

Syllabus

IN THE MATTER OF
FOX-WEIS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3236. Complaint, Oct. 4, 1937—Decision, Dec. 22, 1937*

Where a corporation engaged in distribution and sale of furs and fur coats to members of purchasing public in other States and in the District of Columbia, in substantial competition with others similarly engaged in distribution and sale of such products, and including those who, in selling and distributing furs and fur coats made from skins of rabbit or muskrat, truthfully designate said garments as actually thus made, by use of such words as "Dyed Coney" or "Dyed Muskrat" in equally prominent type and in close proximity and hyphenated to other designations used by them in describing such garments, those engaged in sale of such products actually made from the skins of seal and so designated, and those who do not in any manner misrepresent their business status and, falsely, that they are manufacturers, for the direct purchase of the products of which there is preference on the part of substantial portion of purchasing public as securing, in their opinion, better prices, superior merchandise and other advantages not to be had after product has passed through hands of number of middlemen—

- (a) Made use of designations "Sealine," "Black Seal," "Hudson Seal," and "French Seal" in describing, in its advertisements in newspapers of interstate circulation and in other advertising media, its furs and fur coats, together with qualification, in not easily readable type and widely separated from aforesaid designations, "Dyed Coney" or "Dyed Muskrat," and without qualification in other cases, notwithstanding fact products thus described and represented were not made from the furs and skins of the seal, but, in a number of cases, from rabbit skins so dressed and dyed as to resemble, in appearance only, the more costly seal, with its superior pliability, durability, wearing quality, and luster, and number thereof were made from muskrat skins likewise so dressed and dyed as to resemble garments made from seal, to which they were inferior in aforesaid respects and for which there was a preference on the part of a substantial number of purchasing public; and
- (b) Represented itself as a "manufacturing furrier," through use of such statements on letterheads and other advertising media, and through statement "it makes a difference when you buy from the maker," notwithstanding fact it was not the manufacturer of all the furs and fur coats sold by it, but purchased a substantial majority of such products ready-made for sale to ultimate purchaser;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous beliefs that garments in question were actually made from the furs and skins of seal, and that it was the manufacturer of all such products sold by it, and with result that substantial portion of such public, by reason of such mistaken and erroneous beliefs, were induced to buy such

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garments thus designated and described, and trade was thereby diverted to it from its competitors as aforesaid:

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

Mr. J. T. Welch for the Commission.

Hartman, Sheridan & Tekulsky, of New York City, 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 Fox-Weis Company, a corporation, hereinafter referred to as respondent, has been and is 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, Fox-Weis Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 1130 Chestnut Street, in the city of Philadelphia, State of Pennsylvania. It is now, and has been for some time heretofore, engaged in the business of distributing and selling to members of the purchasing public, among other items of merchandise, furs and fur coats.

The respondent causes said furs and fur coats, when sold, to be transported from its aforesaid principal place of business to the purchasers thereof located at points in States of the United States other than the State of Pennsylvania. It maintains, and for a period of more than one year last past has maintained, a constant current of trade and commerce in said furs and fur coats, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in the distribution and sale of said furs and fur coats with other corporations and with firms and individuals likewise engaged in the business of distributing and selling furs and fur coats, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Fur coats and other garments made from the furs and skins of seal have, over a period of many years, acquired a wide popularity among that portion of the public purchasing garments made from fur on account of their superior quality, including pli-

ability and durability of the leather and wearing quality and luster of the fur. Garments made from furs and skins of seal demand prices substantially greater than the prices of garments made from rabbit or muskrat furs and skins and there is a preference on the part of a substantial number of the purchasing public for garments made from furs and skins of seal. Garments made from the furs and skins of seal are commonly designated as "seal," or some derivation of said word, including the word "seal" and said designation is well-known and recognized both by the trade and the purchasing public generally.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, respondent has, from time to time, inserted advertisements in newspapers having an interstate circulation and has made use of other advertising media designed and intended to influence purchasers of said furs and fur coats. In said advertisements, respondent has caused certain of its furs and fur coats to be variously represented or designated as "sealine," "black seal," "Hudson seal," and "French seal." In certain of said advertisements, the designations above set out are made without qualification of any kind. In other of said advertisements, the words "dyed coney" or "dyed muskrat" appear in substantially smaller type so as to not be easily readable and are not in close proximity to said designations above set out, but are, in fact, widely separated therefrom.

