

Complaint

22 F. T. C.

IN THE MATTER OF
MILES L. FINCH DOING BUSINESS AS ASSOCIATE
BRITISH MANUFACTURERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2519. Complaint, Aug. 15, 1935—Decision, Mar. 10, 1936

Where an individual engaged in the sale of genuine Harris Tweed and of certain power loomed woolen fabrics of domestic manufacture—

Advertised and labeled the latter as "IMPORTED British Wool HARRIS TWEED type (Shepherd and black faced sheep in background)" and as "Loomed from British Island Wool, HARRIS TWEED type", notwithstanding fact that fabric thus described was not genuine Harris Tweed, i. e., hand woven wool cloth made in the Outer Hebrides, Scotland, but was an imitation thereof and inferior thereto;

With effect of misleading and deceiving the purchasing public and retail merchants into buying said fabrics in the belief that they were the genuine Harris Tweed, and of further affording said retailers an opportunity to perpetrate a fraud upon the purchasing public, and with further effect of unfairly diverting trade to said individual from competitors engaged in the sale of genuine Harris Tweed and from those truthfully and honestly advertising tweed similar to aforesaid product, and with capacity and tendency so to deceive and mislead; to the injury and prejudice of the public and competitors:

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

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

Mr. R. L. Kennedy for the Commission.

Mr. Felix A. Russell, of Washington, D. C., 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 Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, hereafter referred to as the 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 be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Miles L. Finch is an individual engaged in business under the name and style of Associate British Manufacturers, with his principal place of business at 200 Fifth

Complaint

Avenue, New York, N. Y. Respondent is now and for more than 2 years last past has been engaged in the importation and sale of genuine Harris Tweed and imitations of Harris Tweed, and in the sale of certain power loomed woolen fabrics, imitating genuine Harris Tweeds, of domestic manufacture, and, in the distribution thereof, in commerce, between and among various States of the United States, has caused said products, when sold, to be shipped from respondent's place of business in the State of New York, to purchasers thereof located in said State, and States of the United States other than the State of New York.

PAR. 2. In the course and conduct of its said business, the respondent was at all times herein referred to and now is in substantial competition in interstate commerce with divers other individuals, corporations, and partnerships engaged in the sale and distribution of genuine "Harris Tweed" and with individuals, corporations, and partnerships engaged in the sale and distribution of imitations thereof.

PAR. 3. "Harris Tweed" is a tweed made from pure virgin wool produced in Scotland, spun, dyed, and finished in the Outer Hebrides, and handwoven by the islanders at their own homes in the islands of Lewis, Harris, Uist, Barra, and their several appurtenances, and all known as the Outer Hebrides.

PAR. 4. The registered trade-mark of Harris Tweed consists of an emblem, under which appear the words "Harris Tweed." The words "Harris Tweed" are an integral part of the trade-mark. Said trade-mark is registered in Washington, United States Patent Office, No. 89399, and in Great Britain, Reg. No. 319214.

PAR. 5. In the course and conduct of respondent's business, as hereinabove described, the respondent in soliciting the sale of and selling, in interstate commerce, tweed in imitation of and inferior to genuine Harris Tweed and in truth and in fact not made from pure virgin wool produced in Scotland; not spun, dyed, and finished in the Outer Hebrides; not hand-woven by the islanders at their own homes in the Outer Hebrides, has during the time herein mentioned advertised and labeled and is now advertising and labeling such tweed as follows:

IMPORTED
British Wool
HARRIS TWEED
type
(Shepherd and black faced
sheep in background)

Findings

22 F. T. C.

The words "IMPORTED" and "HARRIS TWEED" are much larger, in lettering, than the words "British Wool", and the word "type" is in letters much smaller than the words "British Wool", and respondent has during the time herein mentioned advertised and labeled such tweed as "Loomed from imported HARRIS TWEED wool", and "Loomed from British Island Wool, HARRIS TWEED type."

PAR. 6. Said advertisements and labels have the tendency and capacity to deceive and mislead, and do mislead and deceive, the purchasing public, by causing it to believe that in the purchase of said tweed, advertised as aforesaid, it is buying genuine Harris Tweed; retail merchants, who may order and buy, in interstate commerce, said imitation tweed from the description thereof, in respondent's advertisements, and afford such retail merchants an opportunity to perpetrate a fraud on the purchasing public, and have unfairly diverted, and do now unfairly divert, trade to respondent from, and otherwise substantially prejudice, competing individuals, partnerships, and corporations, engaged in the sale, in interstate commerce, of genuine Harris Tweed, and competitors who truthfully and honestly advertise and sell, in interstate commerce, tweed similar to the tweed which the respondent, as hereinabove set forth in paragraph 5, advertises and sells.

PAR. 7. The acts and practices and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and of the respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 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."

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 power and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent herein, Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered his appearance and having filed his substitute answer herein, whereby he admits all the material allegations of the complaint to be true, and states that without further evidence, or other intervening procedure, the Commission may make,

issue, and serve upon respondent findings of facts and an order to cease and desist from the violations of law charged in the complaint.

And thereupon this proceeding came on for final hearing and the respondent having waived the filing of briefs and the hearing of oral argument herein before the Commission, and said Commission having approved and accepted respondent's substituted answer wherein is admitted all of the material allegations of the complaint and having duly considered the record and being now fully advised in the premises, now finds the following:

FINDINGS AS TO THE FACTS

That the respondent, Miles L. Finch, is an individual engaged in business under the name and style of Associate British Manufacturers, with his principal place of business at 200 Fifth Avenue, New York City, N. Y.

That respondent is now and for more than 2 years last past has been engaged in the sale of genuine Harris Tweed, and in the sale of certain power loomed woolen fabrics, imitating genuine Harris Tweed, of domestic manufacture and, in the distribution thereof, in commerce, between and among the various States of the United States, has caused said merchandise, when sold, to be shipped from respondent's place of business, in the State of New York, to purchasers thereof located in other States of the United States.

That respondent in the course and conduct of his business is, and for a long time past has been, in substantial competition, in interstate commerce, with divers individuals, corporations, and partnerships engaged in the sale and distribution of genuine Harris Tweed, and with individuals, corporations, and partnerships engaged in the sale and distribution of imitations thereof.

That "Harris Tweed" is a hand-woven woolen cloth manufactured in the Outer Hebrides, Scotland.

That the registered trade-mark of Harris Tweed consists of an emblem, under which appear the words "Harris Tweed." The words "Harris Tweed" are an integral part of the trade-mark. Said trade-mark is registered in Washington, United States Patent Office, No. 89399, and in Great Britain, Reg. No. 319214.

That in the course and conduct of respondent's business, as hereinabove described, the respondent in soliciting the sale of and selling, in interstate commerce, tweed in imitation of and inferior to genuine Harris Tweed and in truth and in fact not hand woven woolen cloth manufactured in the Outer Hebrides, Scotland, has during the time herein mentioned advertised and labeled and is now advertising and labeling such tweed as follows:

Conclusion

22 F. T. C.

IMPORTED

British Wool

HARRIS TWEED

type.

(Shepherd and black faced
sheep in background)

The words "IMPORTED" and "HARRIS TWEED" are much larger, in lettering, than the words "British Wool", and the word "type" is in letters much smaller than the words "British Wool", and respondent has during the time herein mentioned advertised and labeled such tweed as "Loomed from imported HARRIS TWEED wool", and "Loomed from British Island Wool, HARRIS TWEED type."

That said advertisements and labels have the tendency and capacity to deceive and mislead, and do mislead and deceive, the purchasing public, by causing it to believe that in the purchase of said tweed, advertised as aforesaid, it is buying genuine Harris Tweed; retail merchants, who may order and buy, in interstate commerce, said imitation tweed from the description thereof, in respondent's advertisements, and afford such retail merchants an opportunity to perpetrate a fraud on the purchasing public, and have unfairly diverted, and do now unfairly divert trade to respondent from, and otherwise substantially prejudice, competing individuals, partnerships, and corporations, engaged in the sale, in interstate commerce, of genuine Harris Tweed, and competitors who truthfully and honestly advertise and sell, in interstate commerce, tweed similar to the tweed which the respondent, as hereinabove set forth, advertises and sells.

That the acts and practices and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and of the respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 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."

CONCLUSION

The aforesaid acts and practices of respondent, Miles M. Finch, engaged in business under the name and style of Associate British Manufacturers, are each and all to the prejudice of the public and to the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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 duly heard by the Federal Trade Commission upon a complaint of the Commission, and the answer of the respondent, 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 the respondent, Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, in connection with the distribution, offering for sale and sale of Harris Tweed in interstate commerce, forthwith cease and desist from:

(a) Representing or claiming in or by advertisements of any character or otherwise, that tweed or other woolen cloth not hand woven and manufactured in the Outer Hebrides, Scotland, is "Harris Tweed."

(b) Advertising or labeling tweed or other woolen cloth as—

IMPORTED
British Wool
HARRIS TWEED
type.

(c) Advertising or labeling tweed or other woolen cloth as—

Loomed from imported
HARRIS TWEED
Wool

(d) Advertising or labeling tweed or other woolen cloth as—

Loomed from
British Island Wool
HARRIS TWEED
type.

and from making, in advertisements of any character, claims for his merchandise like, or similar in substance to, the claims hereinabove specified.

It is further ordered, That the respondent, Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, shall, within 60 days after service upon it of this order, file with the Commission, a report, in writing, setting forth, in detail, the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

Complaint

22 F. T. C.

IN THE MATTER OF

R. H. SHAROT, DOING BUSINESS AS MODEX MILLS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2588. Complaint, Oct. 17, 1935—Decision, Mar. 17, 1936*

Where an individual engaged in the sale and exportation of various articles of merchandise, including hosiery, underwear, raincoats, and general wearing apparel—

Represented himself as a manufacturer or mill operator through letterheads, bill heads, invoices, correspondence, and advertising matter, and through use of trade name including word "Mills"; facts being he did not make any of the products dealt in by him, nor own, operate, or control any plant or factory making them;

With capacity and tendency to mislead and deceive purchasers into the belief that he was a manufacturer or operator of established business standing and that in buying from him they were dealing with a manufacturer and thereby saving the middleman's profit, and into buying his products in such erroneous belief, and to divert trade to him from manufacturers and distributors of such products in foreign commerce who do not misrepresent their status, and with effect of so doing, to said competitors' substantial injury and prejudice:

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 J. Keenan*, trial examiner.

Mr. T. H. Kennedy for the Commission.

Wolf & Jacobi and *Mr. William Biel*, 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 R. H. Sharot, an individual, trading as Modex Mills Company, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, in violation of 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 is R. H. Sharot, an individual, trading under the name and style of Modex Mills Company, with his principal place of business located in the city of New York, State