. Y., and is the owner and operator of a large department store in which it sells among other articles of merchandise a certain hat which it advertises and sells under the name of Toyo Panamas, and which said Toyo Panama hats it ships in interstate commerce from its said store in the city of New York, N. Y., into and through various of the States of the United States of America, and is in competition with divers other individuals, firms, associations and corporations engaged in the sale of imitation Panama hats in interstate commerce as well as those engaged in the sale of genuine Panama hats in interstate commerce.

PAR. 2. The hats sold and shipped in interstate commerce by respondent under the name of Toyo Panama are made from a paper derived from rice pulp after which it is twisted and woven by hand or loom into a product resembling a Panama straw hat; and while the word "Toyo" means paper, this fact is not known to the buying public.

PAR. 3. The word, "Panama", as applied to straw hats, has a definite geographical meaning both to the trade and public. A straw hat to be a Panama must be imported from Central or South America, and made from the leaf of the paja toquilla or the jipajapa plant. Genuine Panama hats are woven by hand in a saturated condition and the better quality Panama hats are woven while under water. There is no paper used in the manufacture of genuine Panama hats and any process, geographical location or material used other than as hereinbefore set out in this paragraph, is foreign to what the trade and the public have come to understand the word "Panama" hat to mean.

PAR. 4. The respondent in the advertising of its said hats for sale in interstate commerce and in the distribution thereof in interstate commerce, omitted any words or phrases qualifying the said Toyo hats so that the buying public would know the same were not genu-

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ine Panama but made of paper as aforesaid, but inserted and caused to be inserted in various newspapers published in New York and elsewhere, and especially the New York Journal, a certain advertisement in the following words:

Saturday Special.

Toyo Panamas \$1.79

A Grand Group of Brimmed Favorites for Summer!

Many Styles in the Group with Different Bands.

All size brims. One day only at \$1.79.

McCreery's—Fifth Ave.—34th St.

PAR. 5. The advertising, designating and describing by respondent as set out in paragraph 4, of its said Toyo hats and using in connection therewith the word "Panama" or "Panamas" is misleading and deceptive and has a tendency and a capacity to mislead and deceive the public by causing it to believe that the said Toyo hats so advertised were genuine Panama hats, made of the material and by the process set out herein in paragraph 3; and has a capacity to and does divert trade from the competitors of respondent who are engaged in the sale in interstate commerce of genuine Panama hats and those competitors of respondent engaged in the sale in interstate commerce of imitation Panama hats who truthfully advertise and describe same.

CONCLUSION

The foregoing acts of the respondent set out and described in the Commission's findings as to the facts are to the injury and prejudice of the public and of respondent's competitors, and constitute 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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief of counsel for Commission, no brief being filed by counsel

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for respondent and counsel for respondent not appearing to argue this proceeding on the day it was set for hearing before the Commission, to wit, December 9, 1934, and the Commission having made its findings as to the fact 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".

It is ordered, That respondent, James McCreery & Company, a corporation, its officers, agents, servants, employees and representatives, in the manufacture, sale and distribution in interstate commerce of its Toyo hats made from the paper derived from rice pulp, do cease and desist from:

(a) Representing or advertising in any manner whatsoever that its said Toyo hats are "Panama" hats.

(b) Using the word "Panama" in describing its said Toyo hats in the sale, offering for sale, or advertising thereof in interstate commerce, and from using the word "Panama" in connection with any other words or phrases in the advertising, sale and offering for sale in interstate commerce of its said Toyo hats.

(c) Selling, offering for sale or advertising any other hats in interstate commerce as "Panama" hats, or using the word "Panama" in connection or in conjunction therewith, unless in truth and in fact such hats so sold, offered for sale, or advertised in interstate commerce are genuine Panama hats woven by hand in a saturated condition and made from the leaf of the paja toquilla or the jipajapa plant.

It is further ordered, That the respondent, James McCreery & Company, within 60 days after the service upon it of this order shall file with the 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
CHARLES E. MORRISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2367. Complaint, Apr. 15, 1935—Decision, Jan. 14, 1936*

Where an individual engaged in the sale at retail of fur coats and other fur garments at prices substantially the same as those usually charged for comparable products by retailers, falsely represented through letters and other trade literature and through radio broadcasts, advertisements in periodicals and in other ways, that he was a "reliable wholesale fur house backed by responsibility and confidence", selling to stores from "coast to coast," that his place of business was "the * * * Fur Coat Show Room," a "wholesale show room," and not a store, that he was a "wholesale manufacturing furrier" and offered said fur garments at "strictly wholesale prices", and that fur coats could be purchased from him at one-third to one-half less than at retail stores; with capacity and tendency to mislead and deceive the purchasing public into the belief that his representations were true, and into purchasing said garments from him in such belief, and with result of diverting trade to him from competitors, who do not make such false representations; to the substantial injury of substantial competition in commerce:

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. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

Mr. Hilliard L. Bernstein, 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 Charles E. Morris, hereinafter referred to as respondent, has been or 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. The respondent, Charles E. Morris, is now and for more than two years last past has been engaged under and by his name and under and by the trade name Charles E. Morris Show Room in the city of New York, State of New York, in the business of sell-