

Syllabus

IN THE MATTER OF

HARRY NEIVERT, TRADING AS PIGRO CHAMOIS
COMPANY

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

Docket 2513. Complaint, Aug. 13, 1935—Decision, Aug. 28, 1937

Where an individual engaged in the distribution of leather products, including certain products which were neither (1) chamois leather, as originally made from the skin of an Alpine antelope, highly prized for its soft and pliable quality for use in polishing such articles as jewelry, metals, glass, and wood, and possessed of additional feature of absorbing water readily and returning, when dry, to its original softness and pliability, nor (2) composed of the inner side of a sheepskin or "flesher," from which the outer or grain side has been split, tanned exclusively with marine-oil, and with a natural yellowish color well known to purchasing public, and possessed generally of same qualities as those of the original chamois skin, and commercially now known, and to public as "chamois," and in the sale of said products in competition with others engaged in manufacture and sale of washable leather goods to wholesale and retail dealers and other purchasers in the various States and in the District of Columbia—

Made use of trade name including word "chamois" on its invoices, letterheads, circulars, and other printed matter, and in other ways, in soliciting sale of and selling his aforesaid products, and included said word in invoices, circulars, and advertising matter in describing and referring to said certain products hereinabove referred to, through such names as "Carpincho chamois cuts," "Carpincho square cuts, chamois color," "Sheepskin chamois, chrome tan," notwithstanding fact said certain products were not the genuine or commercial chamois leather, as hereinbefore described, but constituted the inner side of the carpincho leather, grain or outside split of which is used in glove manufacture, and which, in color and appearance, as result of tanning process employed, resembles that of chamois, though not possessed of moisture-absorbent quality of the oil-tanned sheepskin fleshers and without latter's quality of returning to their original softness and pliability after being saturated with water;

With capacity and tendency to mislead and deceive number of the purchasing public into buying his said leather products in the erroneous and mistaken belief that they were purchasing such products possessing qualities of chamois as hereinabove set forth, and to deceive ultimate purchasers into buying leather products which they did not intend to buy and which do not possess said certain desirable qualities possessed by the chamois, as above set forth, and with result of placing in the hands of retailers means of deceiving ultimate purchaser as to the leather from which said products are actually made, and with tendency and capacity to divert trade from competitors engaged in selling articles of leather in commerce among the various states, truthfully represented as chamois, and from other competitors likewise engaged in selling in such commerce products truthfully

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advertised and of the same kind and general appearance as those of said individual:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James M. Hammond for the Commission.

Maidier & Maidier, of Gloversville, N. Y., 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 Harry Neivert, an individual doing business as the Pigro Chamois Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in "commerce" as defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this, its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent herein, Harry Neivert, is an individual doing business under the firm name and style of Pigro Chamois Company, with his principal place of business being in the city of Gloversville, N. Y. He is now and has been for more than one year last past, engaged in the business of manufacturing leather products designated by him as Carpincho chamois cuts, pocket shaped carpincho chamois cuts, carpincho square cuts "chamois color," sheepskin chamois chrome tan, carpincho middle split chamois, sheepskin chamois, chrome tanned, Java flesher chamois and other leather products carrying as part of their name or designation the word "chamois" and in the sale thereof between and among the various States of the United States and the District of Columbia, shipping such products, when sold, to the purchasers thereof, some located in the State of New York and others located in various States of the United States and 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, the 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 of leather products between and among the various States of the United States, and 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 the District of Columbia now represents and for more than one year last past has represented in and by the use of his aforesaid trade name by the designation of his leather products hereinbefore mentioned, by advertisements, price lists 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 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 general 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 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 the oil dressed sheepskin is the word "chamois" and that 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 "chamois," but are articles manufactured from sheepskin which have not been oil tanned or from pigskin and have the same general appearance but not the peculiar qualities or properties of articles known to the public and trade as "chamois."

PAR. 4. Use by the respondent of its aforesaid trade name, of the aforesaid designations of its leather products, and of other designations, and of the advertisements 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" and to purchase such products of respondent in such erroneous belief and places into the hands of dealers 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 anywise designate such products as "chamois." There are also among such competitors manufacturers who manufacture and sell "chamois" and who truthfully represent their products as "chamois." By the aforesaid acts and practices of respondent, trade is diverted

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by 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.

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 the 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 issued and served its complaint in this proceeding upon respondent herein, Harry Neivert, an individual, doing business under the firm name and style of Pigno Chamois Company, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, the respondent filed his answer in this proceeding, admitting in part, and denying in part, the allegations of the complaint. Thereafter a stipulation was entered into, whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Messrs. Maider & Maider, of Gloversville, N. Y., and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding, in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. For more than one year prior to the filing of the complaint in this proceeding, Harry Neivert, respondent herein, was, and had been, doing business under the firm name and style of Pigro Chamois Company, in the distribution and sale of leather products. His office and principal place of business was then, and still is, located in the city of Gloversville, State of New York.

Respondent has caused, and still causes, his said leather products, when sold by him, to be transported in commerce from his place of business at Gloversville, N. Y., to the purchasers thereof by shipping the said products to, into, and through States other than the State of New York.

PAR. 2. During the times above referred to, other individuals, firms, and corporations located in the various States of the United States have been engaged in the manufacture of washable leather products which they have sold, and still sell, to wholesale and retail dealers and other purchasers located in the various States of the United States and in the District of Columbia. The respondent, during the aforesaid times, was, and still is, in competition in the sale of leather products with said other individuals, firms, and corporations, in commerce as herein set out.

PAR. 3. Respondent, for more than one year prior to the filing of the complaint in this proceeding, described and referred in his invoices, circulars, and advertising matter, to certain of the leather products sold by him as follows: Carpincho chamois cuts; pocket shaped carpincho chamois cuts; carpincho square cuts, chamois color; sheepskin chamois, chrome tan; carpincho middle split chamois; sheepskin chamois, chrome tanned; and Java flesher chamois; and carried as part of the respective names or designations of other leather products the word "chamois."

PAR. 4. The respondent, at the time of the filing of the complaint herein, and for a long time prior thereto, used as, and for, the trade name for his said business the words "Pigro Chamois Company." This trade name was used by the respondent on his invoices, letter-heads, circulars, and other printed matter, and in other ways, in soliciting the sale of, and in selling, his products in commerce as described in paragraph 1.

PAR. 5. Chamois leather was originally made from the skin of an Alpine antelope known as the "chamois." This animal is now, and has been for many years, practically extinct, so that its skin is a rarity and has not been sold in commercial quantities for many years. Its skin was highly prized for its soft and pliable quality

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for use in polishing such articles as jewelry, metals, glass, and wood. It possessed the additional feature of absorbing water readily and returning, when dry, to its original softness and pliability.

In searching for a substitute for the original "chamois" leather after the source of supply became exhausted, tanners tried many different varieties of leather and processes of tannage. After many experiments, it was found that the inner side of a sheepskin, known technically as a "flesher," from which the outer, or grain, side has been split, when tanned exclusively with marine-oil, usually cod oil, would produce an article very similar to, and possessing, generally, the same qualities as that of the skin of the original "chamois" antelope. Sheepskin fleshers, thus tanned, because of their use for many years as a substitute for the skin of the "chamois" antelope, constitute what is now known commercially and to the public as "chamois." This leather is not dyed, as the oil tannage gives it a natural yellowish color which is well known to the purchasing public. Its original softness and its pliability, when dried, after having been saturated with water, are very desirable qualities, and influence the purchase of large quantities of said products in preference to other products designed for similar usage.

PAR. 6. Gloversville, N. Y., where respondent's place of business is located, is the center of the glovemaking industry in the United States. Gloves, except work gloves of the heaviest kind, are made from the grain, or outside split, of many different kinds of skins, including the carpincho, which is a semi-aquatic South American animal resembling in appearance a large pig. This leather resembles "chamois" in color and appearance, as the whole skin during the tanning process, and before splitting, is dyed yellow for use in making yellow gloves. Hides which are intended for ultimate use in the manufacture of gloves, however, are usually not oil-tanned, which is a slow and expensive process, but are either tanned by the use of formaldehyde or chrome, which are much cheaper and quicker processes of tanning. The inner side of these skins, the grain split of which has been used in the manufacture of gloves, is, therefore, a byproduct, and is sold cheaply for any use to which the same may be put. These inner splits, many of which are carpincho or peccary, constitute the articles purchased and marketed as "chamois" by the respondent. He deals primarily with the "Five and Ten Cent" retail chains, and his products usually sell for ten or twenty cents. Skins tanned by chrome or formaldehyde from which the respondent's products are made are entirely satisfactory for use as gloves, but will not absorb moisture with the ease and facility of oil-tanned sheepskin fleshers, and will not return to their original softness

and pliability after being saturated with water. The leather products made from these inner skins so tanned by the formaldehyde or chrome processes, therefore, do not have many of the desirable qualities of those products made from the skins referred to in paragraph 5. The yellow color and general similarity in appearance, coupled with the use of the descriptive terminology set out in paragraphs 3 and 4 has a capacity and tendency to mislead and deceive a number of the purchasing public into purchasing respondent's leather products in the erroneous and mistaken belief that they are purchasing leather products possessing the qualities detailed in paragraph 5.

PAR. 7. The use by respondent of the word "chamois" in his trade name, and in connection with the sale of articles of leather referred to in paragraph 3 hereof is misleading, and has the capacity and tendency to deceive, and may deceive, the ultimate purchasers into buying leather products which they do not intend to buy and which do not possess certain desirable qualities possessed by the leather products referred to in paragraph 5. Through and by virtue of the practices aforesaid, the respondent places, and has placed, in the hands of retailers a means of deceiving the ultimate purchaser as to the leather from which said products are actually made.

The use by the respondent of the aforesaid practices has the tendency and capacity to divert trade from competitors engaged in selling articles of leather in commerce between and among the various States of the United States which are truthfully represented as "chamois" and from other competitors of respondent likewise engaged in selling in like commerce products which are truthfully advertised and are of the same kind and general appearance as those of respondent.

CONCLUSION

The aforesaid acts and practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, 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 answer of respondent, and the agreed stipulation as to the facts entered into between the respondent herein, Harry Neivert, an individual, doing

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business under the firm name and style of Pigo Chamois Company, by his attorneys of record, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceedings; 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, Harry Neivert, an individual, doing business under the firm name and style of Pigo Chamois Company, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of his leather products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or by inference through his trade name, circulars, contracts, advertisements, invoices, or bulletins, or through any other means whatever, that the leather products sold by him are "chamois," or are made from "chamois" when said leather products are not manufactured:

(a) From the skin of the Alpine antelope commonly known and referred to as chamois; or

(b) From fleshers or under-splits of sheepskin straight oil-dressed or tanned without the use of alum, chrome, or formaldehyde.

It is further ordered, That the respondent shall, within 30 days from the date of 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
TRADE LABORATORIES, INC., ETC., 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 3064. Complaint, Feb. 19, 1937—Decision, Aug. 28, 1937*

Where five corporations and three individuals, officers thereof and directors and in control of their sales policies and general business activities, engaged in distribution and sale of shoe polish, shaving, dental, and sun tan creams, and similar commercial preparations, and toilet articles made by two of aforesaid corporations—

- (a) Packed their aforesaid products in containers upon which were printed, together with description of product, certain price marks, facts being retail prices thus indicated, and appearing on items of merchandise or containers thereof, were not intended by them or by those buying for resale, to be true retail prices or values of merchandise thus price marked, but were intended to be far in excess of prices contemplated and actually charged for sale of merchandise to ultimate consumer buying in usual course of trade, and were not fairly indicative of quality, character, and amount of said products or their ingredients; in accordance with general public's understanding of manufacturers' long-standing practice of indicating retail price on containers of their product as indicative of quality, character, and amount of ingredients used, and in accordance with confidence placed by public in such price marks and representations thereby made and substantial volume of merchandise purchased in such lines;
- (b) Placed the tubes or containers of the products variously made and sold by them in cartons of a capacity and size greatly in excess of that required to house said various tubes, and capable of containing much larger and longer tubes of product than those actually contained, to the deception of the purchasing public, recipient, usually and in accordance with its expectation in purchasing product of type made and packed as aforesaid, of a tube or amount commensurate with size of pasteboard carton or container enclosing same; and
- (c) Caused certain of their said products to be conspicuously labeled and advertised as made and sold by "Dr. Dally's Laboratories, New York, N. Y.," notwithstanding fact products in question, made by two of their number as above set forth, were not made by Dr. Dally's Laboratories, nor under formula or supervision of any doctor so named, nor in laboratory having doctor in its employ; and

Where the non-manufacturing three of aforesaid five corporations—

- (d) Included word "laboratories" in their corporate names, and represented thereby that they owned, controlled, or operated chemical workroom or place devoted to experimental study in some branch of natural science or to the application of scientific principles in the testing, analysis, and preparation of their said products, facts being they were not directly engaged, as separate corporate entities, in manufacture of any product, but merely owned and controlled their own respective corporate names, used by said manufacturing corporations, in distribution of products sold