

Complaint

IN THE MATTER OF

JULIUS ABRAHAMS, TRADING AS PHILADELPHIA
BADGE COMPANY

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

Docket 2700. Complaint, Jan. 31, 1936—Decision, Mar. 17, 1936

Where an individual engaged in the manufacture and sale of stamp photos, falsely and misleadingly represented that his said products were purchased, used, or endorsed by the Government through stating that "among our national known users are * * * United States Government" in periodical and other advertising and otherwise; with effect of misleading and deceiving substantial parts of the purchasing public and inducing them to buy said products in and because of the erroneous belief that it was purchased in large quantities by the Government, and, by inference, was endorsed thereby, and of diverting to himself trade from competitors among whom there are those who truthfully represent their products as being thus purchased and those who do not misrepresent their products as thus purchased, when such is not the case, and with capacity and tendency so to mislead, deceive, and divert; to the substantial injury of substantial competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Maurice Stern, of Philadelphia, Pa., 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 Julius Abrahams, an individual trading as Philadelphia Badge Co., 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. Julius Abrahams is an individual trading as Philadelphia Badge Co., with his principal place of business in the city of Philadelphia, in the State of Pennsylvania. He is now and, for more than 1 year last past, has been engaged in the business of manufacturing, selling, and transporting in commerce stamp photos, causing said products, when sold, to be shipped from his place of

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business in the State of Pennsylvania, to purchasers thereof located in a State or States of the United States other than the State of Pennsylvania, and in the District of Columbia. In the course and conduct of his business, respondent has at all times herein referred to been in competition with other individuals, partnerships, corporations, and firms likewise engaged in the sale and distribution, in interstate commerce, of similar products and commodities.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his stamp photos in interstate commerce, has by advertising in various periodicals, advertising literature, and otherwise made the following statement and representation:

"Among our national known users are * * * United States Government."

PAR. 3. The said statement and representation when applied to respondent's products and commodities as aforesaid, is false, misleading, and deceptive. Respondent's use thereof, as hereinabove set forth, was and is calculated, has and had the capacity and tendency to and does mislead and deceive substantial parts of the purchasing public, and causes them to purchase said product and commodity in and because of the erroneous belief that said product and commodity is purchased in large quantities by the Government of the United States, and, by inference, is endorsed by the Government.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof, and have been for more than 1 year last past, manufacturers and distributors of stamp photos and similar products and commodities who truthfully advertise and represent that their products and commodities are purchased by the Government of the United States, or any department thereof, when such is the case. There are also among such competitors of the respondent and have been for more than 1 year last past manufacturers and distributors of stamp photos and similar products and commodities who do not falsely represent that such products and commodities have been or are purchased by the Government of the United States or any department thereof when they are not in fact so purchased.

PAR. 5. The use by the respondent of the aforementioned statements and representations in its advertisements and otherwise has had and still has the capacity and tendency to and has diverted and still diverts trade to respondent from his competitors who truthfully represent their products and commodities, and thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 6. The acts and practices set forth herein are to the prejudice of the public and all respondent's competitors, and constitute unfair

methods of competition within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, and 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 the 31st day of January 1936, issued and served its complaint in this proceeding upon the respondent, Julius Abrahams, an individual, trading as Philadelphia Badge Co., 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 said respondent's answer thereto the respondent through his attorney, Maurice Stern, Esq., filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in and by which it was agreed that the statement of facts contained in the complaint might be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which said stipulated answer it was provided that the Commission might proceed upon the statement of facts as set forth in the complaint to make its report, its findings as to the facts (including inferences which it might draw from said facts as agreed upon), and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered 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. Julius Abrahams is an individual trading as Philadelphia Badge Co., with his principal place of business in the city of Philadelphia in the State of Pennsylvania. He is now, and for more than 1 year last past has been engaged in the business of manufacturing, selling, and transporting in commerce stamp photos, causing said products, when sold, to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in a State or States of the United States other than the State of Pennsylvania and in the District of Columbia. In the course and conduct of his business, respondent has at all times herein referred

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to been in competition with other individuals, partnerships, corporations, and firms likewise engaged in the sale and distribution, in interstate commerce of similar products and commodities.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his stamp photos in interstate commerce, has by advertising in various periodicals, advertising literature, and otherwise made the following statement and representation:

"Among our national known users are * * * United States Government."

