

IN THE MATTER OF
ATLAS CHINA 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 2738. Complaint, Mar. 5, 1936—Decision, Apr. 17, 1936

Where a vitreous, translucent, and glazed ware designated as china or china-ware had long been made in and exported from Limoges, France, to European countries and to America and had come to acquire a favorable reputation in the United States as porcelain or china of superior quality, utility, and beauty and to enjoy a goodwill and increasing popular demand and said products thus made and imported had come to be widely and generally known, and word "Limoges" had come to signify and mean such products there made and imported therefrom; and thereafter a corporation engaged in processing and decorating foreign and domestic made, undecorated porcelain and chinaware "blanks", and in the sale, offer, and distribution thereof among the various States—

- (a) Branded, labeled, marked, and otherwise caused word "Limoges" to appear on certain of its decorated porcelain and chinaware products sold and distributed to retailers, customers, and purchasers in the various States, notwithstanding fact that said products did not originate in and were not made in Limoges, but were obtained from countries other than France;
- (b) Branded, labeled, marked, and otherwise caused to appear on certain of its said products as aforesaid, words and description "French Decoration", notwithstanding fact that said products were not decorated with French designs and decorations peculiar to the country of France and to French artistry;
- (c) Branded, labeled, marked, and otherwise caused to appear words and description "Hand Painted" upon certain of its aforesaid products, notwithstanding fact that said products were not painted by hand but were decorated and painted by mechanical and acid processes;

With result of placing in hands of dealers selling its said products means of misleading and deceiving consuming public into purchase thereof, and of misleading and deceiving members of public and retail trade into false and erroneous belief that aforesaid representations were true and that products thus variously represented, originated in and were made in Limoges and were decorated with French designs and decorations as above set forth, and were hand painted, and of inducing purchase thereof in place of products of competitors, and of thereby diverting to itself trade from its competitors who do not misbrand and falsely and misleadingly label, mark, and misrepresent their products:

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

Mr. Jay L. Jackson for the Commission.

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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 Atlas China Co., Inc., a corporation, hereinafter referred to as respondent, has been and now 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 in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 710 Wythe Avenue, in the city of Brooklyn, in the State of New York. Said respondent is now, and for more than 6 months last past has been, engaged in the business of processing, decorating, and selling, offering for sale, and distributing decorated porcelain- and china-ware products in commerce among and between various States of the United States, and has caused and now causes said products, when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipment.

PAR. 2. In the course and conduct of the business of respondent, as aforesaid, respondent has been and is now in competition with other corporations, firms, partnerships, and individuals engaged in like commerce.

PAR. 3. In the course and conduct of the business of respondent, as aforesaid, respondent did and does purchase and obtain supplies of both foreign and domestic made undecorated porcelain- and china-ware products, otherwise known as "blanks", which respondent did and does cause to be processed, decorated, and branded, labeled or marked, offered for sale, and sold in commerce, as aforesaid.

PAR. 4. There is now, and for more than 150 years approximately there has been, manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which during said time has been and is now designated, described, and known as porcelain-ware, or as china or chinaware by reason of its original or initial manufacture in China, before its introduction into Europe. In the early part of the nineteenth century, porcelain-ware, or chinaware as it gradually came to be called, began to be exported from Limoges, in France, into the various countries of Europe and America, particularly into the United States of America and into and through the several

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States thereof. Such products immediately thereupon acquired a favorable reputation in the United States as porcelain or china of superior quality, utility, and beauty, resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the said products of Limoges, France. For many years prior to incorporation of respondent herein, and during all times material to this complaint, the said products manufactured at Limoges, in France, and imported therefrom into the United States, have been and are now widely and generally known, and the word "Limoges" has for many years heretofore come to signify and mean and now signifies and means porcelain or china, or porcelain- and china-ware, manufactured at Limoges, in France, and imported into the United States therefrom.

PAR. 5. In the course and conduct of the business aforesaid, respondent did and does misbrand and falsely and misleadingly label, mark, and represent certain of its said products by causing the words "Limoges", "French Decoration", and "Hand Painted" to appear on said products, whereas, in truth and in fact, the aforesaid words do not properly and truthfully describe and represent said products, and, whereas in truth and in fact, said products were not and are not "Limoges" and were not and are not made in Limoges, France; said products were not and are not decorated in France, or with French designs or decorations, but were and are decorated elsewhere than in the country of France and with designs or decorations other than those peculiar to France and French artistry; and said products were not and are not hand painted, but the designs or decorations appearing thereon were and are applied and made by mechanical operations and acid processes.

