

Syllabus

IN THE MATTER OF

GEORGE LANDON AND MICHAEL MASON WARNER,
TRADING AS LANDON & WARNERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2947. Complaint, Oct. 15, 1936—Decision, Apr. 5, 1937*

Where two individuals engaged in the sale and distribution of billfolds, Gladstone handbags, and other similar products, in substantial competition with others engaged in sale and distribution of similar goods or articles in commerce between and among the various States, and with numerous competitors who make and sell their billfolds and aforesaid handbags, covered with leather made from the outside or top side of cow skin, after having been separated or split from the flesh side thereof, and properly described by makers of such products, and generally known by manufacturers and dealers and purchasing public as "cowhide," "genuine cowhide," "choice leather," and ". . . A-1 quality leather," and for which articles and other leather products thus made and generally known and described as aforesaid, purchasing public generally has a pronounced and distinct preference—

- (a) Represented, through marks, stamps, and brands in large letters on their said handbags, that the same were genuine cowhide, and in advertising circulars distributed widely among their customers and prospective customers, that the said handbags, thus offered, sold and distributed, were "made only of choice leather . . .," and of "A-1 quality leather," facts being handbags thus described were not made from the outside or top side of cowskin and were not genuine cowhide or made of choice leather or of A-1 quality leather, as ordinarily and commonly understood by purchasing public, but were composed of the much inferior, less durable, and cheaper split cowhide derived from the flesh side of the skin; and
- (b) Represented, in their advertising circulars, that the initials of purchasers of said handbags were placed thereon in "14-K Gold" and that such initials would be encased within a "14-K Gold" frame, and, in their advertising catalogs distributed to their customers and prospective customers, that the metallic corners and snap-buttons on their billfolds were "14-K Gold," facts being said initial letters and frames and metallic corners and snap-buttons were not composed of "14-K gold," but, on the contrary, were 14-K gold plated;

With capacity and tendency to mislead and deceive purchasing public into the erroneous beliefs that the Gladstone handbags advertised, offered, and sold by them were made from the outside or topside of cow skin and were genuine cowhide, choice leather, and A-1 quality leather, as represented by them, and that said articles, when purchased, would be stamped with initials of the purchaser in 14-K Gold and a 14-K Gold frame, and that the said billfolds' metallic corners and snap-buttons were 14-K Gold, and with capacity and tendency to induce members of the purchasing public to buy said products because of the erroneous beliefs thus engendered, and to

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divert trade unfairly to them from competitors engaged in sale in interstate commerce of similar products, and who rightfully and truthfully represent the same and do not in any wise falsely represent their products; 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. Astor Hogg 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," the Federal Trade Commission, having reason to believe that George Landon and Michael Mason Warner, Jr., trading as Landon and Warner, hereinafter referred 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 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. Respondents, George Landon and Michael Mason Warner, Jr., are copartners, trading under the name and style of Landon and Warner, with their office and principal place of business located at 360 N. Michigan Avenue, in the city of Chicago, Ill. They are now, and have been for more than one year last past, engaged in the business of selling and distributing billfolds, Gladstone bags, and other similar products to members of the purchasing public in commerce, as herein set out.

PAR. 2. The respondents, being engaged in business as aforesaid, cause and caused said products, when sold by them, to be transported from their principal place of business in the city of Chicago, Ill., to purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia. There is now and has been at all times mentioned herein a constant current of trade in commerce in said products sold and distributed by said respondents among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business are now, and have been at all times mentioned herein, engaged in substantial competition with other partnerships and with corporations, firms, and individuals engaged in the sale and distribution of

similar products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 4. Many of respondents' competitors, mentioned in paragraph 3 hereof, make and sell billfolds and Gladstone bags covered with leather made from the outside or top-side of cowskin after same has been separated or split from the flesh-side of the skin. Such leather is described by makers of such products, and generally known by manufacturers, tanners, dealers, and the purchasing public as "cowhide," "genuine cowhide," "choice leather," and "A-1 quality leather." The flesh side of the cowskin is now used to some extent for the making of leather, which leather is ordinarily known and described as "split cowhide." It is very much inferior in quality and durability to, and cheaper in price than, "genuine cowhide," "choice leather," and "A-1 quality leather" as described in this paragraph. There is a marked preference on the part of the purchasing public for billfolds and Gladstone bags made from genuine cowhide, choice leather, and A-1 quality leather as described herein.

PAR. 5. In the course and conduct of their business as described herein, respondents, in offering for sale, selling, and distributing in interstate commerce their "Landon and Warner" feature Gladstone bags represented and still represent by marks, stamps, and brands in large and conspicuous letters on the bags themselves that said Gladstone bags were and are "genuine cowhide," and they further represented and still represent in advertising circulars, circulated widely among their customers and prospective customers, that the Gladstone bags so offered for sale, sold, and distributed were "made only of choice leathers . . .," and of "A-1 quality leather." Said respondents in soliciting the sale of, and selling their Gladstone bags in interstate commerce represented, and still represent, in the advertising circular referred to that the initials of purchasers of said bags would be placed thereon in 14-K gold, and that such initials would also be encased within a 14-K gold frame. Further, respondents in the aid of the sale of their billfolds under the trade name "Pasmaster," which billfolds were, and are, equipped with metallic corners and snap buttons, represented and represent in their advertising catalogs that said metallic corners and snap buttons were "14-K gold."

