

Complaint

IN THE MATTER OF

HARRY J. KATZ AND LOUIS BLACK, INDIVIDUALLY AND
TRADING AS THE NUTEX COMPANY

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

Docket 3271. Complaint, Nov. 22, 1937—Decision, June 1, 1938

Where a firm engaged in sale and distribution of rubber prophylactics in commerce among the various States and in the District of Columbia—

Set forth on the containers of said products such statements as "Mfg. by The Nutex Co.," etc., and on their business stationery, and following their aforesaid trade name, the words "Manufacturers and Distributors of Druggists' Sundries," notwithstanding fact they did not manufacture products sold by them, and were not manufacturers, from whom substantial part of consuming public has long preferred to buy as affording opportunity to secure superior article at same price, or equivalent one at lower price, than if purchased through intermediary, but purchased such products in open market from those who did;

With tendency and capacity to mislead a substantial number of purchasers into erroneous and mistaken beliefs that aforesaid products were made by said firm, and with result that trade was unfairly diverted to them from competitors engaged in like and similar businesses, among whom there are those who make and distribute like and similar commodities or other products designed and intended for similar uses, and who truthfully advertise and represent their business status and refrain from advertising or representing, through their price lists, brand marks, and other advertising media, that they possess a business status which they do not have; to the substantial injury of competition in commerce;

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

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Ralph S. Fowler, of Washington, D. C., 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 J. Katz and Louis Black individually and trading as The Nutex Co., hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce as "commerce" is 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 its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Respondents, Harry J. Katz and Louis Black, individually and trading as The Nutex Co., have their principal place of business in the city of Philadelphia, State of Pennsylvania. They are now, and for more than 1 year last past have been engaged in the sale and distribution of rubber prophylactics 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, respondents transport, or cause the same to be transported, from their principal place of business in the city of Philadelphia, State of Pennsylvania to the 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 respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and partnerships, firms, and corporations likewise engaged in the business of manufacturing, selling, and distributing rubber prophylactics and other products designed and intended for similar usage 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 their said business and for the purpose of inducing the purchase of their products, respondents have caused to be printed and circulated through the United States mails to their customers and prospective customers in the various States of the United States price lists and other advertising matter.

The respondents have caused, and still cause to be imprinted on the containers in which their products are packed and sold, on their price lists and other advertising media as well as on their business stationery, words and phrases purporting to be descriptive of the business status of the respondents. Among the words and phrases appearing on the containers in which respondents pack and sell their said products the following are descriptive:

Mfg. by

THE NUTEX CO. Philadelphia, Pa.

On the business stationery of the respondents appear the following words and phrases:

THE NUTEX COMPANY
Manufacturers and Distributors
of
Druggists' Sundries

PAR. 5. The foregoing statements and representations made by the respondents are false and misleading and serve as representations to customers and prospective customers that the respondents manufacture the products sold and distributed by them.

In truth and in fact, the respondents do not manufacture the products sold by them, but buy said products in the open market from the manufacturers thereof.

PAR. 6. There are among the competitors of the respondents in commerce as herein set out manufacturers and distributors of like and similar commodities or other products designed and intended for similar usage who truthfully advertise and represent their business status and who refrain from advertising or representing through their price lists, brand marks, and other advertising media that they possess a business status which they do not have.

PAR. 7. For many years a substantial part of the consuming public has had and so expressed a marked preference for products sold and distributed to the public by the manufacturers of the same. It places confidence in the manufacturers of such products and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon the aforesaid practice.

PAR. 8. The foregoing false and misleading statements and representations on the part of the respondents have a tendency and capacity to mislead a substantial number of purchasers into the erroneous belief that the products offered for sale, sold, and distributed by respondents are manufactured by them. As a result thereof, trade has been unfairly diverted to respondents from those competitors engaged in like and similar businesses. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 9. The above methods, acts, practices, and representations of the respondents have been and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been and are 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 the Federal Trade Commission Act, the Federal Trade Commission on November 22, 1937, issued, and on November 23, 1937, served, its complaint in this proceeding upon

the respondents, Harry J. Katz and Louis Black, individually, and trading as The Nutex Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After issuance of said complaint and the filing of respondents' answer thereto, a stipulation as to the facts was entered into by W. T. Kelley, Chief Counsel of the Federal Trade Commission, and Ralph S. Fowler, counsel for the respondents, which said stipulation was thereafter approved by the Commission, and duly filed and recorded in the office of 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, and the Commission having duly considered 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. Respondents Harry J. Katz and Louis Black are individuals trading as The Nutex Co., and have their principal place of business in the city of Philadelphia, State of Pennsylvania. They are now and for more than 1 year last past have been engaged in the sale and distribution of rubber prophylactics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When the respondents sell their products they transport or cause the same to be transported from their principal place of business in Philadelphia, Pa., 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 course of trade in the above described products sold by respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of their business the respondents are now and have been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the business of manufacturing and in selling and distributing in commerce among and between the various States of the United States and in the District of Columbia, rubber prophylactics and other products designed and intended for similar usage.

