

Complaint

IN THE MATTER OF

ELITE GLOVE 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 3187. Complaint, July 24, 1937—Decision, Nov. 3, 1937

Where a corporation engaged in manufacture, sale, and distribution of gloves, in commerce among the various States and in the District of Columbia, in substantial competition with others similarly engaged, and including among such competitors manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective products and refrain from advertising or representing, through catalogs, brand marks, or other advertising media, that the merchandise offered by them has a merit, value, and origin which it does not have; in advertising its said product through price lists, newspapers, periodicals and other advertising matter circulated through the mails to its customers and prospective customers—

Represented, through used of word "British," and through sale and distribution of gloves with such brands as "Lady Daphne A British Doeskin MADE IN U. S. A." and "Lady Daphne A British Suede MADE IN U. S. A.," that the leather used in the manufacture thereof was processed or made into the finished leather in England, such as long distinctly preferred by a substantial part of the consuming public in gloves, shoes, and other personal wearing effects, and was imported therefrom into the United States, facts being the hides used in making its said products were imported from the Sudan of Egypt into the United States, and there tanned and processed into finished leather product;

With result of misleading customers and prospective customers into the belief that leather in question was processed into finished leather product in England and imported therefrom into the United States and there made into gloves, and with tendency and capacity to mislead substantial portion of consuming public into erroneous belief that all of its said representations were true with respect to its said products, and source or origin of materials entering into manufacture thereof, and into purchase thereof on account of such belief, and with result that trade was diverted to it from competitors engaged in similar businesses as hereinbefore set forth; 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. S. Brogdyn Teu, II for the Commission.

Mr. H. Andrew Schlusberg, 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,"

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the Federal Trade Commission, having reason to believe that Elite Glove Company, Inc., a corporation, hereinafter referred to as respondent, has been and is now 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, Elite Glove Company, Inc., is a corporation organized and doing business under the laws of the State of New York, and having its principal place of business in the city of Gloversville, State of New York. It is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of women's purses and gloves in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold, respondent transports or causes the same to be transported from its principal place of business in the city of Gloversville, State of New York, to purchasers thereof located in other States of the United States and in the District of Columbia.

There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described products sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is now, and has been, in substantial competition with other corporations, and with individuals, partnerships, and firms likewise engaged in the business of manufacturing, selling, and distributing women's purses and gloves in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its products, respondent has caused to be printed and circulated through the United States mails, to its customers and prospective customers in the various States of the United States, catalogs, price lists, and other printed matter.

The respondent has also caused and still causes advertisements to be inserted in newspapers and magazines having a general interstate circulation. And further, it has caused and still causes to be imprinted on said finished products and on the containers thereof as herein set out words and phrases purporting to be descriptive of its said product. Among the statements made in the aforesaid catalogs, price lists, newspapers, and magazine advertisements, and

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among the words and phrases imprinted on respondent's said products, and upon the containers thereof, the following are representative:

1. Lady Daphne
A British Doeskin
MADE IN U. S. A.
2. Lady Daphne
A British Suede
MADE IN U. S. A.

In the above set out quoted representations appearing on respondent's products the old English letters in the words "Lady Daphne—A British Doeskin" and "Lady Daphne—A British Suede" are approximately three times the size of the letters, all capitals, in the phrase "Made in U. S. A." The words appearing in large type Old English as contrasted with the phrase "Made in U. S. A.," in very much smaller letters, serve to heighten and to unduly stress the words "Lady Daphne—A British Doeskin" and "Lady Daphne—A British Suede."

PAR. 5. All of the foregoing false and misleading statements and representations made by the respondent, particularly the use of the words "Lady Daphne," said words being indicative of English Royalty, in connection with the words "A British Doeskin" or "A British Suede," and the disparity of the size of the letters used therein as compared to the size of the letters used in the phrase "Made in U. S. A.," serve as representations to customers and prospective customers that the leather used in the manufacture of the respondent's products is processed into a finished leather in England and imported into the United States.

The said representation is further heightened by the use of the phrase "Made in U. S. A." in conjunction with the above set out words in that it leads customers and prospective customers into the belief that the leather is processed into a finished leather in England and imported into the United States, where it is made into gloves and purses.

PAR. 6. In truth and in fact, the leather used in the manufacture of respondent's products is not processed into a finished leather in England and imported into the United States, but is tanned and processed into finished leather in this country and therefrom made directly into the purses and gloves manufactured by the respondent.

PAR. 7. For many years, a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for purses, gloves, and particularly shoes, and other personal wearing effects made of leather, which are manufactured in England or manu-

factured in this country from leathers processed in England and then imported into the United States.

PAR. 8. There are among the competitors of the respondent in commerce as herein set out manufacturers and distributors of like and similar commodities who truthfully advertise and represent the nature, merit, and origin of their respective products, and who refrain from advertising or representing through their catalogs, brand marks, and other advertising media that the merchandise offered for sale by them has a merit, value, and origin that it does not have.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its products, and the source of origin of the materials entering into their manufacture, in offering for sale and selling its said products, were and are calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the consuming public into the erroneous belief that all of the said representations are true, and into the purchase of respondent's said products on account of said beliefs.

PAR. 10. As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses herein referred to. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in 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 July 26, 1937, issued and served its complaint in this proceeding upon respondent, Elite Glove Company, Inc., charging it 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 respondent's answer thereto, a stipulation as to the facts was entered into between W. T.

Kelley, Chief Counsel for the Commission, and H. Andrew Schlusberg, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto and the stipulation as to the facts (respondent having waived the filing of a 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. The respondent, Elite Glove Company, Inc., is a corporation having its principal office and place of business in the city of Gloversville, State of New York.

PAR. 2. The respondent has been, for more than one year last past, engaged in the business of manufacturing, selling, and distributing gloves in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from its principal place of business in the State of New York to purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said gloves so sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business the respondent, in soliciting the sale of, and in selling, its products, and for the purpose of creating a demand upon the part of the consuming public for said products, has for more than one year last past caused its products to be advertised through the media of price lists, newspapers, magazines, and other advertising media, printed, published, and circulated through the United States mails to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by it. The price lists and other printed matter published and distributed by respondent, and hereinbefore referred to, contain misleading descriptions and representations concerning respondent's products. Certain of the gloves manufactured, sold, and distributed by it are branded and represented to the purchasing public in the following manner:

1. Lady Daphne
A British Doeskin
MADE IN U. S. A.
2. Lady Daphne
A British Suede
MADE IN U. S. A.

PAR. 6. The foregoing statements and representations made by respondent in connection with the words "A British Doeskin" or "A British Suede," and the disparity of the size of the letters used therein as compared with the size of the letters used in the phrase "MADE IN U. S. A.," serve as representations to customers and prospective customers that the leather used in the manufacture of respondent's products is processed into the finished-leather in England and imported into the United States.

The use of the words and phrases set out immediately above leads customers and prospective customers into the belief that the leather is processed into the finished leather in England and imported into the United States, where it is made into gloves.

PAR. 7. The leather used in the manufacture of respondent's products is not processed into a finished leather in England and imported into the United States, but is tanned and processed into a finished leather in this country and therefrom made directly into the gloves made by respondent. The hides used in the making of respondent's products are imported from the Sudan of Egypt into this country, and after the hides are imported into this country they are tanned and processed into the finished leather product.

PAR. 8. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for gloves, and particularly shoes, and other personal wearing effects made of leather which are manufactured in England, or manufactured in this country from leather processed in England and then imported into the United States.

PAR. 9. There are among the competitors of respondent in commerce as herein set out manufacturers and distributors of like and

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similar commodities who truthfully advertise and represent the nature, merit, and origin of their respective products, and who refrain from advertising or representing through their catalogs, brand marks, or other advertising media that the merchandise offered for sale by them has a merit, value, and origin that it does not have.

PAR. 10. All the statements and representations made by respondent in designating or describing its products and the source of origin of the materials entering into their manufacture in offering for sale, and selling, said products were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the consuming public into the erroneous belief that all the said representations are true, and into the purchase of respondent's said products on account of said belief.

As a result of the representations made by respondent trade has been diverted from those competitors of respondent engaged in similar businesses hereinbefore referred to. As a consequence thereof substantial injury has been and is 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, Elite Glove Company, Inc., 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 stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and H. Andrew Schlusberg, counsel for respondent, 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, Elite Glove Company, Inc., a corporation, its representatives, agents, and employes, in connection with the offering for sale, sale and distribution of gloves in com-

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merce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through the use of the word "British," or any other word or words of similar import and meaning, alone or in conjunction with other words, or through any other means or device, or in any manner, that its gloves, or the leather from which said gloves are made, were imported from or made from hides processed into finished leather in England or any other part of the British Empire.

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.

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IN THE MATTER OF

ACME PRODUCTS COMPANY

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

Docket 3204. Complaint, Aug. 16, 1937—Decision, Nov. 4, 1937

Where a corporation engaged in sale and distribution of life preservers to purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture, sale and distribution, as aforesaid, of like and similar products, and including therein manufacturers and distributors of such products who truthfully advertise and represent the merit of their respective goods and refrain from advertising or representing that merchandise offered by them has a merit which it does not have, or, falsely, that it has met the requirements of the Steamboat Inspection Service—

Represented, through brand on certain of its said life preservers, "Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats," that life preservers in question complied with rules and regulations of the United States Steamboat Inspection Service and might lawfully be used as life preservers on pleasure boats, facts being that they did not so comply and might not lawfully be used as such;

With result of misleading a substantial portion of consuming public in the several States and in aforesaid District by inducing them mistakenly and erroneously to believe that its said life preservers were guaranteed as above set forth, and might lawfully be used as hereinbefore stated, and with tendency and capacity to mislead and deceive purchasing public into erroneous and mistaken belief that such statements and representations were true, and with effect of inducing them to buy such preservers of it by reason of such erroneous beliefs, and with result of thereby unfairly diverting trade to it from those competitors similarly engaged who do not make use of similar acts and practices; 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. S. Brogdyne Teu, II for the Commission.

Woodruff, Klein & White, of New Haven, Conn., 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 Acme Products Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress,