

IN THE MATTER OF
LOUIS FABRIKANT, TRADING AS LOUIS FABRIKANT
COMPANY

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

Docket 2742. Complaint, Mar. 13, 1936—Decision, Oct. 19, 1936

Where an individual, engaged in the sale and distribution of textile fabrics, including a certain fabric made from brushed tricot, knitted rayon and silk, with a velvety appearance, and with a resemblance to fabrics made from camels' hair, so that by virtue of appearance of material it would lead purchaser, barring opportunity to compare with material made thereof, to believe same was composed, in part at least, from hair or wool of camel, and which fabric, while used mostly in manufacture of dresses, was also employed for manufacture of mufflers and shawls—

Adopted trade-mark "Camel Snede" as a name for said fabric, and registered same in Patent Office, and prominently and conspicuously displayed or featured said name in advertisements suggested, phrased, and worded by him for use of wholesalers and retailers in offering and selling said fabric to ultimate purchasers thereof, and stated in many of said advertisements, that said product, thus named, was a very soft wool and rayon mixture, with velvety finish, and failed, in majority of such advertisements, adequately to qualify or correct, through statements in small and inconspicuous print, impression made through conspicuous display of phrase in question; notwithstanding fact said fabric contained no camel's hair nor wool from either sheep or camels, but was made solely from silk and rayon;

With result that there was conveyed to mind of reader association of camel's wool or camel's hair with fabric displayed or advertised, and such impression prevailed notwithstanding subsequent explanations, and with effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that said fabric was made from camel's hair or contained wool from sheep or camel, and of unfairly diverting trade to him from competitors who do not engage in similar practices and misrepresent character or quality of merchandise sold by them, or represent their said fabrics as made from wool of sheep or camels, for which there has long been preference on part of a substantial portion of purchasing public as superior to other fabrics designed for similar usage; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Pencke for the Commission.

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,"

Complaint

the Federal Trade Commission, having reason to believe that Louis Fabrikant, trading as Louis Fabrikant Company 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, Louis Fabrikant, is an individual, trading and doing business under the firm name and style of Louis Fabrikant Company, with his principal place of business at 450 Seventh Avenue, in the city and State of New York. The respondent is now, and for more than two years last past has been, engaged in the sale and distribution of textile fabrics used in the manufacture of dress goods. Said respondent, being engaged in business as aforesaid, causes the said merchandise to be shipped from said place of business in the State of New York to purchasers thereof located at various points in States other than the State of New York and in the District of Columbia, and there is now, and has been at all times mentioned herein a constant current of trade and commerce in said textile fabrics sold by the respondent among and between the various States of the United States. In the course and conduct of his said business said respondent is now, and has been at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale and distributiton of textile fabrics used in the manufacture of dress goods in commerce among and between the various States of the United States.

PAR. 2. Respondent has invented and perfected a certain fabric made from brushed tricot knitted rayon and silk that has a velvety appearance and resembles fabrics made from Camel's hair. He has adopted the trade-mark "Camel Suede" as a name for this fabric and has had said name registered in the United States Patent Office. Said fabric, which forms a substantial part of respondents line of textile fabrics, is manufactured and dyed by a silk mill in Reading, Pa., and shipped to respondent's place of business in New York.

Respondent sells said fabric to the wholesale and retail trade in various States. The respondent has suggested and assisted in the phrasing and wording of advertisements used by the said wholesalers and retailers in offering for sale and in selling said fabric to the ultimate purchasers thereof. These advertisements are inserted in newspapers and are otherwise displayed to the purchasing public. In all of said advertisements the name "Camel Suede" is prominently and conspicuously displayed so as to serve as a representation to the

purchasing public that said fabric is made from camel wool. In many of said advertisements the statement is made that "Camel Suede" is a very soft wool and rayon mixture with a velvety finish. In truth and in fact said fabric does not contain any camel's hair whatever and contains no wool of either sheep or camels but is made solely from silk and rayon.

