

Complaint

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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

of New York. He is, and for more than 1 year last past has been, engaged in the sale and distribution of various items of merchandise, such as hosiery, dresses, shoes, cosmetics, raincoats, sanitary napkins, to customers located in foreign countries, in commerce between the United States and various foreign countries, causing the same when sold to be shipped from his place of business in the State of New York or other State of origin to purchasers thereof located in various foreign countries. In the course and conduct of his business said respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in foreign commerce of similar products.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, said respondent adopted as and for his trade name the words Modex Mills Company, under which to carry on his business, and which trade name, containing the word "Mills", he has used continuously for several years last past and is now using in soliciting the sale of and selling his said products in foreign commerce. He has caused said trade name "Modex Mills Company" to appear on his letterheads, bill heads, invoices, and advertising matter distributed in foreign commerce. Said printed matter featured the said trade name, when in truth and in fact said respondent does not make or manufacture the products sold by him which he has sold and distributed in foreign commerce, nor does he own or operate or directly and absolutely control any mill or mills wherein the products sold by him are made or manufactured, but, on the contrary, respondent has filled orders with products made or manufactured in a mill or mills or factory which he does not own, operate, or control.

PAR. 3. There is a preference on the part of certain of the retail merchants in various foreign countries for goods, wares, and merchandise, to be resold by retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with the mill owner or manufacturer they can buy goods at a cheaper price or on more favorable terms than they can from jobbers or corporations, associations, individuals, firms, and partnerships not manufacturing goods, wares, and merchandise they sell to such retail dealers, by eliminating the profit of the middleman, and that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The use by the respondent of the word "Mills" in his trade name, in respondent's letterheads, stationery, or otherwise, has a tendency and capacity to mislead and deceive purchasers who are customers and

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prospective customers of respondent by causing them to believe that respondent actually owns and operates or directly and absolutely controls the mill or mills or factory in which said products are made or manufactured or that respondent himself makes or manufactures his products, and that thereby such customers or prospective customers save or will save the middleman's profit, and that the said respondent, in the use of the word "Mills" has a tendency and capacity unfairly to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships who are actually manufacturing products similar to the products of respondent for sale and distribution in foreign commerce and those competitors of respondent who do not manufacture similar or like products to those of respondent for sale and distribution in foreign commerce but who truthfully advertise and label same and who do not claim and represent themselves to be manufacturers.

PAR. 4. The practices of respondent described in paragraph 2 hereof are all to the prejudice of the public and respondent's competitors and have been and are unfair methods of competition in foreign commerce, in violation of the provisions 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 powers and duties, and for other purposes", the Federal Trade Commission on October 17, 1935, issued and served its complaint in this proceeding upon the respondent, R. H. Sharot, an individual trading as Modex Mills, charging him 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, a hearing was held before John J. Keenan, an examiner of the Commission theretofore duly designated by it, at which hearing respondent, through his attorney, made a statement for the record in which he admitted all the material allegations of the complaint to be true and waived all further hearings in the matter.

Thereafter, the proceeding came on regularly for final hearing before the Commission on the said complaint, the answer and the testimony of the respondent given at the hearing hereinabove referred to, 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. The respondent, R. H. Sharot, is an individual trading as Modex Mills, and is now, and has been since 1923, in business at 15 Moore Street, New York, N. Y.

PAR. 2. Respondent is, and has been since 1923, engaged as a jobber in the export business, and, as such, in the sale and exportation of various articles of merchandise, including hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel, to purchasers thereof located in various foreign countries, among them Venezuela, Colombia, Peru, and South Africa, and has caused and still causes said products, when so sold by him, to be transported in commerce from his principal place of business in New York, N. Y., or from other places in the United States, to the said purchasers located in various foreign countries.

PAR. 3. During the time above mentioned and referred to, other individuals, firms, and corporations located in the various States of the United States have been engaged in the manufacture and sale of similar articles of merchandise to those hereinabove referred to, which they have sold and still sell to the purchasers thereof located in various foreign countries. The respondent, during the aforesaid time, was and still is in competition in commerce and in the sale of said products with said individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in foreign commerce.

PAR. 4. The respondent, during the aforesaid time, in connection with the offering for sale and the sale of the aforesaid products, represented and still represents, through letterheads, bill heads, invoices, correspondence, and advertising matter, that he is a manufacturer or mill operator, and respondent has and does use the word "Mills" in his trade name in such a way that his customers or prospective customers are led to believe that respondent is a mill operator or manufacturer, and when in truth and in fact respondent does not manufacture any of the products offered for sale and sold by him, and does not own or operate, or directly or absolutely own, operate, or control any plant or factory in which any of said products offered for sale and sold by him are made or manufactured.

PAR. 5. It is the common belief among purchasers of respondent's products located in foreign countries that the products above referred to can be purchased directly from a manufacturer or mill operator at a considerable saving in price. There are those among the pur-

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chasers or prospective purchasers of respondent's products located in foreign countries who prefer to purchase said products direct from the manufacturer or mill operator and from manufacturers, mill operators, and dealers of established business standing. The representations made by respondent, above referred to, have the capacity and tendency to mislead and deceive the purchasers of respondent's products into the belief that when purchasing said products from respondent they are dealing with a manufacturer or mill operator of established business standing and thereby are gaining an advantage by saving the middleman's profit.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer or mill operator and to purchase respondent's products in such erroneous belief.

PAR. 7. There are among the competitors of respondent manufacturers and distributors of products similar to those sold by respondent in foreign commerce, who do not misrepresent their status as manufacturers or mill operators, who likewise sell and distribute products similar to those sold and distributed by respondent in various foreign countries, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be mill owners or operators. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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 matter coming on to be heard by the Commission upon the complaint filed herein on October 17, 1935, and upon the answer to said complaint filed November 5, 1935, by R. H. Sharot, an individual, trading as Modex Mills, and upon the testimony given at a hearing held before John J. Keenan, an examiner of the Commission, theretofore duly designated by it, at which hearing the respondent admitted

all the material allegations of the complaint to be true and consented that the Commission might find the facts in this matter as 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."

It is ordered, That the respondent, R. H. Sharot, individually and trading as Modex Mills, and his agents, representatives, servants, and employees, in connection with the offering for sale and sale of hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel in foreign commerce, cease and desist from representing, directly or indirectly, through and by the use of his trade name, or in any other manner, that respondent is a manufacturer, mill operator, or mill owner.

It is further ordered, That the respondent above named within 30 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with.

IN THE MATTER OF
THE DIAMOND MATCH COMPANY

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

Docket 2599. Complaint, Dec. 9, 1935¹—Decision, Mar. 17, 1936

Where a corporation engaged in the manufacture and sale of (a) "Strike-on-the-Box" or "Safety" type matches, thus known and designated for many years, packed and sold in boxes thus labeled, and of a size adaptable for carrying on the person, and (b) "Strike-Anywhere" type matches;

Packed and sold the latter type in small boxes of approximately the same size as those in which the "Strike-on-the-Box" type is packed, marked and labeled "Safety First", and simulating in many respects said "Safety" type, and conspicuously displayed word "Safety" on the larger containers in which it packed its larger size "Strike-Anywhere" matches;

With capacity and tendency to confuse, mislead and deceive purchasers into the belief that its said matches, thus packed, labeled and sold, were in fact "Safety" matches of the "Strike-on-the-Box" type, and with result of causing dealers and consuming public to purchase substantial quantities thereof as and for the genuine safety matches and of placing in the hands of dealers an instrument enabling them to commit a fraud upon the consuming public by thus offering and selling its said product as and for said safety type, and of diverting a substantial volume of trade from competitors, among whom there are those who make and sell or import and sell "Strike-on-the-Box" matches packed and labeled and rightfully represented as "Safety" matches; to the substantial injury of substantial competition in commerce:

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. J. T. Welch for the Commission.

COMPLAINT¹

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 the Diamond Match Co., a corporation, 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 thereto would be in the public interest, hereby issues its amended complaint stating the charges in that respect as follows:

¹ Amended.