PAR. 6. The aforesaid misbranding, false and misleading labeling, marking, representations, acts, and conduct of respondent have placed and place, and each of them has placed and places, in the hands of dealers selling products of respondent, the means to mislead and deceive the consuming public into the purchase of respondent's said products as and for porcelain- and china-ware products manufactured at Limoges, France, or as porcelain- or china-ware of the type, character, and quality there manufactured.

PAR. 7. The aforesaid misbranding, false and misleading labeling, marking, representations, acts, and conduct of respondent, in the sale and distribution of its said products, have had and have the tendency and capacity to mislead and deceive, and do mislead and deceive, members of the public and of the retail trade into the false and erroneous belief that the aforesaid representations are true and that the aforesaid products are "Limoges", decorated in France and with French decorations and designs, and hand painted, thereby

causing said members of the public and retail trade to buy and deal in the said products of respondent in lieu and in place of competing products of respondent's competitors, in consequence of which trade has been and is diverted to respondent from its competitors who do not misbrand and falsely and misleadingly label, mark, and represent their products, all thereby substantially injuring said competitors of respondent.

PAR. 8. The above acts, conduct, and things done by respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce within the meaning and intent 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 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 March 5, 1936, issued and forthwith served its complaint in this proceeding upon respondent, Atlas China Co., Inc., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on March 19, 1936, said respondent filed its answer to said complaint, in which said respondent admits all of the material allegations of the complaint to be true, states that it desires to waive hearings on the charges set forth in the complaint and not to contest the proceeding, and further states that without further evidence or 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 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, Atlas China Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 710 Wythe Avenue, in the city of Brooklyn, State of New York.

PAR. 2. Respondent is now, and for more than 6 months immediately preceding March 5, 1936, has been, engaged in the business of processing and decorating foreign and domestic made undecorated porcelain- and china-ware products, otherwise known as "blanks",

and in selling, offering for sale, and distributing decorated porcelain- and china-ware products in commerce among and between the various States of the United States, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from the State of New York to various States of the United States other than the State of New York, in the course and conduct of which respondent has been, and is now, in competition with other corporations, firms, partnerships, and individuals engaged in the sale, offering for sale, and distribution of decorated porcelain- and china-ware products in commerce among and between the various States of the United States.

PAR. 3. There is now and for more than 150 years approximately there has been manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which during said time has been and is now designated, described, and known as porcelain-ware, or as china or chinaware by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the nineteenth century, porcelain-ware, or chinaware as it gradually came to be called, began to be exported from Limoges, in France, into the various countries of Europe and America, particularly into the United States of America and into and through the several States thereof. Such products immediately thereupon acquired a favorable reputation in the United States as porcelain or china of superior quality, utility, and beauty, resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the said products of Limoges, France. For many years prior to incorporation of respondent herein, and during all times material to this complaint, the said products manufactured at Limoges, in France, and imported therefrom into the United States, have been and are now widely and generally known, and the word "Limoges" has for many years heretofore come to signify and mean and now signifies and means porcelain or china, or porcelain- and china-ware, manufactured at Limoges, in France, and imported into the United States therefrom.

PAR. 4. In the course and conduct of respondent's business, as above described, and within the time above mentioned, respondent offered for sale, sold, and distributed certain of its decorated porcelain- and china-ware products to retail traders, customers, and purchasers thereof in various States of the United States, on which products respondent branded, labeled, marked, and otherwise caused to appear the words and descriptions "Limoges", "French Decoration", and "Hand Painted", thereby representing that the products bearing the word "Limoges" originated and were made in the city of Limoges, in the country of France; that the products bearing the words and

description "French Decoration" were decorated with French designs and decorations peculiar to the country of France and to French artistry; and that the products bearing the words and description "Hand Painted" were painted by hand and not otherwise by mechanical or acid processes; whereas, contrary to the representations so made, the respondent's products here described, referred to, and represented as "Limoges" did not originate in, and were not manufactured in Limoges, France, but were obtained by respondent from countries other than the country of France; the respondent's products here described, referred to, and represented as of "French Decoration" were not decorated with French designs and decorations peculiar to the country of France and to French artistry; and the respondent's products here described, referred to, and represented as being "Hand Painted" were not painted by hand but were decorated and painted by mechanical and acid processes.

