

IN THE MATTER OF

RICHARD B. YANCEY AND MRS. E. Y. COUNCILL, TRADING AS INTERNATIONAL CHINA COMPANY AND AS BAKER POTTERY COMPANY

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

Docket 2625. Complaint, Nov. 12, 1935—Decision, Aug. 23, 1936

Where a firm engaged in sale of chinaware, earthenware, and other pottery of various kinds through traveling salesmen, whom they supplied with samples for use in soliciting orders from customers or prospective customers, who had no means of learning condition of merchandise until payment therefor had been made—

- (a) Falsely represented through former that their "odds and ends" assortment of 1,020 pieces, consisting, generally, of cups and saucers, plates of various sizes and styles, platters, bakers, etc., would not include more than three designs, patterns, and decorations, and would provide, in every instance, at least three complete sets of thirty-six pieces of uniform design, pattern, or decoration, and filled orders secured thereby, facts being it was impossible to assemble even one such set therefrom;
- (b) Filled orders with merchandise which was inferior to that represented by samples exhibited to customer, or by salesman's statements or representations, and which differed in quality, kind or design from that represented and with many items chipped, cracked, or broken upon receipt, notwithstanding salesman's representation that quality and marking of chinaware or earthenware would be as indicated by samples or pictures, and that such various products would be received by customer as represented, and intended failure of shipments to correspond with samples, and as a practice failed and refused to adjust claims resulting from such misrepresentations, acts, and practices which it acquiesced in and ratified, and from merchandise's failure to correspond to samples exhibited;
- (c) Represented, as above set forth, that said "odds and ends" assortments were not in fact "odds and ends," but composed of ware made up for chain stores with a few remaining sets offered as "deals" and given former designation only to effect reduction in freight rates, notwithstanding fact such assortments were in truth and in fact odds and ends, as known in trade, and not "left-overs" or "deals" thus offered;

With result that such misrepresentations and practices gave them an unfair advantage over competitors who offer and sell chinaware and pottery of all kinds and truthfully advertise, describe and represent the same and do not make use of such business methods, and of diverting business from concerns in active, substantial competition with them, to themselves; to the substantial injury of substantial competition in commerce:

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.

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

Mr. James M. Brinson for the Commission.

Mr. W. T. Shuford, of Salisbury, N. C., for respondents.

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 Richard B. Yancey and Mrs. E. Y. Council, trading as International China Company and as Baker Pottery Company, hereinafter called respondents, have been and are 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, it hereby issues its complaint, stating its charges as follows in that respect.

PARAGRAPH 1. Respondents Richard B. Yancey and Mrs. E. Y. Council are now and for more than a year last past have been co-partners trading under the names and styles of International China Company and Baker Pottery Company with their office and principal place of business at the city of Salisbury in the State of North Carolina. They are now and during said period of time have been engaged in the sale in commerce among and between the State of North Carolina and the various other States of the United States and the District of Columbia in chinaware, earthenware, and other pottery of various kinds. It has been and is their practice to cause their products when sold to be transported from factories where they are made for respondents in Tennessee, Ohio, and Virginia, to purchasers thereof located in the various States of the United States other than the States from which such shipment originated.

In the course and conduct of their business respondents have been at all times hereinafter mentioned and now are in competition with the individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of china, chinaware, earthenware, and pottery of all kinds.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof respondents as jobbers have sold the usual line of domestic chinaware to retailers and also have sold and sell such products in half and full size assortments through the agency of travelling salesmen or solicitors whose practice it has been to secure orders for the same from customers and prospective customers in the various States of the United States. Said salesmen or solicitors, having been duly authorized by respondents, and acting within the

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scope of their employment, have made the following and other similar or equivalent statements and representations to customers and prospective customers when soliciting orders for the products of respondents, to wit, that the products in each assortment were of one design and grade and that the quality and marking of the china-ware sold would be the same as indicated by sample or picture shown the customer or prospective customer; that the fine quality samples shown customers and prospective customers have been made for a chain store and that a few sets only were left over which were being offered as "deals"; that there were not more than three designs and at least three complete sets of 36 pieces to a set in each assortment; that the goods for sale were described on the sales slips as "odds and ends" only for the reason that it is necessary in order to obtain reduced freight rates on the goods and that such words "odds and ends" have no other significance and that the goods would be as represented.

In truth and in fact the products so offered for sale and sold by salesmen or solicitors on behalf of respondents were really what are known in the trade as "odds and ends" and consisted of various designs and grades out of which it was and is impossible to assemble complete sets. Such products have not been made for chain stores and they were not and are not leftovers or "deals". The words "odds and ends" were really descriptive of the products and were not and are not used because of any reference to or consideration of reduced freight rates. Many of the products, upon receipt by the purchasers have been chipped and cracked and broken. Furthermore many of the purchasers had no means of ascertaining the condition of the merchandise purchased until it had been received and payments made therefor. Respondents, through their agents, insisted upon payment before delivery and it has failed and neglected to adjust complaints resulting from the misrepresentations of its salesmen and solicitors.

