

Complaint

22 F. T. C.

IN THE MATTER OF
BEST & COMPANY

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

Docket 2359. Complaint, Apr. 11, 1935—Decision, Feb. 19, 1936

Where a corporation engaged in the sale and distribution of a general line of merchandise including women's hats, made use of words "Toyo Panama" and "Panama", in newspaper advertising describing and offering certain hats, notwithstanding fact that said products were not the genuine superior Panama hat woven moist in South American countries by natives skilled in the distinctive type of hand weaving concerned, and made of material from the tropical jipljapa or paja toquilla plant, but were made of rice paper and imported from an island of Japan; with capacity and tendency to induce purchasing public to buy said hats as and for the genuine Panama product and to divert trade unfairly from competitors engaged in the sale of "Toyo" hats, Japanese meaning of which designation is not popularly known or understood by purchasing public, and from those engaged in sale of Panama hats, truthfully and rightfully advertised and represented by said competitors:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. M. James Spitzer of *Strauss, Reich & Boyer*, 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 reason to believe that Best & Company, a corporation, 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 the Commission that a proceeding by it would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and at all times hereinafter mentioned has been, a corporation duly organized, created, and existing 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 a number of years last

past has been, engaged in the sale and distribution of a general line of merchandise, including hats. Its sales are made directly to the purchasing public located throughout the various States of the United States and in the District of Columbia, and pursuant to such sales shipments are made from respondent's place of business in New York, N. Y., into and through various States of the United States other than the State of the point of origin of such shipments, and in the District of Columbia. In so carrying on its said business, respondent maintains a constant current of trade and commerce between the State of New York and other States of the United States. There are in the United States other persons, firms and corporations engaged in the business of selling and distributing a general line of merchandise, including hats, who, pursuant to such sales, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and with such other persons, firms and corporations respondent is, and at all times hereinafter mentioned has been, in active and substantial competition.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling certain of its merchandise, namely, hats, causes same to be advertised in newspapers having circulation in the various States of the United States, wherein said hats were represented, designated and referred to by the following language:

Get under the shady brim of a Toyo* Panama. Panamas are more talked about than ever this summer because nothing beats them for chic, cool comfort and versatility. Here are three very new Best versions to wear with print or pastels in town or at a resort. In white only. Exclusive with Best's.

and

* Okinawa Toyo, the Best Quality.

As a part of said advertisement there are three pictorial representations of three different styles of hats, and one of them is referred to as "Maria Guy uses a long quill to give this Panama dash."

PAR. 3. The word "Panama," when used in connection with hats, means to the trade and purchasing public hats imported from Central or South America, made from the leaf of the *paja toquilla* or *jipijapa* plant which has been woven by hand while in a saturated condition and then dried in the sun.

PAR. 4. The statements and representations made by respondent in the advertising, as set forth in paragraph 2 hereof, are false and misleading because said hats were not made from the leaves of the *paja toquilla* or *jipijapa* plant, or in accordance with the process used in the manufacture of Panama hats, but were manufactured in accord-

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ance with a process other than that used in the manufacture of Panama hats and from materials other than those of which Panama hats are made.

PAR. 5. There is a preference on the part of many wearers of hats located throughout the United States for Panama hats, and the false and misleading statements and representations used by respondent in aid of the sale of the hats sold and distributed by it as aforesaid had and have the capacity and tendency to induce the purchasing public to purchase and use respondent's hats in the belief that said statements and representations made as to them are true, and had and have the capacity and tendency to unfairly divert trade from competitors of respondent engaged in the sale in interstate commerce of Panama hats, which said competitors truthfully and honestly advertise and represent their said Panama hats. On account of the aforesaid practices of respondent, substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 6. The acts and things done by the respondent are to the injury and prejudice of the public and the 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 on April 11, 1935 issued and served its complaint in this proceeding upon respondent Best & Company, 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 allegation of said complaint were introduced by Astor Hogg, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by M. James Spitzer, attorney 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, briefs in support of

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the complaint and in defense thereto, and oral argument of counsel aforesaid; 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, Best & Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York in said State. For several years last past respondent has been engaged in the business of selling and distributing a general line of merchandise including hats for women. Sales are made by respondent directly to the purchasing public located throughout the various States of the United States. Respondent causes said merchandise, including women's hats when so sold, to be transported from its place of business in the State of New York, into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business respondent is in active and substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of merchandise, including women's hats, in commerce between and among the various States of the United States.

PAR. 2. In the month of June 1931, respondent, through newspapers having interstate circulation, advertised and offered for sale women's hats made in Japan of rice paper as "Toyo Panama" hats and as "Paper Panama" hats.

Subsequently in, to wit, the year 1934, respondent in soliciting the sale of and selling its said hats advertised in newspapers having circulation in the various States of the United States certain of its women's hats with the following language:

BEST & CO.

Fifth Avenue at 35th Street

Garden City Mamaroneck East Orange Brookline Ardmore
advises you to

Get Under The Shady Brim Of A TOYO* PANAMA

Panamas are more talked about than ever this Summer because nothing beats them for chic, cool comfort and versatility. Here are three very new Best versions to wear with prints or pastels, in town or at a resort. In white only. Exclusive with Best's.

