

IN THE MATTER OF
**B. H. KRUEGER, INC., AND LIGHTFOOT SCHULTZ
COMPANY**

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

Docket 2515. Complaint, Aug. 14, 1935—Decision, Dec. 29, 1936

Where a corporation engaged in manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics including perfumes, toilet water, face powder, lipstick, rouge, and similar products, to purchasers in the various States, and including a line of toiletries sold and distributed by an American concern in interstate commerce under trade name or brand "Drury Lane English Lavender"—

Caused its aforesaid products or line of toiletries to be labeled and branded with aforesaid words and words "Distributed by Worthall, Ltd., London, Montreal, New York", notwithstanding fact said American corporation thus referred to was not a limited corporation as commonly understood by the public, nor an English company, and had no operating branch or office in London, or Montreal, and products sold and distributed by it in interstate commerce were not made or compounded in London or imported from England or made from English materials, but were all made or compounded in the United States and principally of materials produced therein, and were in no sense products of English manufacture nor English in origin;

With effect of misleading and deceiving dealers and purchasing public into erroneous and mistaken belief that the said toilet preparations and supplies made, compounded and sold by it and marketed by said American distributor, were genuine English products and that its said distributor was an English company with offices in London and Montreal, and that its said products were of English origin and manufacture or were imported from England, and of inducing dealers and purchasing public, acting in such beliefs, to buy such imitation toilet preparations, and thereby unfairly divert trade to it from its competitors who do not thus, or otherwise, misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin which, as genuine English toiletries long compounded, blended and made in England by English companies of English materials and imported and appropriately labeled and branded for sale and distribution in the United States, are bought by a substantial portion of the purchasing public in preference to imitations thereof not of English origin or manufacture; to injury of competition in commerce among the various States:

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

Before *Mr. John W. Addison* and *Mr. John W. Bennett*, trial examiners.

Mr. Allen C. Phelps for the Commission.

Mr. Milton Dammann, of New York City, for Lightfoot Schultz Co.

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 B. H. Krueger, Inc., a corporation, and Lightfoot Schultz Company, a corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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. B. H. Krueger, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business at 151 West 19th Street in the city of New York, N. Y. The officers of said respondent B. H. Krueger, Inc. are Bernard H. Krueger, president and treasurer, and Max Krueger, secretary. Respondent Lightfoot Schultz Company is a corporation organized, existing, and doing business under the laws of the State of New York, with its office at 389 Fifth Avenue, New York City, and a factory at 1412 Park Avenue, Hoboken, N. J. The officers of said Lightfoot Schultz Company are Milton Dammann, president, Marshall Mundheim, vice president and secretary, and Jules B. deMesquite, treasurer.

PAR. 2. Respondent B. H. Krueger, Inc., since prior to September 1934, has been and now is engaged in the business of manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics, including perfumes, toilet water, face powder, lip stick, rouge, and similar products to purchasers in the various States of the United States. Respondent Lightfoot Schultz Company since prior to September 1934, has been and now is engaged in manufacturing, compounding, selling, and distributing a line of toilet soaps to purchasers in the various States of the United States. Both of said respondents ordinarily sell and distribute their said products at wholesale and cause the said products to be transported from the States of New York and New Jersey into other States of the United States and the District of Columbia, and in the course and conduct of their said businesses said respondents were and are in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, compounding, sale, and distribution in interstate commerce of similar products.

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PAR. 3. During the time above mentioned respondent B. H. Krueger, Inc. in the course and conduct of its said business manufactured and compounded, wrapped, packed, and delivered to the order of one Worthall, Ltd., a corporation, a line of toiletries which were sold and distributed by said Worthall, Ltd. in interstate commerce under the trade name or brand of "Drury Lane English Lavender." Respondent Lightfoot Schultz Company during the time above mentioned manufactured and compounded, wrapped, packed, and delivered to the order of Worthall, Ltd. a line of toilet soaps, which was sold and distributed in interstate commerce by said Worthall, Ltd. under the trade name or brand of "Drury Lane English Lavender." The labels attached to the containers and packages in which said toiletries and soaps were packed, sold, and distributed were furnished to said respondents by said Worthall, Ltd., but said labels were attached to said packages or containers and the packaging and bottling of said products were done by the respondents, who thereupon delivered the finished products to destinations and consignees in the several States designated by said Worthall, Ltd.

PAR. 4. For a long period of time the terms "English," "Made in England" and "Imported from England" and similar terms when used in connection with toilet articles such as perfumes, soaps, toilet water, face powder, rouge, and similar articles, have had and still have a definite significance in the minds of wholesalers and retailers and the ultimate purchasing public, to wit: Such toiletries and products have for many years been compounded, blended and manufactured in England by English companies of English materials and imported into the United States, and where so compounded, produced and imported have been appropriately labelled and branded for sale and distribution in the various States of the United States. Such terms as the above when applied to toilet products not made of English materials or manufactured by an English company or imported from England are false and misleading, and a substantial portion of the purchasing public prefers to buy genuine English toiletries produced as aforesaid, rather than imitations thereof which are not of English origin or manufacture.