PAR. 6. Said descriptions, representations, marks, stamps, and brands made by respondents as to their Gladstone bags and billfolds were, and are, false and fraudulent in that:

1. The Gladstone bags described as "genuine cowhide," "made of only choice leathers," and "A-1 quality leather" are not, and were not, genuine cowhide, made of only choice leathers, or made of A-1 qual-

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ity. leather as such descriptions, marks, brands, and representations are commonly understood by the purchasing public.

2. The initial letters and frames placed, and offered to be placed, on the Gladstone bags were not, and are not 14-K gold, but on the contrary were, and are, 14-K gold-plated.

3. The metallic corners and snap buttons on their billfolds were not, and are not, 14-K gold as represented, but were other than 14-K gold.

PAR. 7. The representations, descriptions, marks, stamps, and brands, as hereinbefore set out, and other similar representations, have had, and do have, the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous beliefs that the Gladstone bags advertised and sold by respondents were genuine cowhide, made of only choice leathers, and of A-1 quality leather, as described herein, and that said bags, upon request of the purchaser, would be stamped by the respondents with the initials of the purchaser in 14-K gold and placed in a 14-K gold frame; that the metallic corners and snap buttons of the billfolds advertised and sold by respondents were 14-K gold. The said representations, descriptions, marks, brands, and stamps have had, and do have, the capacity and tendency to induce members of the purchasing public to buy said products because of the erroneous beliefs engendered, as above set forth. Further, said representations, descriptions, marks, brands, and stamps have the capacity and tendency to unfairly divert trade from competitors of respondents engaged in the sale in interstate commerce of similar products, which said competitors truthfully and rightfully advertise and represent their said products. As a result thereof, substantial injury has been and now is being done by respondents' to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 8. The acts and practices of respondents are all to the injury and prejudice of the public and competitors of respondents 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," 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 the 15th day of October 1936, is-

sued and served its complaint in this proceeding upon respondents, George Landon and Michael Mason Warner, partners, trading as Landon & Warner, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hagg, 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 George Landon, attorney for the respondents, 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 and brief in support of the complaint (respondents' counsel having waived the filing of brief); 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. George Landon and Michael Mason Warner are partners trading and doing business as Landon & Warner, with their office and principal place of business located at 360 North Michigan Avenue, in the city of Chicago, Ill. For more than one year last past, respondents have been engaged in the business of selling and distributing billfolds, Gladstone handbags and other similar products. They sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia. Respondents ship their products when sold, from their place of business in the States of Illinois, to the purchasers thereof located in the various States of the United States other than the State of Illinois. Respondents are now and for more than one year last past have been in substantial competition with other partnerships and with corporations, firms and individuals engaged in the business of selling and distributing billfolds, Gladstone handbags, and other similar products in commerce between and among the various States of the United States.

PAR. 2. Numerous competitors of respondents manufacture and sell their billfolds and Gladstone handbags covered with leather made from the outside or topside of cowskin, after same has been separated or split from the flesh side of the skin. Leather made from the out-

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side or topside of cowskin is properly described by makers of such products, and is generally known by manufacturers, dealers and the purchasing public, as "cowhide," "genuine cowhide," "choice leather," and "A-1 quality leather." The flesh side of the cowskin is used to some extent in the making of certain grades of leather, which grades of leather are ordinarily known and described as "split cowhide." "Split cowhide" is very much inferior in quality and durability to, and cheaper in price than, "genuine cowhide," "choice leather," and "A-1 quality leather," which are made from the outside or topside of cowskin as before described. The purchasing public generally has a pronounced and distinct preference for billfolds and Gladstone handbags and other leather products that have been made from leather from the outside or topside of cowskin generally known and described as "genuine cowhide," "choice leather," and "A-1 quality leather" rather than split cowhide.

PAR. 3. Respondents in offering for sale and selling in interstate commerce their Gladstone handbags have represented by marks, stamps, and brands in large letters on the handbags themselves that said Gladstone handbags were "genuine cowhide." They have also represented, in advertising circulars circulated widely among their customers and prospective customers, that the Gladstone handbags so offered for sale, sold and distributed, were "made only of choice leather . . .", and of "A-1 quality leather." They have also represented in their advertising circulars that the initials of purchasers of said handbags are placed on the handbags in 14-K Gold, and that such initials would be encased within a 14-K Gold frame. Respondents have represented in their advertising catalogs distributed to their customers and prospective customers that the metallic corners and snap-buttons on their billfolds were "14-K Gold."

PAR. 4. The descriptions, representations, marks, stamps and brands used by respondents in connection with their Gladstone handbags and billfolds were and are false and misleading in that:

1. The Gladstone handbags described as being "genuine cowhide" "made of only choice leather" and "A-1 quality leather" were not made from the outside or topside of cowskin, and were not genuine cowhide, were not made of choice leather, or of A-1 quality leather as such descriptions are ordinarily and commonly understood by the purchasing public, but on the contrary such handbags were and are composed of split cowhide, derived from the flesh side of the cowskin.

2. The initial letters and frames placed and offered to be placed on the said handbags, and the metallic corners and snap buttons on their billfolds were not composed of 14-K Gold, but on the contrary, such

initial letters, frames, corners and snap buttons were 14-K Gold-plated.

PAR. 5. The above and foregoing descriptions, marks and brands used by the respondents and the representations made by respondents have had and do have the capacity and tendency to mislead and deceive the purchasing public into the erroneous beliefs that the Gladstone handbags advertised, offered for sale, and sold by respondents, were made from the outside or topside of cowskin and were "genuine cowhide," "choice leather," and "A-1 quality leather" as represented by respondents, and that said handbags, when purchased would be stamped by the respondents with initials of the purchaser in 14-K Gold and placed in a 14-K Gold Frame; that the metallic corners and snap-buttons of the billfolds advertised and sold by the respondents were 14-K Gold. The representations, marks, brands and descriptions used by respondents as aforesaid have had and do have the capacity and tendency to induce members of the purchasing public to buy said products because of the erroneous beliefs engendered as above set forth. Such representations, descriptions, marks, and brands used by the respondents, have a capacity and tendency to unfairly divert trade from competitors of respondents engaged in the sale in interstate commerce of similar products who rightfully and truthfully represent their products and who do not in anywise falsely represent their products; and in this manner, respondents do substantial injury to the competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, George Landon and Michael Mason Warner, partners, trading and doing business as Landon & Warner, are to the prejudice of the public and of respondents' 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 respondents, 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, brief of the Commission filed herein (respondents having

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waived the filing of brief); 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 the respondents, George Landon and Michael Mason Warner, individually and as partners trading as Landon and Warner, their representatives, agents, servants, and employees, in connection with the offering for sale, sale and distribution of Gladstone handbags, luggage and billfolds in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Labeling, stamping, marking, branding, advertising or otherwise representing through the use of the words "cowhide," "genuine cowhide," "choice leather," and "A-1 quality leather," or any other word or words of similar meaning, import or effect, that Gladstone handbags or other luggage manufactured in whole or in part from the under layers or flesh side of cowskin, known as split leather, are made from the outside layer of cowskin;

2. Using the term "14-K Gold" or any other term, mark or symbol of similar import to describe initials or letters placed on the handbags when such initials are not composed of 14-K gold and when they are gold-plated;

3. Representing in any manner that letters or initials of purchasers are encased within a 14-K gold frame when such frame is not composed of 14-K gold or when such frames are gold-plated;

4. Representing in any manner that the metallic corners and snap buttons on their billfolds are 14-K gold when the same are not composed of 14-K gold or when such metallic corners and snap buttons are gold-plated.

It is further ordered, That the respondents shall, within 30 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.

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IN THE MATTER OF
JOSEPH A. PIUMACOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2229. Complaint, Sept. 5, 1934—Decision, Apr. 6, 1937*

Where an individual, manufacturing pharmacist, engaged in sale and distribution of a preparation made for him under his formula and known and sold for some seven or eight years theretofore under name "Glendage," and formerly under name "Sexvitor," and in marketing said preparation, packaged in bottles of ninety tablets, for sale at retail for \$3.00, through wholesale drug jobbers principally, and through retail drug chains, and occasionally direct to consumers, at various points in the several States and in the District of Columbia, in substantial competition with those engaged in offer and sale of remedies, preparations, products and treatments used and useful for treatment and correction of ailments and conditions for which his said "Glendage" might possess any corrective or therapeutic value, and for treatment and correction of ailments and conditions for which he represented said preparation as an effective corrective or treatment—

Represented, in advertising said "Glendage" in newspapers in various cities and through form letters mailed to prospective purchasers thereof and through pamphlets distributed among such purchasers and containing statements as to the value thereof in the treatment and correction of human ailments and conditions, and superiority thereof compared with other preparations and products used in treatment and correction of ailments and conditions for which it was recommended, that said "Glendage" was a gland tonic and remedy which would restore vigorous health, and was the best such remedy known, and the "last word" in "modern science" in such remedies, and one which stimulated all the glands to healthy activity and was entirely unlike other so-called gland remedies, and stood superior as a tonic, and was a remedy for nervousness, overwork, and lack of vim and vigor, and would return one to the full vigor of manhood or womanhood, and constituted competent and effective treatment or corrective for use in remedying ailments and conditions indicated, facts being it did not possess the therapeutic efficacy represented and implied by him in treatment and correction of ailments and conditions for which recommended, and said various representations and statements were false and misleading;

With effect of misleading and deceiving many persons affected with ailments and conditions concerning which said representations and implications were made, and of causing a substantial portion of such persons erroneously to believe that said representations and implications were true, and that preparation in question possessed therapeutic efficacy represented, and was a competent and effective treatment or corrective for use in remedying ailments and conditions for which recommended, and of causing a substantial portion of such persons, because of such erroneous belief, to buy said preparation, and thereby unfairly divert trade to him from his competitors who truthfully represent their preparations, products, remedies and treatments; to their substantial injury and that of the public: