

Complaint

IN THE MATTER OF

SAMUEL BRIER, DOING BUSINESS AS SAMUEL BRIER & COMPANY AND QUAKERTOWN LUGGAGE 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 3049. Complaint, Feb. 4, 1937—Decision, Apr. 2, 1937

Where an individual, and a corporation, headed and controlled, managed and operated by him, engaged in the manufacture, distribution, and sale of handbags, suitcases, and other luggage to jobbers and retailers, portion of which luggage, thus manufactured and sold by them, was made from top grain leather and portion of which was made from the inferior and less durable and costly split or inner side leather—

Placed upon pieces of said latter luggage, covered with said split leather, conspicuous stamp reading "Warranted Cowhide," "Genuine Cowhide," "All Leather," "Genuine Leather," and thereby represented that such pieces were covered with the preferred top grain leather;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by them was covered with the outside or top layer of the hide, and with the result of enabling retailers and jobbers to mislead and deceive the purchasing public as to the quality of the material with which such luggage was covered, and of placing in the hands of retailers and dealers an instrument and means whereby they might commit a fraud upon members of such public, and with the further result, as a direct consequence of the misleading and erroneous belief induced as aforesaid, that a number of the consuming public bought a substantial volume of their said luggage, and trade was unfairly diverted to them from those likewise engaged in the sale of luggage covered with split hide, and who truthfully labeled the same, and from those also engaged in the sale of top grain leather-covered luggage; 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.

Mr. George Foulkes for the Commission.

Bender, Rubin & Simons, of Philadelphia, Pa., 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 Brier, an individual doing business as Samuel Brier & Company and Quakertown Luggage Company, Inc., a corporation hereinafter re-

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ferred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, 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. Respondent, Samuel Brier, is an individual doing business as Samuel Brier & Company, with his principal office and place of business located at 310 Spruce Street, Philadelphia, State of Pennsylvania.

Respondent Quakertown Luggage Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Quakertown, State of Pennsylvania.

Respondent, Samuel Brier is president of the respondent, Quakertown Luggage Company, Inc. He controls, manages and operates the sales policies and business activities of respondent, Quakertown Luggage Company, Inc.

PAR. 2. Respondents have been, for more than one year last past, and are now, engaged in the business of manufacturing, distributing, and selling handbags, suitcases and other luggage to jobbers and retailers, many of whom reside in States other than the State of Pennsylvania. When orders are received therefor they are filled by respondents by shipping said luggage to said purchasers from the respective places of business of said respondents into and through other States of the United States and in the District of Columbia. There is now and has been during the time hereinbefore mentioned, a constant current of trade in commerce in said luggage so distributed and sold by respondents between and among the various States of the United States and in the District of Columbia.

In the course of their said businesses said respondents were, and are, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of handbags, suitcases and other luggage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Certain pieces of luggage manufactured and sold by respondents, as aforesaid, are made from top grain leather, while other pieces are made from split leather. Top grain leather is that portion of the hide which includes the outer surface or hair side. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide. Split leather is of inferior quality and durability to top grain leather and commands a lower price. The terms "Top Grain Leather," "Grained

Leather," "Genuine Leather," "Genuine Cowhide," "Warranted Leather," "Warranted Cowhide," "All Leather," and "Leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather as distinguished from split leather as described above, and there is a preference among the trade and consuming public for luggage made of such leather over luggage made from split leather. Certain pieces of the luggage manufactured and sold as aforesaid by respondents are covered with said split leather and respondents place upon the surface of luggage so manufactured from split leather a conspicuous stamp reading as follows:

Warranted Cowhide .
 Genuine Cowhide
 All Leather
 Genuine Leather

Said stamps, labels, and markings serve as representations to the purchasing public that the material with which such luggage is covered is top grain leather. In addition, retailers and jobbers are thus enabled by reason of said stamps, labels, and representations to mislead and deceive the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 4. The acts and practices of respondents in offering for sale and selling said handbags, suitcases and other luggage stamped and labeled as aforesaid had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by respondents is covered with the outside or top layer of the hide. Further, said acts and practices as herein set out places in the hands of retailers and dealers an instrument and a means whereby said retailers and dealers may commit a fraud upon members of the purchasing public. As a direct consequence of the misleading and erroneous belief induced by the advertisements and representations of respondents, as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondents' luggage with the result that trade has been and is now being unfairly diverted to respondents from corporations, firms, partnerships, and individuals likewise engaged in the business of selling luggage covered with split hide and who truthfully label said luggage, as well as from corporations, firms, partnerships and individuals who are engaged in the business of selling luggage covered with top grain leather. As a result thereof substantial injury has been done and is now being done by respondents to competition in commerce between and among

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the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices and representations of respondents have been, and are, all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate 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."

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 February 4, 1937, issued and served its complaint in this proceeding upon respondent Samuel Brier, an individual doing business as Samuel Brier & Company, and respondent Quakertown Luggage Company, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said act. On February 25, 1937, the respondents filed their answer, in which answer they admitted all the material allegations of the complaint to be true and stated that they waived hearing on the charges set forth in the complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings of the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, 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 Samuel Brier is an individual doing business as Samuel Brier & Company, with his principal office and place of business located at 310 Spruce Street, Philadelphia, State of Pennsylvania.

Respondent Quakertown Luggage Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Pennsylvania, with its principal office and place of business located in Quakertown, State of Pennsylvania.

Respondent Samuel Brier is president of the respondent, Quakertown Luggage Company, Inc. He controls, manages, and operates the sales policies and business activities of respondent, Quakertown Luggage Company, Inc.

PAR. 2. For more than one year last past the respondents have been, and are now, engaged in the business of manufacturing, distributing, and selling handbags, suitcases, and other luggage to jobbers and retailers, many of whom reside in States other than the State of Pennsylvania. When the respondents receive orders for their luggage they are filled by respondents by shipping said luggage to purchasers from the respective places of business of said respondents into and through other States of the United States and in the District of Columbia.

There is now, and has been during the time hereinbefore mentioned, a constant current of trade in commerce in said luggage so distributed and sold by respondents between and among the various States of the United States and in the District of Columbia.

The respondents, in the course of the operation of their said businesses, were and are in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of handbags, suitcases, and other luggage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. A portion of the luggage manufactured and sold by the respondents, as aforesaid, is made from top grain leather, while other pieces are made from split leather.

Top grain leather is that portion of the hide which includes the outer surface or hair side. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide.

Split leather is of inferior quality and durability to top grain leather and commands a lower price on the market.

The terms "Top Grain Leather," "Grained Leather," "Genuine Leather," "Genuine Cowhide," "Warranted Leather," "Warranted Cowhide," "All Leather," and "Leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather as distinguished from split leather as described above.

There is a preference among the trade and consuming public for luggage made of top grain leather over luggage made from split leather.

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Certain pieces of the luggage manufactured and sold as aforesaid by the respondents are covered with said split leather and respondents place upon the surface of luggage so manufactured from split leather a conspicuous stamp reading as follows:

Warranted Cowhide
Genuine Cowhide
All Leather
Genuine Leather

These stamps, labels, and markings serve as representations to the purchasing public that the material with which such luggage is covered is top grain leather. By placing said labels and markings on the luggage respondents enable retailers and jobbers to mislead and deceive the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 4. The acts and practices of respondents in offering for sale and selling said handbags, suitcases and other luggage stamped and labeled as aforesaid had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by respondents is covered with the outside or top layer of the hide. Further, said acts and practices as herein set out places in the hands of retailers and dealers an instrument and a means whereby said retailers and dealers may commit a fraud upon members of the purchasing public.

As a direct consequence of the misleading and erroneous belief induced by the advertisements and representations of respondent, as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondents' luggage with the result that trade has been and is now being unfairly diverted to respondents from corporations, firms, partnerships and individuals likewise engaged in the business of selling luggage covered with split hide and who truthfully label said luggage, as well as from corporations, firms, partnerships, and individuals who are engaged in the business of selling luggage covered with top grain leather. As a result thereof substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Samuel Brier, an individual doing business as Samuel Brier & Company, and respondent Quakertown Luggage Company, Inc., a corporation, are to the prejudice of the public and of respondents' competitors, and

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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 and answer of the respondents, in which answer the respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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 the respondent, Samuel Brier, individually and doing business as Samuel Brier & Company, or doing business under any other trade name, and the respondent Quakertown Luggage Company, Inc., a corporation, and its officers, their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of handbags, suitcases, and other luggage in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Warranted Cowhide," "Genuine Cowhide," "All Leather," "Genuine Leather," or through the use of any other words or symbols of similar import and meaning, or in any manner whatever, that handbags, suitcases, and other luggage sold by them and made from split leather or the inner split of leather are in fact made from the outer split or any part of the hide or skin other than the inner split thereof.

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

IN THE MATTER OF
BEAR MILL MANUFACTURING COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 25 1914

Docket 2678. Complaint, Oct. 11, 1935—Decision, Apr. 5, 1937

Where a corporation engaged in the sale and distribution of cotton and rayon fabrics and of rayon and cotton mixtures, purchasing unfinished cotton, rayon, and mixed fabrics and having the same processed according to its instructions by a finishing company over which it exercised no control and which it did not own or operate, and selling its said fabrics in substantial competition with those engaged in sale and distribution, or in manufacture, sale, and distribution, of cotton and rayon fabrics and of cotton and rayon mixtures, and including among its competitors many who sell and distribute, but do not manufacture, their said cotton and rayon fabrics, or in any way represent themselves as manufacturers thereof, and competitor manufacturers of cotton and rayon fabrics sold by them who do employ terms "mill" and "manufacturing" or other terms of similar import and meaning—

Represented, through use of terms "Mill" and "Manufacturing" as included in its corporate name, on its stationery and invoices circulated throughout the United States to customers and prospective customers, and on folders containing samples of its said products and carried by its salesmen who travel throughout the United States, to its customers, prospective customers, and general buying public, that it actually owned and operated, or directly and absolutely controlled, a mill wherein its goods were made, the facts being it did not thus own, operate or control any such factory or mill and was not engaged in manufacturing, and was not itself a manufacturer as understood by trade and purchasing public generally, and did not own any print works, dye works, bleach works, finishing works, spinnery or weavery, but was engaged solely in sale and distribution of fabrics made by others as hereinbefore set forth;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that it actually owned and operated, or directly and absolutely controlled, a mill or mills wherein the products sold by it were manufactured, and with further result that the buying public, as a result of the erroneous belief thus induced, bought a substantial volume of its said products, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of cotton and rayon fabrics and who truthfully advertise and represent the nature and character of their respective businesses; 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. Charles F. Diggs*, trial examiner.

Mr. T. H. Kennedy for the Commission.

Mr. Dudley B. Bonsal of Curtis, Mallet-Prevost, Colt & Mosle, of New York City, for respondent.