PAR. 5. The branding, labeling, marking, representations, acts, and conduct of respondent, as described and referred to in the foregoing paragraphs, have placed and place, and each of them has placed and places, in the hands of dealers selling the porcelain- and china-ware products of respondent the means by which to mislead and deceive the consuming public into the purchase of respondent's porcelain- and china-ware products, and the same have had and have, and each of them has had and has, the tendency and capacity to mislead and deceive, and did and do mislead and deceive members of the public and of the retail trade into the false and erroneous belief that the aforesaid representations made by respondent are true; that the products so represented as "Limoges" originated in and were made in Limoges, France; that the products so represented by the words "French Decoration" were decorated with French designs and decorations peculiar to the country of France and to French artistry; and that the products so represented by the words "Hand Painted" were painted by hand and not otherwise by mechanical or acid processes, thereby causing members of the public and of the retail trade to buy and deal in the products of respondent in lieu and in place of competing products of competitors of respondent, in consequence of which trade has been and is diverted to respondent from its competitors who do not misbrand and falsely and misleadingly label, mark, and represent their products.

CONCLUSION

The acts and practices of respondent, as described in the foregoing findings of facts, have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in commerce within the intent and meaning

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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.

ORDER TO CEASE AND DESIST

This proceeding having come before the Federal Trade Commission upon the complaint of the Commission, the answer of respondent admitting all of the material allegations of the complaint to be true, 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, Atlas China Co., Inc., a corporation, its subsidiaries, officers, agents, representatives, and employees, and each of them, in the sale and offering for sale of porcelain- and china-ware products in interstate commerce do cease and desist from:

(1) Branding, labeling, marking, or otherwise causing the word "Limoges" to appear on porcelain- and china-ware products of respondent and in any way representing said products, or causing said products, to be represented as Limoges porcelain- or china-ware when such products have not had their origin and have not been manufactured in the city of Limoges, in the country of France;

(2) Branding, labeling, marking, or otherwise causing the words "French Decoration" to appear on porcelain- and china-ware products of respondent and in any way representing said products, or causing said products, to be represented as products decorated with French designs and decorations peculiar to the country of France and to French artistry when such products and the designs and decorations thereon were not and are not decorated with French designs and decorations peculiar to the country of France and to French artistry;

(3) Branding, labeling, marking, or otherwise causing the words "Hand Painted" to appear on porcelain- and china-ware products of respondent and in any way representing said products, or causing said products, to be represented as having been painted by hand when such products have not been or are not painted by hand, or otherwise have been or are decorated and painted by mechanical or acid processes.

It is further ordered, That respondent, Atlas China Co., Inc., a corporation, within 60 days from and after the date of 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 said order to cease and desist hereinabove set forth is being complied with.

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IN THE MATTER OF

SAMUEL HOROWITZ, TRADING AS COMMERCIAL SILK MILLS

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

Docket 2572. Complaint, Oct. 8, 1935—Decision, Apr. 24, 1936

Where an individual engaged in the sale and distribution of silk greige goods or silks in the unfinished state, and of finished silk, continually included word "Mills" in his trade name in soliciting sale of his products, and displayed such name on his letterheads and billheads and since on or about 1913 included on his letterheads words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." and words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa." on billheads circulated to customers, notwithstanding fact that at no time since said year had he ever made the products dealt in by him or owned or absolutely controlled any mill or factory, but products sold by him were made by individuals or concerns over which he had no control; with result that customers were led to believe that he was a mill operator or manufacturer and with capacity and tendency to mislead and deceive purchasers of his products into belief that in buying from him they were dealing with a manufacturer or operator of established business standing and thereby gaining an advantage by saving the middleman's profit, in accordance with common belief among such class of purchasers, that through such direct purchases considerable savings, more favorable terms, and a more uniform line of goods may be had, and with tendency to or with effect of diverting trade to him from competitors, among whom there are manufacturers and distributors of similar products and similarly engaged jobbers who do not misrepresent their status as manufacturers or mill operators; to their substantial injury and prejudice:

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

Mr. T. H. Kennedy for the Commission.

DuBroff & DuBroff, 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 Samuel Horowitz, an individual trading as Commercial Silk Mills, hereinafter called the 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