PAR. 4. In the conduct of their business and for the purpose of inducing the purchase of their products, respondents have caused to be printed and circulated among their customers and prospective cus-

tomers in the various States of the United States price lists and other advertising matter.

The respondents have caused and still cause to be printed on the containers in which their products are packed and sold, on their price lists and other advertising media, as well as on their business stationery, words, and phrases purporting to be descriptive of the business status of the respondents. Among the words and phrases appearing on the containers in which respondents pack and sell their products, the following are representative:

Mfg. by
THE NUTEX CO., Philadelphia, Pennsylvania.

On the business stationery of the respondents appear the following words and phrases:

THE NUTEX COMPANY
Manufacturers and Distributors
of
Druggists' Sundries

PAR. 5. The statements and representations set out in paragraph 4, supra, and made by the respondents, serve as representations to customers and prospective customers that respondents manufacture the products sold and distributed by them. The respondents do not manufacture the products sold by them, but buy them in the open market from those persons who do manufacture them.

PAR. 6. There are among the competitors of the respondents in commerce as herein set out manufacturers and distributors of like and similar commodities or other products designed and intended for similar usage who truthfully advertise and represent their business status, and who refrain from advertising or representing through their price lists, brand marks, and other advertising media, that they possess a business status that they do not have.

PAR. 7. For many years a substantial part of the consuming public has had and still has a preference for products sold and distributed by manufacturing sellers due to the belief that it will thus obtain a superior article at the same price or an equivalent article at a lower price than it would obtain if purchased through an intermediary.

PAR. 8. The statements and representations on the part of the respondents as herein set out have a tendency and capacity to mislead a substantial number of purchasers into the erroneous and mistaken beliefs that the products for sale, sold, and distributed by respondents are manufactured by them. As a result thereof trade has been unfairly diverted to respondents from those competitors engaged in like and similar businesses. As a consequence substantial

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injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, Harry J. Katz and Louis Black, individually, and trading as The Nutex Co., are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Ralph S. Fowler, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Harry J. Katz and Louis Black, individually, and trading as The Nutex Co., or under any other trade name, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of rubber prophylactics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "manufacturers," and the phrase "mfg. by," in connection with the use of their trade name or names, or through the use of any words or terms of similar import and meaning, or through any other means or device, or in any manner, that said respondents, or either of them, are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order:

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IN THE MATTER OF

EXCELLO FABRICS, INC.

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

Docket 3287. Complaint, Dec. 23, 1937—Decision, June 1, 1938

Where a corporation engaged in sale and distribution of fabrics to garment manufacturers and other customers in the various States—

Designated and referred to certain of its products as "Pure Dye Satin" and "Silk," in advertisements in newspapers and trade publications of interstate circulation, and supplied its customers with labels to be, and which were, attached by them to garments made from said fabrics, containing aforesaid words, and with placards reading "Satin Crysglo Slips * * * The new pure dye satin," for their use in selling and distributing garments made by such customers from said fabrics in commerce among and between the various States, notwithstanding fact said fabrics and garments made therefrom, and thus advertised and offered, were not composed of silk, product of the cocoon of the silk worm, but of other materials;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and that said fabrics and garments, thus labeled and described, were made from silk, long associated in minds of garment manufacturers and consuming public as definitely and specifically meaning product of cocoon of the silk worm, as were words "Satin" and "Pure Dye," used to designate and describe dress goods and other items of wearing apparel, and to cause such purchasing public, as result of such erroneous beliefs, to buy said products as and for silk, long held in great esteem and confidence for its preeminent qualities, and with effect of unfairly diverting trade to it from competitors, including those engaged in sale and distribution of fabrics in commerce who do not misrepresent the material of which such fabrics are made:

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

Mr. George W. Williams for the Commission.

Eppstein & Hirshfeld, 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 Excello Fabrics, Inc., 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, and it appearing to said Commis-