

Syllabus

IN THE MATTER OF
MUTUAL BRIEF CASE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2889. Complaint, Aug. 7, 1936—Decision, Aug. 12, 1937*

Where a corporation engaged in manufacture of leather luggage, and in use in such manufacture of two types of leather employed in making such luggage, namely, top grain leather and split leather, and in sale and distribution of such leather luggage in commerce among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture, sale and distribution of leather goods in commerce, as above set forth, and including many competitors who sell leather luggage made from top grain leather and also that made from split leather, and properly describe former, as variously known by manufacturers, dealers, and purchasing public, as "cowhide" only, "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain," and properly describe latter, as similarly generally known, as "split leather" luggage—

Offered and sold, in interstate commerce, its split leather goods, labeled and branded "cowhide" only, or "warranted genuine cowhide," in distinction from its top grain leather goods labeled and branded by it as "genuine top grain cowhide," notwithstanding fact such split leather luggage, thus branded, was not made from outside or top side of hide, or from top grain, as understood in trade and by purchasing public, but was made from split leather, i. e., lower portion of hide, and from which top grain portion has been cut away;

With capacity and tendency to mislead and deceive purchasing public and substantial portion of trade into erroneous belief that its said luggage, thus branded and labeled, was made from top grain leather, for goods of which purchasing public has generally pronounced and distinct preference, and with result of placing in hands of wholesalers and retailers means whereby said luggage, made of split leather as above set forth, and goods of which can be made to resemble those of other in appearance, is passed off to purchasing public as top grain leather luggage, and consuming public purchased substantial volume of its aforesaid product, and trade was unfairly diverted to it from its competitors likewise engaged in manufacture, sale, and distribution of leather luggage, and who truthfully brand and represent kind of leather used in manufacture of 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. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles J. Fagg, of Newark, N. J., for respondent.

Complaint

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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 Mutual Brief Case Company, a corporation, hereinafter referred to as the respondent, has been and is 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. Said respondent, Mutual Brief Case Company, is a corporation, organized and existing under the laws of the State of New York with its principal factory, warehouse and sales office at 133-135 Kossuth Street, in the city of Newark, in the State of New Jersey. Respondent is now and for more than one year last past, has been engaged in the manufacture of leather, leather luggage, leather brief cases, and leather golf bags and in the sale and distribution of the same, in commerce between and among the various States of the United States and the District of Columbia; causing said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York.

PAR. 2. In the course and conduct of its business aforesaid, respondent is now and for more than one year last past has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing and selling leather luggage in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent manufactures certain of its luggage from split cowhide leather, also described as the under or flesh side of the hide. Respondent places upon such luggage, and has done so during the period aforesaid, a conspicuous stamp or label reading "Cowhide Only" or "Warranted Genuine Cowhide" as the case may be. Said stamp or label represents and implies to the purchasing public that the material with which such luggage is covered is top grain leather, or as otherwise described, the outside or surface layer of the hide. Further, retailers are enabled by reason of said stamp or label, to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered. Top grain leather is superior in quality, durability and price to the split leather.

The public generally believes the word leather to mean the top or hairy side of the hide.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers of leather luggage who do not in any way misrepresent or falsely label their said merchandise.

PAR. 4. The above and foregoing representations, as shown by the label used by respondent, as described in paragraph 3, have the capacity and tendency to, and do mislead and deceive the purchasing public into the belief that the said luggage so labeled is manufactured from, or covered with, genuine top grain cow hide, and have the capacity and tendency to, and do induce the said purchasing public, acting in such erroneous belief, to purchase respondent's product, thereby diverting trade to the respondent from those of its competitors who do not misrepresent and falsely label their product, and in this manner respondent does substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or 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 interstate commerce within the meaning and intent of Section 5 of "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 7, 1936, issued and served its complaint in this proceeding upon respondent Mutual Brief Case Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. No answer to said complaint was filed. After the issuance of said complaint, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint was offered. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in

support of the complaint (no brief having been filed by respondent and no oral argument having been made) 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, Mutual Brief Case Company, is a corporation doing business under the laws of the State of New York. The respondent's principal office and place of business is at 133-135 Kossuth Street, Newark, N. J.

For several years last past it has been engaged in the sale and distribution of leather luggage in commerce between and among the various States of the United States and in the District of Columbia. When respondent's goods are sold, it causes them to be shipped from its place of business in Newark, N. J., to the purchasers thereof at their places of business in the various States of the United States and in the District of Columbia.

At all times since respondent has been in said business, it has been in substantial competition with other individuals, and partnerships, and with corporations likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution of leather goods, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 2. Two general types of leather employed in the manufacture of leather luggage are top grain leather and split leather. Top grain leather is the top portion of the hide from which the hair has been removed and the under portion or that lying next to the flesh of the animal has been cut away. Split leather is the lower portion of the hide which lies next to the flesh of the animal and from which the top grain portion has been cut away. The respondent uses both types of said leather in the manufacture of its luggage.

