

Complaint

IN THE MATTER OF
JOSEPH H. SELD, TRADING AS SELD LEATHER
COMPANY

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

Docket 2636. Complaint, Nov. 20, 1935—Decision, May 17, 1937

Where an individual engaged in the manufacture and sale of certain leather products made from cheap and inferior leathers having the general appearance of "chamois," in competition with manufacturers of similar products who do not in any wise designate same as "chamois" or associate said word with some other descriptive word, and with manufacturers who make and sell the skin of the chamois antelope or oil-tanned skin of the sheep, and truthfully do represent their said products as "chamois"—

Represented, through designations "Pigskin Chamois," "Pigskin Chamois Se-leco," "Chamois, Rose Brand," and "Genuine Pigskin Chamois," in advertisements, price lists, letterheads, invoices, and in other ways, that said products were "chamois," notwithstanding the fact they were not made from the skin of the practically extinct chamois antelope nor from the oil-dressed and suede-finished flesh of undersplit of sheepskin, and were not, as commercially now known, chamois, and would not serve as a satisfactory substitute for such sheepskin as thus known;

With effect of misleading and deceiving purchasers of aforesaid products into belief that they were chamois, as hereinabove set forth, and to purchase same in such erroneous belief, and of placing in the hands of dealers and retailers means of misleading and deceiving aforesaid public, and of unfairly diverting trade to him from competitors who do not misrepresent their products; to the substantial injury of substantial 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. James M. Hammond for the Commission.

Mr. H. Andrew Schlusberg, of Gloversville, N. Y., for respondent.

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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 Joseph H. Seld, an individual, doing business under the firm name and style of Seld Leather 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

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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. The respondent herein, Joseph H. Seld, is an individual, doing business under the firm name and style of Seld Leather Company, with his office and principal place of business in the city of Gloversville, N. Y. He is now, and has for more than one year last past been engaged in the business of manufacturing certain leather products, designated by him as "Pigskin Chamois," "Pigskin Chamois Seleo," "Chamois, Rose Brand," "Genuine Pigskin Chamois," "Carpincho Splits," "Peccary Splits," "Deerskin Splits," "Buckskin Splits," and other cheap and inferior leather products having the general appearance of "chamois," some of which are marked "chamois" or have the word "chamois" used as a descriptive word or part of a trade name or designation in connection with their selling and marking, and in the sale thereof between and among the various States of the United States and in the District of Columbia, shipping such products, or causing same to be shipped when sold, from respondent's place of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in the other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in the aforesaid leather products. In the course and conduct of his business respondent is now, and for more than one year last past has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of leather products between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in selling and offering for sale his aforesaid leather products between and among the various States of the United States and in the District of Columbia, now represents, and for more than one year last past has represented, through the designation of his leather products hereinbefore mentioned, by advertisements, price lists, letterheads, invoices, and in other ways, that the aforesaid leather products are chamois. Chamois has its origin in the name of an European antelope, the skin of which is made into a soft, pliable leather which is used in the manufacture of gloves and for the polishing of silver and metals. The chamois antelope is now practically extinct, and its skin is no longer an article of commerce. At the present and for a long time last past, the word "chamois" as com-

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mercially known is used to designate the inner part of a sheepskin, which when oil dressed is a very soft and pliable product sold commercially under the name of "chamois." Said product is likewise valuable for polishing and cleaning purposes, possessing particularly the power of quickly absorbing moisture and returning thereafter, when dried, to its original softness and pliable quality. The only trade name and designation given to the skin of a chamois antelope and to oil dressed sheepskin is the word "chamois," and the word "chamois" means to the retail trade and to the public either the skin of a chamois antelope or the oil-tanned skin of a sheep.

PAR. 3. In truth and in fact, the leather products dealt in by the respondent, as described in paragraph 1 herein, and represented by him as set out in paragraphs 1 and 2 to be chamois, are not in fact the skin of the chamois antelope or the oil-tanned skin of the sheep, but are articles manufactured from pigskin, peccary, carpincho, and skins other than oil-tanned sheepskin or the chamois antelope, and have the same general appearance but not the peculiar qualities or properties of articles known to the public and trade, and properly designated as "chamois."