Said designations purport to be descriptive of respondent's furs and fur coats and serve as representations that said garments are made from furs and skins of seal.

PAR. 5. In truth and in fact, the garments offered for sale and sold by the respondent, bearing the designations above set out, are made from furs and skins other than furs and skins from the seal. A number of said garments are made from rabbit skins so dressed and dyed as to resemble garments made from furs and skins of the seal in appearance only. Said rabbit skins are inferior to the skins of seal in pliability and durability of the leather and in wearing quality and luster of the fur. A number of said garments are made from muskrat skins so dressed and dyed as to resemble garments made from furs and skins of the seal. Said muskrat skins are inferior to the skins of the seal in pliability and durability of the leather and in wearing quality and luster of the fur.

PAR. 6. There are now, and have been, competitors of respondent selling and distributing furs and fur coats made from skins of rabbit or muskrat, in commerce among and between the various States of the United States, who truthfully designate said garments as ac-

tually being made from the skins of rabbit or muskrat by use of such words as "dyed coney" or "dyed muskrat" in type equally prominent to, and in close proximity and hyphenated to, the other designations used by said competitors in describing said garments. There are also other competitors of respondent selling furs and fur coats which are actually made from the skins of seal and are so designated, in commerce among and between the various States of the United States. There are also among respondent's competitors those who do not in any manner misrepresent their business status and represent that they are manufacturing furriers when such is not the case.

PAR. 7. In the course and conduct of its business and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, respondent has represented itself to be a manufacturing furrier. On its letterheads and its other advertising matter, the respondent has made use of such statements as "Fox-Weis Company, Manufacturing Furriers," and "it makes a difference when you buy from the maker." Such statements serve as representations that the respondent is the maker of the furs and fur coats which it sells to members of the purchasing public. In truth and in fact the respondent is not the manufacturer of such furs and fur coats that it sells, but purchases the same already made up and ready for sale to the ultimate purchaser. The respondent is not a manufacturer or a manufacturing furrier as that term is known and understood among the purchasing public generally.

There is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the manufacturer they secure better prices, superior merchandise, and other advantages which cannot be secured when merchandise is purchased after having gone through the hands of a number of middlemen.

PAR. 8. The false and misleading representations used by the respondent in the offering for sale and sale of its furs and fur coats, as hereinabove set out, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that said garments are actually made from the furs and skins of seal and that the respondent is the manufacturer thereof. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been induced to purchase garments so designated by the respondent and thereby trade has been unfairly diverted to the respondent from competitors named in paragraph 6 hereof. 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.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and constitute unfair methods of competition within the meaning and intent 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 the 4th day of October, 1937 issued and served its complaint in this proceeding upon said respondent, Fox-Weis Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, 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 and 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 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. Respondent, Fox-Weis Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 1130 Chestnut Street, in the city of Philadelphia,

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State of Pennsylvania. It is now, and has been for some time heretofore, engaged in the business of distributing and selling to members of the purchasing public, among other items of merchandise, furs and fur coats.

The respondent causes said furs and fur coats, when sold, to be transported from its aforesaid principal place of business to the purchasers thereof located at points in States of the United States other than the State of Pennsylvania. It maintains, and for a period of more than one year last past has maintained, a constant current of trade and commerce in said furs and fur coats, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in the distribution and sale of said furs and fur coats with other corporations and with firms and individuals likewise engaged in the business of distributing and selling furs and fur coats, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Fur coats and other garments made from the furs and skins of seal have, over a period of many years, acquired a wide popularity among that portion of the public purchasing garments made from fur on account of their superior quality, including pliability and durability of the leather and wearing quality and luster of the fur. Garments made from furs and skins of seal demand prices substantially greater than the prices of garments made from rabbit or muskrat furs and skins and there is a preference on the part of a substantial number of the purchasing public for garments made from furs and skins of seal. Garments made from the furs and skins of seal are commonly designated as "Seal," or some derivation of said word, including the word "Seal" and said designation is well known and recognized, both by the trade and the purchasing public generally.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, respondent has, from time to time, inserted advertisements in newspapers having an interstate circulation and has made use of other advertising media designed and intended to influence purchasers of said furs and fur coats. In said advertisements, respondent has caused certain of its furs and fur coats to be variously represented or designated as "Sealine," "Black Seal," "Hudson Seal," and "French Seal." In certain of said advertisements, the designations above set out are made without qualification of any kind. In other of said advertisements, the words "Dyed

Coney" or "Dyed Muskrat" appear in substantially smaller type so as to not be easily readable and are not in close proximity to said designations above set out, but are, in fact, widely separated therefrom. Said designations purport to be descriptive of respondent's furs and fur coats and serve as representations that said garments are made from furs and skins of seal.

PAR. 5. In truth and in fact, the garments offered for sale and sold by the respondent, bearing the designations above set out, are made from furs and skins other than furs and skins from the seal. A number of said garments are made from rabbit skins so dressed and dyed as to resemble garments made from furs and skins of the seal in appearance only. Said rabbit skins are inferior to the skins of seal in pliability and durability of the leather and in wearing quality and luster of the fur. A number of said garments are made from muskrat skins so dressed and dyed as to resemble garments made from furs and skins of seal. Said muskrat skins are inferior to the skins of the seal in pliability and durability of the leather and in wearing quality and luster of the fur.

PAR. 6. Prior to July 1, 1937, the respondent changed its advertising literature in the following respects: Furs and fur coats made from furs and skins of rabbit and muskrat which have been dyed so as to resemble furs and skins of seal, or of any other animal, are now designated and described by use of the words "Seal," "Hudson Seal," "French Seal," "Black Seal," "Sealine," "Beaver," and "Beaverette," preceding and hyphenated to words which state that the furs and skins used in the garment are dyed and are rabbit or muskrat skins. All of such words appear in equal size type and are in close proximity and hyphenated in respondents present advertising. Such garments as have heretofore been described and represented in the manner set forth in paragraph 4 of the complaint are now described and represented as follows: "Seal-Dyed Coney," "Hudson Seal-Dyed Muskrat," "Beaver-Dyed Coney," "French Seal-Dyed Coney," "Beaverette-Dyed Coney," "Black Seal-Dyed Coney."

PAR. 7. There are now, and have been, competitors of respondent selling and distributing furs and fur coats made from skins of rabbit or muskrat, in commerce among and between the various States of the United States, who truthfully designate said garments as actually being made from the skins of rabbit or muskrat by use of such words as "Dyed Coney," or "Dyed Muskrat" in type equally prominent to, and in close proximity and hyphenated to, the other designations used by said competitors in describing said garments. There are also other competitors of respondent selling furs and fur coats which

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are actually made from the skins of seal and are so designated, in commerce among and between the various States of the United States. There are also among respondent's competitors those who do not in any manner misrepresent their business status and represent that they are manufacturing furriers when such is not the case.

PAR. 8. In the course and conduct of its business and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, the respondent has represented itself to be a manufacturing furrier. On its letterheads and other advertising matter, the respondent has made use of such statements as "Fox-Weis Company, Manufacturing Furriers," and "it makes a difference when you buy from the maker." Such statements serve as representations that the respondent is the maker of all the furs and fur coats which it sells to members of the purchasing public. In truth and in fact, the respondent is not the manufacturer of all the furs and fur coats which it sells. A substantial majority of the furs and fur coats sold by the respondent are purchased by it ready-made for sale to the ultimate purchaser, but the respondent does actually control and operate a plant wherein it maintains facilities for making fur garments and fur coats. In such plant, respondent employs approximately twenty-three people in the following capacities:

1 Manager	2 Cutters
15 Finishers	1 Ironer
1 Nailer	1 Cleaner
2 Operators	

In said plant, it maintains certain machinery and equipment for making fur garments and fur coats as follows:

2 Fur sewing machines	3 Ironing and glazing tables
5 Fur cutting tables	2 Nailing tables
1 Fur lining and finishing table	2 Fur drums
1 Fur staying machine	5 Fur knives
1 Machine for sewing lining	4 Sets of nailing pinchers
1 Fancy stitch machine	

From the period October 1, 1935 to September 30, 1936, respondent manufactured in its plant three hundred twenty-seven (327) coats and thirty-one (31) jackets. From October 1, 1936 to September 30, 1937, it made in its plant three hundred ninety-two (392) coats and ten (10) jackets. It does not sell any of its products to any other retail furrier but sells said products in its retail place of business.