PAR. 5. In the course and conduct of their said businesses, as aforesaid, respondents have caused their products so sold and distributed in interstate commerce, to be labeled and branded with the words "Drury Lane," "English Lavender," and "Distributed by Worthall, Ltd., London, Montreal, New York," when in truth and in fact the said Worthall, Ltd. is not a limited corporation nor is it an English company, it had no branch or office in London or Montreal, none of the products which it so sold and distributed in interstate commerce

were manufactured or compounded in London nor were the same imported from England or made from English materials. On the contrary, Worthall, Ltd. is a New York corporation; all of said products were manufactured or compounded in the United States, principally of materials produced in this country, and same were in no sense products of English manufacture nor English in origin.

PAR. 6. The representations so made by respondents, as above set forth, and the use of the word "Limited" instead of incorporated, by said corporation, in combination with the words "London, Montreal, New York," of the trade name "Drury Lane" and the words "English Lavender," are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the toilet articles and supplies manufactured, compounded, and sold by respondents are genuine English products, and that respondents' distributor Worthall, Ltd. is an English company with offices in London and Montreal, and that said products are imported from England, when such is not the fact. Said representations have the capacity and tendency to and do induce dealers and the purchasing public, acting on such beliefs, to purchase the said imitation toilet articles, thereby diverting trade to respondents from their competitors who do not by their corporate trade names or by false and misleading advertising or in any other manner misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin and manufacture, and thereby respondents do substantial injury to competitors and to the purchasing public in interstate commerce.

PAR. 7. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and the competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning 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 August 14, 1935, issued and served its complaint in this proceeding upon respondents B. H. Krueger, Inc., and Lightfoot Schultz Company, charging them with the use of unfair methods of competition in commerce in violation of the pro-

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visions of said act. After the issuance of said complaint, and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by the respondent B. H. Krueger, Inc., and by Milton Dammann, attorney for respondent Lightfoot Schultz Company; 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 answers thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been applied for); 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: B. H. Krueger, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at 151 West Nineteenth Street in the city of New York, N. Y. The officers of said respondent B. H. Krueger, Inc., are Bernard H. Krueger, president and treasurer, and Max Krueger, secretary.

PAR. 2. Respondent B. H. Krueger, Inc., since prior to September 1934, has been, and now is, engaged in the business of manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics, including perfumes, toilet water, face powder, lipstick, rouge, and similar products to purchasers in the various States of the United States. Said respondent ordinarily sells and distributes its said products at wholesale and causes the said products to be transported from the State of New York into other States of the United States and the District of Columbia. In the course and conduct of its said business, said respondent was, and is, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, compounding, sale, and distribution in interstate commerce of similar products.

PAR. 3. During the time above mentioned, respondent B. H. Krueger, Inc., in the course and conduct of its said business manufactured and compounded, wrapped, packed, and delivered to the order of one Worthall, Ltd., a corporation, a line of toiletries which were sold and distributed by said Worthall, Ltd., in interstate com-

merce under the trade name or brand of "Drury Lane English Lavender." The labels attached to the containers and packages in which said toiletries and soaps were packed, sold, and distributed were furnished to said respondent by said Worthall, Ltd., but said labels were attached to said packages or containers, and the packaging and bottling of said products were done by the respondent, who thereupon delivered the finished products to destinations and consignees in the several States designated by said Worthall, Ltd.

PAR. 4. For a long period of time the terms "English," "Made in England," and "Imported from England" and similar terms of English connotation or derivation, when used in connection with toilet preparations such as perfumes, soaps, toilet water, face powder, rouge, and similar articles, have had, and still have, a definite significance in the minds of wholesalers and retailers and the ultimate purchasing public, to wit: that such toiletries and products have for many years been compounded, blended, and manufactured in England by English companies of English materials and imported into the United States, and where so compounded, produced, and imported, have been appropriately labelled and branded for sale and distribution in the various States of the United States. A substantial portion of the purchasing public prefers to buy genuine English toiletries produced as aforesaid, rather than imitations thereof which are not of English origin or manufacture. Such terms as the above, when applied to toilet products not made of English materials or manufactured by an English company or imported from England, are false and misleading.