PAR. 3. Over a period of many years a substantial portion of the purchasing public have expressed, and have had, a preference for purchasing certain fabrics containing camels' hair or made from wool from sheep or camels, believing that said fabrics so made are of superior quality to other fabrics designed for similar usage.

There are among respondent's competitors many who do not in any way misrepresent the quality, material, or character of the fabrics sold and distributed by them and do not represent that said fabrics are made from wool of sheep or camels when such is not the fact.

PAR. 4. The acts and representations of the respondent in adopting the name Camel Suede for his fabric herein described, and in representing said fabric to be made from wool, in offering for sale and selling his fabric was, and is calculated to, and had, and now has, a tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said fabric is made from camels' hair or contains wool from sheep or camels. Further, as a direct consequence of the mistaken and erroneous beliefs, induced as aforesaid, a substantial portion of said purchasing public has purchased a substantial volume of said fabric with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of selling textile fabrics for use in the manufacture of dress goods who truthfully advertise and represent the quality, material and character of their respective fabrics. As a result thereof substantial injury has been, and is now being, done by respondent to substantial competition in commerce as herein set out.

PAR. 5. The above acts and things done and caused to be done by the respondent were and are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent 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.

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 March 13, 1936, issued and served its complaint in this proceeding upon respondent Louis Fabrikant, trading as Louis Fabrikant Company, 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, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Maurice Yanoff, an employee of the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid, and the Commission having duly considered the same, and being now 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, Louis Fabrikant, is an individual, trading and doing business under the firm name and style of Louis Fabrikant Company, with his principal place of business at 450 Seventh Avenue, in the city and State of New York. He is now, and for more than two years last past has been, engaged in the sale and distribution of textile fabrics used in the manufacture of dress goods. The respondent, being engaged in business as aforesaid, causes the said merchandise to be shipped from said place of business in the State of New York to purchasers thereof located at various points in States other than the State of New York and in the District of Columbia, and there is now, and has been at all times mentioned herein a constant current of trade and commerce in said textile fabrics sold by the respondent among and between the various States of the United States. In the course and conduct of his said business said respondent is now, and has been at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale and distribution of textile fabrics used in the manufacture of dress goods in commerce among and between the various States of the United States.

PAR. 2. Respondent has invented and perfected a certain fabric made from brushed tricot knitted rayon and silk that has a velvety

appearance and resembles fabrics made from camels' hair. He has adopted the trade-mark "Camel Suede" as a name for this fabric and has had said name registered in the United States Patent Office. Said fabric, which forms a substantial part of respondent's line of textile fabrics, is manufactured and dyed by a silk mill in Reading, Pa., and shipped to respondent's place of business in New York.

PAR. 3. Respondent sells said fabric to the wholesale and retail trade in various States. He has suggested and assisted in the phrasing and wording of advertisements used by the said wholesalers and retailers in offering for sale and in selling said fabrics to the ultimate purchasers thereof. These advertisements are inserted in newspapers and are otherwise displayed to the purchasing public. In all of said advertisements the name "Camel Suede" is prominently and conspicuously displayed so as to serve as a representation to the purchasing public that said fabric is made from camel wool. In many of said advertisements the statement is made that "Camel Suede" is a very soft wool and rayon mixture with a velvety finish. The fabric does not contain any camel's hair. It contains no wool of either sheep or camel. It is made solely from silk and rayon. While the majority of the advertisements contain a description of the materials from which said product is manufactured, such statements are made in small and inconspicuous print so that the first impression made upon the reader is the conspicuously displayed phrase "Camel Suede". There is conveyed to the mind of the reader or purchaser the association of camel's wool or camel's hair with the fabric displayed or advertised and that impression generally prevails in spite of any subsequent explanations. The appearance of the material is such that unless there is opportunity to compare it with material manufactured of camel's hair or camel's wool, it will lead the purchaser into the belief that it is made at least partially from the hair or wool of the camel. While the said material is used for the most part in the manufacture of ladies' dresses, it is also used for manufacturing mufflers and shawls, both of which commodities are likewise made from material composed of camel's hair or wool.

PAR. 4. Over a period of many years a substantial portion of the purchasing public has expressed, and has had, a preference for purchasing certain fabrics containing camel's hair or made from wool from sheep or camels, believing that said fabrics so made are of superior quality to other fabrics designed for similar usage.

There are among respondent's competitors many who do not in any way misrepresent the quality, material or character of the fabrics sold and distributed by them and do not represent that said fabrics are made from wool of sheep or camels, when such is not the fact.

PAR. 5. The representations of the respondent in adopting the name "Camel Suede" for his fabric herein described, and in representing said fabric to be made from wool, in offering for sale and selling said fabrics were, and are, calculated to, and have had, and now have, a tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said fabric is made from camel's hair or contains wool from sheep or camels. As a result thereof, trade is unfairly diverted to the respondent from his competitors who do not engage in similar practices and who do not misrepresent the character or quality of the merchandise which they sell. By reason of the acts and practices of the respondent, substantial injury has been done by respondent to competition, in commerce among and between the various States of the United States.

CONCLUSION

The foresaid acts and practices of the respondent, Louis Fabrikant, trading as Louis Fabrikant Company, are to the prejudice of the public and of respondent's competitors, 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 heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by M. Yarnoff, counsel for the respondent, 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, Louis Fabrikant, trading as Louis Fabrikant Company, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of textile fabrics used in the manufacture of dress goods in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Order

23 F. T. C.

(a) Representing, directly or indirectly that textile fabrics which contain no wool of the sheep or hair of the camel are made from wool or from camel's hair;

(b) Using the word "camel" either alone or in conjunction with other words, in advertisements, on labels, and tags, or in any other manner whatever, to designate a textile fabric which does not contain camel's hair or camels' wool.

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

Syllabus

IN THE MATTER OF
JOHN H. MEYER, TRADING AS MED-DENTAL SYSTEMS
COMPANY

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

Docket 2798. Complaint, May 8, 1936—Decision, Oct. 19, 1936

Where a corporation engaged long and continuously in manufacture and sale of a professional accounting system, with desks, cabinets, books, and records specially designed for use by physicians and dentists, and which (1) included forms and charts in use for many years, (2) constituted result of a great amount of time, labor, research, and expenditure of money, (3) possessed features considered unique to such an extent that, observed in any professional accounting system, they were identified and considered as its own, and (4) had become well and favorably known by name to the purchasing trade and consuming public through wide advertising by it in medical and dental journals, and other like media; and thereafter a business, consisting, as originally organized of two partners, and eventually carried on by one of said individuals, and organized to manufacture, sell, and distribute accounting systems especially designed for physicians and dentists, and patterned as closely in every detail as possible on aforesaid well known system, with which one of said partners was familiar by virtue of prior employment with corporate proprietor thereof, hereinabove referred to—

Copied in every detail aforesaid system, including forms for operation thereof, sample equipment for use in selling same and materials generally, from samples and forms obtained by said former employee from system itself, and placed on the market, after so copying and patterning the other, a system of professional accounting for doctors and dentists, which was its exact copy, and copied said other company's sales promotional literature, and also the desks and cabinets which housed its system, as to size, shape, arrangement and general appearance, and offered and sold its said system in substantial competition with said corporation first named, to physicians and dentists in cities, towns, and communities throughout the United States;

With result of unfairly diverting trade from said corporation to it, and of securing for it an undue advantage over competitors by appropriating the result of said corporation's research, ingenuity, labor, and expenditures, and with capacity and tendency to mislead and deceive the purchasing public into erroneous belief that in buying its professional accounting system they were purchasing the well known McCaskey System, and of causing them to buy same on account of such erroneous belief, thus engendered; to the substantial injury of competition in commerce:

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