There is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the manu-

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facturer they secure better prices, superior merchandise, and other advantages which cannot be secured when merchandise is purchased after having gone through the hands of a number of middlemen.

PAR. 9. The aforesaid representations used by the respondent prior to July 1, 1937, as set out hereinabove, in the offering for sale and sale of its furs and fur coats, have had the capacity and tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that said garments were actually made from the furs and skins of seal, and that the respondent was the manufacturer of all the fur garments and fur coats which it sold. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been induced to purchase garments so designated and described, and thereby trade has been diverted to the respondent from competitors referred to in paragraph 7 hereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Fox-Weis 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 agreed stipulation of facts entered into between the respondent herein, Fox-Weis Company, 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 proceeding, and the Commission having made its findings as to the facts and 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 respondent, Fox-Weis Company, a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale, and sale of furs and fur garments made from dyed muskrat or dyed coney (rabbit) fur, in interstate commerce and in the District of Columbia, cease and desist from:

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1. Describing furs or fur garments in any other way than by the use of the correct name of the fur as the last word of the description or designation thereof.

2. Describing furs or fur garments wherein the fur has been dyed to simulate another fur without using the correct name of the fur as the last word of the description or designation thereof immediately preceded by the word "Dyed" compounded with the name of the simulated fur.

3. Using the words "Seal," "Hudson Seal," "French Seal," "Sealine," "Black Seal," as descriptive of furs and fur garments made from muskrat or coney (rabbit), alone or in connection, combination, or conjunction with any other word or words, unless and until the word "Seal," or the words "Hudson Seal," "French Seal," "Black Seal," "Sealine," are compounded with the word "Dyed," and such words so compounded are immediately followed by the true name of the fur as "Hudson Seal-Dyed Muskrat," or "Seal-Dyed Coney."

4. Representing that it is a manufacturing furrier or that it manufactures the garments which it sells, except as to such garments as are actually manufactured by it.

It is further ordered, That the respondent 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
PENNSYLVANIA WHISKEY DISTRIBUTING
CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2576. Complaint, Oct. 11, 1935—Decision, Dec. 23, 1937

Where a corporation engaged, as wholesale distributor and rectifier of alcoholic liquors, in purchasing and bottling whiskies and other distilled spirits and in selling its aforesaid various products to wholesaler and retailer purchasers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies and other distilled spirits and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various distilled spirits and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of the whiskies and other distilled spirits sold by them, truthfully use words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons and labels of the bottles in which they sell and ship their said products, those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth, and those who, engaged in sale of whiskies and other distilled spirits, do not, as a means of furthering and promoting sale of their said products, misrepresent as official Internal Revenue Bonded Warehouse Receipts their own unofficial paper receipts or paper writings—

- (a) Represented, through use of abbreviation "Dist." in its corporate name, as printed on its stationery, cartons, labels, contracts, and advertising, and warehouse receipts, used by it in soliciting and obtaining sale of its products, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distilling company and that the whiskies and other distilled spirits by it sold were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various spirits, as long definitely understood from word "distilling" used in connection with liquor industry and products thereof, in the trade and by the ultimate purchasing public, did not own, operate, or control any place or places where such spirits are made by such process, and was not a distiller, for the purchase of the bottled whiskey and other spirits of which there is a preference on the part of a substantial portion of the purchasing public; and
- (b) Falsely designated as "United States Internal Revenue Bonded Warehouse Receipts" certain paper writings or receipts delivered to its customers and covering distilled spirits stored in bonded warehouses in other States, as means of furthering and promoting sale of its said products, facts being said writings or receipts were contracts between it and customer whereby it was obligated to sell, and customer was obligated to buy, quantity of distilled spirits located in aforesaid warehouses under bond, and for which