PAR. 5. In the course and conduct of its said business, as aforesaid, respondent has caused its products so sold and distributed in interstate commerce, to be labelled and branded with the words "Drury Lane," "English Lavender," and "Distributed by Worthall, Ltd., London, Montreal, New York," when in truth and in fact the said Worthall, Ltd., is not a limited corporation as such term is commonly understood by the public, nor is it an English company. It has no operating branch or office in London or Montreal. None of the products which it sold and distributed in interstate commerce was manufactured or compounded in London, nor were the products imported from England or made from English materials. On the contrary, Worthall, Ltd., is a New York Corporation; all of said products were manufactured or compounded in the United States, principally of materials produced in this country, and said products were in no sense products of English manufacture nor English in origin.

PAR. 6. The representations so made by respondent, as above set forth, and the use on labels placed on its said products by respondent-

ent of the word "Limited" instead of "Incorporated" for said Worthall corporation, in combination with the words "London" or "Montreal"; of the trade name "Drury Lane" and the words "English Lavender"; are calculated to, and have the capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the erroneous and mistaken belief that the toilet preparations and supplies manufactured, compounded, and sold by respondent and marketed by said distributor Worthall, Ltd., are genuine English products, and that respondent's distributor Worthall, Ltd., is an English company with offices in London and Montreal, and that said products are of English origin and manufacture or are imported from England. Said representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting on such beliefs, to purchase the said imitation toilet preparations, thereby unfairly diverting trade to respondent from its competitors who do not by the means above set forth, or in any other manner, misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin and manufacture, to the injury of competition in commerce among and between the various States of the United States.

PAR. 7. The testimony and evidence recorded and filed in this proceeding have failed to establish the allegations of the complaint herein as against respondent Lightfoot Schultz Company.

CONCLUSION

The aforesaid acts and practices of the respondent B. H. Krueger, Inc., 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 answers of respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that respondent B. H. Krueger, Inc., a corporation, 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," and that the allegations of the complaint have not been established as against respondent Lightfoot Schultz Company by the testimony and evidence herein;

It is ordered, That the respondent, B. H. Krueger, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetics and toilet preparations, including perfumes, soaps, toilet water, face powder, and similar articles in interstate commerce or in the District of Columbia, by the use of labels, or otherwise, do forthwith cease and desist from representing:

1. That said products are of English manufacture or origin, or are imported from England;

2. That said products contain ingredients of English origin, when such is not the fact;

3. That said products are manufactured or prepared for, or distributed by, an English company or a company with offices and places of business in England or Canada, when such is not the fact;

4. That any of said products manufactured for, or sold to, Worthall, Ltd., a New York corporation, are offered for sale, sold, or distributed by an English company, or by a company with offices in England or Canada;

5. That any of said products manufactured for, or sold to, Worthall, Ltd., a New York corporation, are of English manufacture or origin, or have been imported from England.

It is further ordered, That the respondent, B. H. Krueger, Inc., a corporation, shall within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice as against respondent Lightfoot Schultz Company, a corporation.

IN THE MATTER OF
NATIONAL ELECTRICAL MANUFACTURERS
ASSOCIATION ET AL.

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

Docket 2565. Complaint, Nov. 16, 1935¹—Decision, Dec. 29, 1936

Where corporations engaged in (1) the manufacture of various kinds of power cable and of rubber covered building wire, largest consumers of which products were privately and publicly owned public utilities, municipal, State, and Federal Governments, and large industrial plants and office buildings, and in (2) soliciting, selling, and delivering such various products directly to the larger consumers, and in supplying the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers, and (3) controlling a large, valuable and continuous trade and commerce among the several States, and transporting and delivering or causing to be transported and delivered, in the course thereof, large quantities of material and finished products across State lines, and (4) in a position, to the extent that they acted collectively and collusively in the production and pricing of their goods, to dominate the markets in which unorganized consumers must buy the same, and, but for the matters hereinbelow set forth, in active competition with one another as to price and otherwise; acting in combination and agreement with one another and through their association and subsidiary groups and sectional organizations thereof, promoted in aid of such agreements and combinations directed to avoiding, frustrating and suppressing price competition, both prior to and during the role as Code Authority under the National Industrial Recovery Act, of said association, in using, interpreting and applying various provisions of said Code with intent and effect of supporting, supplementing and reinforcing such agreements, understandings, policies, and methods; and making use of frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the association, and systematic exchange of price information among the members; and acting in pursuance thereof—

- (a) Entered into agreements and understandings to quote, sell, and deliver their goods according to identical delivered prices, terms, and sales conditions, determined by joint or cooperative action of the members' groups, etc., as above indicated, and systematically prepared, circulated, exchanged, adopted, and used certain price lists promulgated by three of the said member manufacturers, with the assurance that such lists and changes thereof, with due notice, would be observed by the promulgating manufacturers if respected by the others, with intent and effect of avoiding and suppressing price competition among all, and with the understanding of all that purchase on a delivered price basis only would be permitted, and with inclusion of formula through which such delivered prices were to be calcu-

¹ Amended.