It has been and is the practice of respondents to use on their letterheads in soliciting orders for their merchandise the words "imported and domestic" and in their correspondence with customers and prospective customers they have used the words "Our factory". It has also been the practice of respondents to use as one of their trade names the words Baker Pottery Company, thereby signifying and implying that respondents have a pottery for the manufacture of the wares which they sell to the purchasing public. In truth and in fact the products so offered for sale and sold by respondents have been and were and are domestic products and none of them was imported, and respondents neither own, control, nor operate any

factory or pottery wherein their products were or are made. (On the contrary, it has been and is their practice to purchase such products from others or from the manufacturers thereof for resale to the purchasing public.

PAR. 3. There are and have been for several years last past individuals, partnerships, and corporations offering for sale and selling in interstate commerce chinaware and pottery of all kinds.

PAR. 4. The statements and representations made by respondents and their agents, salesmen, or solicitors, as described in paragraph 2 hereof, as inducements for the purchase of their product, have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that they are true and into the purchase of respondents' products in reliance on such erroneous belief.

Such statements and representations likewise have had and have and each of them has had and has the capacity and tendency to divert trade to respondents from competitors offering for sale or selling in interstate commerce china, chinaware, earthenware, glassware, and pottery of all kinds, truthfully described.

PAR. 5. The above and foregoing practices of respondents are all to the prejudice of the public and of respondents' competitors and have been and are unfair methods of competition in interstate 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 the 12th day of November 1935, issued and served its complaint in this proceeding upon respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents filed answer by W. T. Shuford of Salisbury, N. C., as their attorney. Thereafter hearings were held for the taking and receiving of testimony and other evidence before Edward M. Averill, an examiner of the Federal Trade Commission theretofore duly appointed for such purpose. The Commission was represented in course of such hearings by James M. Brinson as its attorney. The evidence so taken and received was duly recorded and filed in the office of the Commission.

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Thereafter, this proceeding having regularly come on for final hearing before the Commission on the complaint, the answer thereto, the evidence, and brief in support of the complaint, respondents having failed to file brief or make request for oral argument; and the Commission having considered the whole record and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Richard B. Yancey and Mrs. E. Y. Councill are now and for more than a year last past have been co-partners trading under the names and styles of International China Company and Baker Pottery Company, with their office and principal place of business at the city of Salisbury in the State of North Carolina. They are now, and during said period of time have been, engaged in the sale of chinaware, earthenware, and other pottery of various kinds.

It has been and is their practice, pursuant to such sales and as a part thereof, to cause their products to be transported from factories where they are made for respondents in Tennessee, Ohio, and Virginia, to purchasers thereof located in the various States of the United States other than the States from which such shipments originate.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents have sold the usual line of domestic chinaware to retailers and also have sold such products in half and full size assortments through the agency of traveling salesmen. These traveling salesmen obtain orders from customers or prospective customers for the merchandise which respondents offer for sale and sell to the purchasing public. Respondents furnish them with samples of the products which they are authorized to sell, and such salesmen as part of their equipment carry with them and exhibit such samples to prospective customers. Among the assortments of chinaware or earthenware which they are authorized to offer for sale and sell is an assortment designated by respondents and their salesmen as "odds and ends." Such assortments each contain 1,020 pieces of chinaware or earthenware, which generally consists of cups and saucers, plates of various sizes, including soup plates and fruit plates, also platters, bakers, cream pitchers, sugar bowls, etc. Typical of the so-called assortments of "odds and ends" is the list of china-

ware or earthenware which appears in one of the orders therefor received in evidence in this matter:

20 Dozen Cups & Saucers
 16 Dozen Plates 6"
 8 Dozen Plates 7"
 10 Plates 9"
 8 Dozen Soups
 5 Dozen Fruits 6"
 1 Dozen Platters 11"
 1 Dozen Platters 13"
 2 Dozen Cream Soups
 1 Dozen Nappies
 1 Dozen Bakers
 1 Dozen Creams
 1 Dozen Sugars

Salesmen of respondents, having been duly authorized by respondents and having been furnished as aforesaid by respondents with samples of chinaware or earthenware for which they were to solicit orders, and acting within the scope of their authority and employment, have made the following and other similar or equivalent statements and representations to customers and prospective customers, and by means thereof have secured for respondents orders for their said chinaware or earthenware, including their so-called assortments of "odds and ends", to wit, that the quality and marking of the chinaware or earthenware would be the same as indicated by said samples or by pictures; that it had been made for chain stores and that a few sets only were left over, which were being offered as "deals"; that there were not and would not be in any assortment of "odds and ends" more than three designs, patterns or decorations, and that the assortment would provide in every instance at least three complete sets of 36 pieces each, of uniform design, pattern, or decoration; that the chinaware or earthenware offered for sale as assortments of "odds and ends" were so described only for the reason that it was necessary in order to secure reduced freight rates on the merchandise, and that such words "odds and ends" had no other significance; and that the chinaware or earthenware would be received by the customer as it was represented to be by the salesman or solicitor.