*Okinawa Toyo, the best quality.

(Illustration of lady's hat.)

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LINEN FACING and band to match
your linen coat or dress, on this wide-
brimmed beauty—17.50

(Illustration of lady's hat)

MARIA GUY

uses a long quill to
give this Panama dash.

Best's copy—15.00

(Illustration of lady's hat)

DUNLAP SAILOR

with good looking new
scoop brim and smart
tassel band—11.75

PAR. 3. Panama hats are made from material derived from tropical plants known as jipijapa or paja toquilla. They are woven entirely by hand while in a moist condition, in South American countries, by natives skilled in the distinctive type of weaving, of which such hats are produced. There are various grades of hats made in Japan of rice paper which resemble Panama hats in appearance and type of weave. The correct name of these hats made in Japan, and made of rice paper, is "Toyo", but the purchasing public does not understand the meaning of the word "Toyo" when used in connection with hats. The word "Panama", as applied to hats, carries with it the idea of quality. The superiority of Panama hats over Toyo hats is due to the quality of material from which Panama hats are made. Toyo hats resemble Panama hats to such an extent that the purchasing public cannot readily distinguish between them. The respondent admits by its answer that the hats advertised by it as Toyo Panama hats were not in fact Panama hats, but were hats made of paper and imported from the Island of Okinawa, Japan.

PAR. 4. Said statements and representations made by respondent in its advertising as set forth in paragraph 2 hereof, are false and misleading because said hats so advertised were not Panama hats, and were not made from the leaves of the paja toquilla or jipijapa plant, or in accordance with the process used in the manufacture of Panama hats, but on the contrary said hats so advertised and sold were made of rice paper and imported from Japan. Said representations used by respondent in aid of the sale of said hats sold and distributed by it as aforesaid, had and have the capacity and tendency to induce the purchasing public to purchase said hats in the belief that they were in fact Panama hats, when such was not and is not the fact, and said representations in said advertisement had and have the capacity and tendency to unfairly divert trade from competitors of respondent engaged in the sale in interstate commerce of Toyo hats and Panama hats, which said competitors truthfully and rightfully advertise and represent their said hats.

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CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation of the 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 the respondent, testimony and evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Astor Hogg, counsel for the Commission, and M. James Spitzer, counsel for the respondent, 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";

It is ordered, that respondent Best & Company, its officers, agents, servants, and employees, in connection with the sale, offering for sale, or distribution of Toyo hats made from rice paper, in interstate commerce, do cease and desist:

(1) From representing or advertising in any manner whatsoever that its "Toyo" hats are "Panama" hats;

(2) From using the word "Panama", in designating or describing its said "Toyo" hats, standing alone or in connection or conjunction with any other word or words, so as to import or imply that the said "Toyo" hats are Panama hats;

(3) From representing, designating, or advertising as "Panama" any other hat or hats, unless such hats so designated and advertised 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 shall, within 60 days after the service upon it of this order, file with the 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.

IN THE MATTER OF
O. F. SCHOECK, DOING BUSINESS AS O. F. SCHOECK
SCHOOL

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

Docket 2414. Complaint, May 24, 1935—Decision, Feb. 19, 1936

Where an individual engaged in the sale and distribution of correspondence courses of study in Diesel engine operation and refrigeration and air-conditioning, and in secretarial training, bookkeeping, and kindred subjects—

- (a) Represented through "blind" advertisements in the "Help Wanted" and similarly captioned and classified advertising columns of the papers, that he was seeking to secure the services of people qualified for different positions, through such typical ads as "Wanted—We want to select several clean-cut young men mechanically inclined, to train for high salaried positions as Diesel engine experts. Write Schoeck care of Plain Dealer", "Wanted—Several young ladies from Grand Rapids and vicinity with some knowledge of shorthand and typing, to train for secretarial positions; experience unnecessary; write MX 342, care Press", and through advertisements in magazines, catalogs and other literature, and orally, both directly and through his salesmen and representatives, that he wished to secure the services, for high salaried positions, of mechanically inclined young men, and of young women with some knowledge of shorthand and typing for secretarial and clerical positions, facts being he was not seeking to secure the services of young men and women as above set forth, but was seeking solely to contact persons to whom he might be able to sell his said courses and to provide himself and his representatives with an opportunity of inducing such persons to subscribe to said courses in the belief that they would be given positions;
- (b) Promised jobs in many instances to those thus contacted, and in other instances advised them, in effect, that he had consummated arrangements with various firms through which they would employ students who had completed said courses, and represented, directly and through his representatives, and advertising circulars and literature that he maintained an employment service which was operative for two years in all courses from the date of graduation, and agreed to train thoroughly and assume responsibility for employment service for students after they had completed their training, and set forth that his employment service worked internationally and in cooperation with all companies, facts being he had no positions at his disposal to give to those who subscribed to his courses, had no such arrangements in cooperation with companies, international or otherwise, or with employers, through which his students could obtain employment, and had failed to secure positions for those who had completed and paid for his said course in the belief that they would secure employment through him;
- (c) Listed alleged executive officers in his advertisements, catalogs, and other advertising literature, as Home Office Registrar, Supervisor of Em-