Respondent's split leather goods offered for sale and sold in interstate commerce are labeled and branded "cowhide only" or "warranted genuine cowhide." Respondent labels and brands its top grain leather goods "genuine top grain cowhide."

The purchasing public generally and the trade understand the words "cowhide only" or "warranted genuine cowhide," or the word "leather," when used to describe luggage, to mean luggage manufactured from top grain leather.

PAR. 3. Many of respondent's competitors sell leather luggage manufactured from top grain leather and also from split leather.

Said top grain leather is properly described by said competitors, and is variously known by manufacturers, dealers, and the purchasing public as "cowhide only," "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain." Said split leather luggage is properly described by said competitors, and is generally known by manufacturers, dealers, and the purchasing public, as "split leather" luggage.

The purchasing public generally has a pronounced and distinct preference for leather goods that are manufactured from top grain leather. Split leather goods can be made to resemble top grain leather in appearance and the purchasing public generally and a substantial portion of the trade cannot distinguish between split leather goods and top grain leather goods. As a result thereof, split leather goods are thus passed off as top grain leather goods.

PAR. 4. The descriptions, representations, stamps, and brands used by respondent in describing its split leather luggage are false and misleading in that said luggage branded as "cowhide only" and "warranted genuine cowhide" is not made from the outside or top side of the hide, or what is understood in the trade and by the purchasing public as top grain, but are manufactured from split leather.

PAR. 5. The use by respondent of the descriptions, marks, and brands set out in paragraph 2 hereof, to describe its split leather luggage, offered for sale and sold in interstate commerce, has had and does have the capacity and tendency to mislead and deceive the purchasing public and a substantial portion of the trade into the erroneous belief that the luggage so branded and labeled was made from top grain leather. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby said luggage is passed off to the purchasing public as top grain leather luggage. As a direct consequence of the mistaken and erroneous beliefs induced by the false and misleading representations above referred to, the consuming public has purchased a substantial volume of respondent's luggage with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale, and distribution of leather luggage, who truthfully brand and represent the kind of leather used in the manufacture of their products. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Mutual Brief Case Company, are to the prejudice of the public and of respondent's

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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, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the allegations of the complaint filed herein, no answer or brief having been filed by respondent and no oral argument having been made, 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, Mutual Brief Case Company, a corporation, its officers, representatives, agents, and employes in connection with the offering for sale, sale, and distribution of luggage in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the word "Cowhide," "Warranted genuine cowhide," or "leather" or any other word or words of similar import and effect, alone or in conjunction with other words, stamped or imprinted on labels or on the luggage itself, or in any other manner, that luggage manufactured in whole or in part from the underlayers or flesh sides of hides, known as split leather, is made from the outside layer of the hide.

- (2) Using the words "cowhide," "warranted genuine cowhide," or "leather" to describe or designate luggage manufactured in whole or in part from underlayers or flesh sides of hides.

It is further ordered, That the respondent 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.

Syllabus

IN THE MATTER OF

JOHN F. BOLON, TRADING AS JOHN F. BOLON CIGAR COMPANY

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

Docket 2293. Complaint, Dec. 30, 1935¹—Decision, Aug. 17, 1937

Where an individual engaged in manufacture, sale, and distribution of cigars through various States, in substantial competition with those likewise engaged in sale and distribution of such products in commerce among the various States and within the District of Columbia—

- (a) Caused cigars thus manufactured by him to be packed for display and sale to public in wooden boxes or containers, on the border of which were imprinted the words "Fabrica De Tabacos Vuelta Abajo," and thereby represented that said cigars were made from tobacco grown in the particular section of the Island of Cuba known as Vuelta Abajo, source of tobacco considered by many of cigar and tobacco trade and consuming public as of a higher and more desirable quality for use in manufacture of cigars than any other tobacco grown on said Island or elsewhere, and, to many of said trade and public, world's most famous cigar tobacco, notwithstanding fact said cigars were not made in Cuba from tobacco grown therein, either in aforesaid district in whole or in part, and, as such, considered by many of tobacco and cigar trade and cigar purchasing public superior in quality to cigars made wholly of tobacco not grown in aforesaid district, but were made entirely from the domestically grown product;
- (b) Caused to be imprinted on box phrase "Cured in Rum," notwithstanding fact he used no rum in curing, treating, flavoring, or sweetening tobacco used by him in manufacture of such cigars; and
- (c) Offered and sold to public cigars bearing trade or brand name "Turkey," with words "Matchless Turkish Blend" imprinted on cellophane wrappers thereof, notwithstanding fact cigars made, sold, and distributed by him to public under such trade names or brands or designations contained no Turkish tobacco whatever, but were made, as aforesaid, of domestic product;

With effect of confusing, deceiving and misleading many of said wholesale and retail dealers and many of said purchasing public into erroneous and mistaken belief that aforesaid cigars were made from tobacco grown wholly or in part in said district, and were cured in rum, or were made wholly from, or blended with, tobacco grown in Turkey, and with capacity and tendency to unfairly divert trade to him from competitors engaged in selling, in interstate commerce, truthfully advertised products of same kind and nature:

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

Mr. Marshall Morgan for the Commission.

¹ Amended.