PAR. 4. The use by the respondent of the aforesaid designations of its leather products, and of other similar designations, and of the advertisements, letterheads, invoices, and price lists described in paragraph 2 hereof, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers of the aforesaid products of respondent into the belief that such products are chamois, to wit: the skin of the chamois antelope or the oil-tanned skin of the sheep, and to purchase such products of respondent in such erroneous belief, and has placed, and places in the hands of dealers and retailers the means of misleading and deceiving the purchasing public.

Among the competitors of respondent mentioned in paragraph 1 hereof, are manufacturers of leather products similar to those made and sold by respondent, but who do not in any wise designate such products as "chamois." There are also, among such competitors, manufacturers who manufacture and sell the skin of the chamois antelope or the oil-tanned skin of the sheep, and who truthfully represent their said products as "chamois." By the aforesaid acts and practices of respondent, trade is unfairly diverted by respondent from its competitors, who do not misrepresent their products, whereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

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PAR. 5. That the above methods, actions, and practices of the respondent are all to the prejudice of the public and to respondent's 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."

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 November 20, 1935, issued and served its complaint in this proceeding upon respondent Joseph H. Seld, an individual trading under the firm name and style of Seld Leather Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After issuance of the said complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by James M. Hammond, attorney for the Commission before Millard F. Hudson and Charles F. Diggs, examiners for the Commission, theretofore duly designated by it; and in opposition to the allegations of the complaint by H. Andrew Schlusberg, attorney for 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 and answer thereto, the testimony and other evidence and brief in support of the complaint, 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. The respondent herein, Joseph H. Seld, is an individual doing business under the firm name and style of Seld Leather Company, with his office and principal place of business in the city of Gloversville, N. Y. He has been engaged for several years in the manufacture and sale of certain leather products made from leathers variously designated by him as "Pigskin Chamois," "Pigskin Chamois Seleo," "Chamois, Rose Brand," "Genuine Pigskin

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Chamois," and from other cheap and inferior leathers having the general appearance of "chamois." He ships said products, or causes the same to be shipped, when sold, from his place of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in other States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in the aforesaid leather products among and between the various States of the United States. In the course and conduct of his business, respondent is now, and for more than one year last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships likewise engaged in the sale and distribution of leather products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in selling and offering for sale his aforesaid leather products between and among the various States of the United States and in the District of Columbia, now represents, and for more than one year last past has represented, through the designation of his leather products hereinbefore mentioned, by advertisements, price lists, letterheads, invoices, and in other ways, that the aforesaid leather products are chamois. Chamois has its origin in the name of an European antelope, the skin of which was made into a soft, pliable leather which was used in the manufacture of gloves and for the polishing of silver and metals. The chamois antelope, however, has become practically extinct, and its skin is no longer an article of commerce. At the present and for a long time last past, the word "chamois" as commercially known is used to designate the inner part of a sheepskin, which when oil-dressed is a very soft and pliable product sold commercially under the name of "chamois." It is defined in the *Dictionary of Leather Terminology*, published by a Joint Committee appointed by the Tanners Council of America functioning in conjunction with Committee members representing other branches of the leather goods industry, as follows:

Chamois Leather. A soft leather originally made from the skins of the Alpine antelope, or chamois, now practically extinct, but at the present time from the fleshers or under-split of sheepskin, oil-dressed, suede-finished, principally used for cleaning and polishing purposes and for gloves. "White Chamois" is a flesher tanned by a formaldehyde and alum process.

The same work describes the term "Flesher" used in the above definition, as follows:

Flesher. Term used to describe a suede-finished flesh side or undercut of a sheepskin, split before tanning.

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Chamois, so manufactured and tanned from sheepskin as described above, is valuable for polishing and cleaning purposes. It possesses the peculiar power of quickly absorbing moisture and returning thereafter when dried to its original soft and pliable quality. The skin of the Chamois or Alpine antelope became exhausted for commercial purposes over forty years ago. Tanners, in their search for a substitute, discovered that the inner splits of sheepskin tanned by the oil process produced a skin possessing approximately the same qualities. Sheepskin so tanned has been in use for many years and is the article now known commercially as "chamois." During the course of the hearings held in connection with this case, a number of old and experienced tanners were summoned for the purpose of defining the present meaning of the term "chamois." None of them had ever seen a real Chamois antelope skin. All defined the term "chamois" in the same manner, as set out in the Dictionary of Leather Terminology quoted above.

PAR. 3. Tests were made of the respondent's products at the United States Bureau of Standards and it was found that they would not serve as a satisfactory substitute for oil-tanned sheepskin, as chamois, because they will not absorb water with facility and will not return when dry to their original soft and pliable quality. A number of practical automobile and window washers of many years' experience appeared and testified that these scientific conclusions were true; that the article known to and used by them as "chamois" was sheepskin manufactured as described in the Dictionary of Leather Terminology quoted above; that they had tried to use leather similar to respondent's product but that it would not give satisfactory results. The testimony taken shows that the general public does not know what a chamois skin as now known is made from, so that the use of a descriptive word such as "Pigskin" or "Carpincho" in connection with the word "Chamois" is entirely uninformative.

PAR. 4. The use by the respondent of the aforesaid designations for his leather products, and of other similar designations and of the advertisements, letterheads, invoices and price lists described in paragraph 1 hereof, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers of the aforesaid products of respondent into the belief that such products are chamois, to wit: the skin of the chamois antelope or the oil-tanned flesher or under-split of sheepskin and to purchase such products of respondent in such erroneous belief, and has placed and places in the hands of dealers and retailers the means of misleading and deceiving the purchasing public.

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Among the competitors of respondent mentioned in paragraph 1 hereof, are manufacturers of leather products similar to those made and sold by respondent, who do not in any wise designate such products as "chamois" or associate the word "chamois" with some other descriptive word. There are also, among such competitors, manufacturers who manufacture and sell the skin of the chamois antelope or the oil-tanned skin of the sheep and who truthfully represent their said products as "chamois." By the aforesaid acts and practices of respondent, trade is unfairly diverted to respondent from his competitors, who do not misrepresent their products, whereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent Joseph H. Seld, an individual trading under the firm name and style of Seld Leather 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 and the answer of respondent, testimony and other evidence taken before Millard F. Hudson and Charles F. Diggs, examiners for the Commission, and theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, 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, Joseph H. Seld, an individual doing business under the firm name and style of Seld Leather Company, his representatives, agents, and employees in connection with the offering for sale, sale and distribution of leather products, do forthwith cease and desist from:

Using the word "chamois," alone, or in conjunction with any other word or words, in any manner whatever, to describe, designate,

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or refer to leather products not made (1) from the skin of the Alpine Antelope or Chamois, or (2) from the fleshers or under-split of sheepskin, oil-dressed and suede-finished, provided, however, leather products made from the fleshers or under-split of sheepskin tanned by a formaldehyde and alum process may be designated as "white chamois."

It is hereby further ordered, That the respondent shall within 30 days from the date of the service upon him of this order file with this Commission his report in writing stating the manner and form in which he shall have complied with this order.

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IN THE MATTER OF

UDGA, INCORPORATED, AND WILLIAM FRASER AND
MARY FRASER

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

Docket 2830. Complaint, June 2, 1936—Decision, May 17, 1937

Where a corporation and an individual, principal, if not sole, stockholder thereof and director and in control of its business practices and sales policies, engaged in the offer and sale of a stomach tablet designated "Udga Treatment," for use in treating stomach ulcers and other stomach ailments and diseases caused, or reputedly caused, by hyperacidity, in advertising their said product in various newspapers, trade magazines and other periodicals of interstate circulation, and in letters and copies of purported testimonials, and other matter forwarded to prospective customers throughout the various States and in the District of Columbia—

Represented, as aforesaid, that their said treatment would cure such ulcers, gastritis, indigestion, dyspepsia, and various other stomach ailments and diseases, including those caused, or reputedly caused, as above set forth, through such statements as "*Stomach Ulcers*—Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. * * * highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion * * *," etc., and through numerous other statements of like tenor and effect, facts being that said tablets could not cure the various ailments and diseases represented by them, and majority of persons who gave testimonials were not capable of diagnosis and were not registered physicians and could not affirmatively state that aforesaid treatment effected cures of diseases from which they suffered;

With result of misleading and deceiving members of the purchasing public into the false belief that such representations were true, and of inducing such members to buy substantial quantities of its product, and, as a result thereof, of unfairly diverting trade to them from competitors who do not falsely advertise or represent the capacity of the pills or other medicines vended by them to cure ailments and diseases hereinbefore indicated; to the 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. William C. Reeves, trial examiner.

Mr. Alden S. Bradley for the Commission.

Sanborn, Graves, Appel, Andre & Morton, and Mr. John C. DeCoursey, of St. Paul, Minn., 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