In truth and in fact the products so offered for sale were what are known in the trade as "odds and ends" and consisted of various designs and grades, out of which it was impossible to assemble three complete sets or even one set; the items of the assortments were not "left-overs" of sets made for chain stores and they were not being offered as "deals"; the words "odds and ends" were truly descriptive of the products. The respondents, with full knowledge of the afore-

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said misrepresentations, acts and practices of their representatives, acquiesced and ratified the same.

Many of the items are and have been chipped or cracked or broken upon receipt by the customer; and shipments when received do not correspond and have not corresponded with the samples which induced the orders, and it was not the intention of respondents, at the time the samples were exhibited to the prospective customer, that the wares to be shipped should or would correspond with the samples.

Purchasers had no means of learning the condition of the merchandise until payment therefor had been made, and respondents, as a practice, fail and refuse, and have failed and refused, to adjust claims resulting from the misrepresentations of their salesmen and from the failure of the merchandise to correspond to the samples.

PAR. 3. There are and have been for several years last past, individuals, partnerships, and corporations offering for sale and selling, in interstate commerce, chinaware and pottery of all kinds, who truthfully advertise, describe, and represent their wares and who do not make use of the other methods of business hereinabove described, with whom respondents have been and are in active, substantial competition. Respondents' misrepresentations, their practice of filling orders with merchandise inferior to samples exhibited and their failure to adjust claims arising therefrom, as above set forth, give and have given respondents an unfair advantage over their said competitors and tend to divert, and divert, business from said competitors. Thereby substantial injury has been and is being done by respondents to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent are to the prejudice of the public and of respondents' 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, no testimony having been offered in opposition thereto, brief filed herein by counsel for the

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Commission, respondents having failed to file brief or make request for oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents, Richard B. Yancey and Mrs. E. Y. Council, trading as International China Company and as Baker Pottery Company, their agents, employees, and other representatives, in connection with the offering for sale or sale in interstate commerce of chinaware, earthenware, and other pottery of various kinds, do forthwith cease and desist:

1. From misrepresenting the number of complete sets of dishes or other chinaware or earthenware that may be made up from the various pieces contained in their assortment designated "odds and ends";

2. From filling orders for chinaware and earthenware with such merchandise in a condition inferior to the condition represented by the samples exhibited to the customer or by the statements and representations of salesmen, or with merchandise of a quality or kind or design different from that represented;

3. Representing that the assortments are not in fact "odds and ends", but are made up of dishes that have been made for the chain stores, and are designated as "odds and ends" only to effect a reduction in freight rates, unless such are the facts.

It is further ordered, That respondents, within 60 days from and after service of this order, shall file with the Commission a report in writing stating in detail the manner and form of compliance therewith.

IN THE MATTER OF
T. S. CRAIG, DOING BUSINESS AS UNITED SILK COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2490. Complaint, July 3, 1935—Decision, Sept. 1, 1936

Where an individual engaged in offer, sale, and distribution of hosiery to purchasers among the several States and in soliciting orders therefor in person and through salesmen, by house-to-house canvass in various towns and cities, and demanding and receiving, at time of order, part or all of purchase price, with any unpaid balance C. O. D., and in exhibiting, in course of such solicitations, purported samples of each quality or grade and order blank purportedly showing mill number, regular retail price, and description of each style, number or sample, along with representation that various samples were respectively representative of the hosiery described and identified by purported mill numbers—

- (a) Filled orders with hosiery which differed in size or color or quality from that ordered and was inferior in quality or grade to that of sample chosen and indicated by purported mill number description, notwithstanding his representation to purchasers that he would deliver goods of size and color desired and selected and of the quality or grade represented by samples chosen and indicated by purported mill number description;
- (b) Accepted all or part of purchase price for such hosiery which differed in size, etc., from that ordered, and was not delivered to purchaser at time promised, or at all, notwithstanding his aforesaid representations as to size, color, and quality or grade, and failed and refused to make good his aforesaid representations and promises and to deliver to purchasers hosiery of size, color, and quality or grade ordered, or to refund purchase price paid therefor;
- (c) Falsely promised, in many instances, to include free pair with order for as many as six, as inducement to prospect to purchase the larger quantity, and, in such instances, failed and refused so to do at time of shipment, or to make good such promise through delivery of free pair upon having his attention called to failure to include, as promised, such pair;
- (d) Represented, in many instances, to prospective purchasers that his hosiery would wear for a specified length of time and usually guaranteed six months' wear for three pairs and a year for six, and promised, in event of their failure so to wear, to replace worn with new hosiery until expiration of guarantee period, notwithstanding fact said goods did not and would not, under normal conditions, wear for period specified and he did not make such replacements;
- (e) Represented, through said order blanks, exhibited to prospective purchasers as aforesaid and display thereon of purported mill numbers and description of hosiery designated thereby or otherwise, and use of trade name including words "United Silk Company", together with designation "Dallas Office", that such purchasers were dealing with an established, substantial concern which carried in stock or had available for delivery hosiery of quality or grades indicated as aforesaid, facts being so-called company was a trade name merely and not an established, substantial business and