PAR. 3. The said statement and representation when applied to respondent's products and commodities as aforesaid, is false, misleading, and deceptive. Respondent's use thereof, as hereinabove set forth, was and is calculated, has and had the capacity and tendency to and does mislead and deceive substantial parts of the purchasing public, and causes them to purchase said product and commodity in and because of the erroneous belief that said product and commodity is purchased in large quantities by the Government of the United States and, by inference, is endorsed by the Government.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof, and have been for more than 1 year last past, manufacturers and distributors of stamp photos and similar products and commodities who truthfully advertise and represent that their products and commodities are purchased by the Government of the United States, or any department thereof, when such is the case. There are also among such competitors of the respondent and have been for more than 1 year last past, manufacturers and distributors of stamp photos and similar products and commodities who do not falsely represent that such products and commodities have been or are purchased by the Government of the United States or any department thereof when they are not in fact so purchased.

PAR. 5. The use by the respondent of the aforementioned statements and representations in its advertisements and otherwise has had and still has the capacity and tendency to and has diverted and still diverts trade to respondent from his competitors who truthfully represent their products and commodities, and thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The acts and practices set forth herein are to the prejudice of the public and all respondent's competitors, and constitute unfair methods of competition within the intent and meaning of Section 5 of an

Act of Congress, approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

The respondent herein, having filed his answer to the complaint in this proceeding, and having subsequently filed with this Commission a motion that he be permitted to withdraw his said answer and that he be permitted to file in lieu thereof, as a substitute answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion;

It is hereby ordered, That the said motion be, and the same hereby is, granted; that the answer be, and the same hereby is, withdrawn; and that the said proposed substituted answer be, and the same hereby is, filed in lieu of the said answer hereby withdrawn.

The said respondent, in and by his said substituted answer, having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in his said substituted answer that he does not contest the said proceeding and that he admits all of the material allegations of the complaint to be true, and that he consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon him an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises;

It is ordered, That the respondent, Julius Abrahams, an individual trading as Philadelphia Badge Co., his agents, servants, representatives, and employees, in connection with the sale or offering for sale of stamp photos in interstate commerce and in the District of Columbia, do forthwith cease and desist from—

Representing through advertisements in newspapers and magazines and through circulars, labels, or in any other form of printed matter, or by radio broadcasting, or in any other way or manner, that his said products are purchased, used, or endorsed by the United States Government, or by any branch or agency thereof, or from making any similar representations or representations of like import or effect;

It is further ordered, That the said respondent shall, within 60 days from the date of the service upon him of this order, file with this Commission a report in writing, setting forth the manner and form in which he has complied with this order.

IN THE MATTER OF
ROMA WINE COMPANY, INC.

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

Docket 2713. Complaint, Feb. 5, 1936—Decision, Mar. 19, 1936

Where the term "Chateau Yquem" had long had a definite significance to wholesalers and retailers and the consuming public as meaning a wine produced from grapes grown upon the estate of a certain Marquis in the Sauterne Country in the province of Bordeaux, France, and made, aged, processed and bottled at the Chateau Yquem upon said estate, and such wine, by reason of the particular composition of the soil, favorable climatic conditions and extreme care used in growing the grapes, had become known throughout the world for its distinctive taste and flavor, and said name had acquired geographic significance as distinctively designating and distinguishing from all others the aforesaid wine, which was preferred by a substantial portion of the purchasing public to imitations thereof bearing the same name; and thereafter a corporation engaged in California in growing and cultivating grapes and manufacturing, selling and distributing wines therefrom—

Represented through use of words "Chateau Yquem" on stationery, invoices, advertising matter and labels and in various other ways that its product was the specific wine produced and grown in France as aforesaid, and thereby furnished its customers with the means of similarly misrepresenting said domestic product to retailers and consuming public, notwithstanding fact it was not the genuine French wine as hereinabove set forth;

With effect of misleading and deceiving dealers and purchasing public into the belief that its said product was the specific and genuine Chateau Yquem, and of inducing their purchase of its said wines in such belief, and thereby diverting trade to it from competitors, including those who purchase, import and sell genuine Chateau Yquem wines and those who sell wines of that type without thus misrepresenting them, and with capacity and tendency so to mislead and deceive; to the substantial injury of substantial competition:

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

Mr. PGad B. Morehouse for the Commission.

Mr. Albert Picard, of San Francisco, Calif., 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