

IN THE MATTER OF
**BENJAMIN TUCKER, TRADING AS BEN TUCKER'S AND
AS HUDSON BAY FUR CO.**

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

Docket 3036. Complaint, Jan. 15, 1937—Decision, July 21, 1938

Where an individual engaged in conducting a retail fur store establishment, and doing a substantial business in the sale of fur garments at retail, and selling a portion of his said garments to customers located in other States, and dealing in garments made, as the case might be, from (1) processed lambskins sheared so as to give appearance and effect of true Broadtail, from baby Persian lamb of Karakul breed of sheep, or from lambskins processed, dressed, and dyed to resemble garments made from baby Persian lambs, but inferior to genuine Broadtail in pliability, durability, wearing quality, and luster; (2) rabbit and coney skins, so processed, dressed, and dyed as to resemble and simulate in appearance garments made from skins and furs of seal and beaver, to which they were inferior in pliability and durability of leather and in wearing quality and luster; (3) marmot skins, so processed, dressed, and dyed as to resemble and simulate in appearance garments made from skins and furs of mink, to which they were inferior in pliability and durability, and in wearing quality and luster; (4) lambskins, so dressed and dyed as to resemble garments known to trade and purchasing public as "Grey Krimmer," made from species of lamb related to Persian lamb group, but inferior thereto in pliability and durability of leather and in wearing quality and luster; (5) muskrat skins, so processed, dressed, and dyed as to resemble and simulate garments made from skins and furs of seal, but inferior thereto in pliability and durability and in wearing quality and luster; and in competition, as thus engaged, with manufacturers, sellers, and distributors of like and similar products, who truthfully advertise and represent the nature, merit, quality, and value of their respective products and the furs from which said products are made, and who do not advertise and otherwise represent that their products have merits, qualities, or values which they do not possess—

Caused certain of his fur garments, in advertisements thereof, to be variously represented or designated as "American Broadtail," "Beaver," "Beaverette," "Black Seal," "Grey Krimmer," "Hudson Seal," "Mink Marmot," "a Persian Swagger," and "Seal," without further qualifications in some of said advertisements, and with words in others "Dyed Coney," "Dyed Muskrat," or "Processed Lamb," notwithstanding fact said garments were not made from furs and skins of seal, beaver, mink, etc., as above represented and implied, and said qualifications, when made, were as footnotes, at a distance from matter to which they referred, and in such small type as to be practically unreadable, and not sufficiently informative to place purchasers and prospective purchasers on notice as to true composition or nature of garments in question, described as aforesaid, as in fact made

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from dyed coney, dyed muskrat, or processed lamb, and from furs and skins other than those of seal, beaver, and mink;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of his said fur garments into mistaken and erroneous belief that said articles thus designated as "Beaver," "Beaverette," "Black Seal," "Hudson Seal," "Mink Marmot," and "Seal" were made from seal, beaver, and mink furs and skins, and that garments described as "Grey Krimmer" and "Persian Swagger" were made from genuine Persian lambskins, and to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and with effect of thereby inducing number of said purchasing public, by reason of such mistaken and erroneous beliefs, to buy substantial volume of its said products, and thereby unfairly divert trade to it from other individuals and concerns who truthfully advertise the fur garments sold by them; to the substantial injury of competition in commerce:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Abraham Grenthal and *Mr. Archibald Palmer*, of New York City, and *Mr. Charles J. Siegel*, of Brooklyn, 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 Benjamin Tucker, an individual trading as Ben Tucker's and as Hudson Bay Fur Co., 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, Benjamin Tucker, is an individual trading under the name and style of Ben Tucker's and as Hudson Bay Fur Co., with his principal place of business located at 194 Livingston Street in the city of Brooklyn, in the State of New York. Respondent for more than 1 year last past has been and still is engaged in business as a furrier, offering for sale and selling his products in commerce between the State of New York and the several States of the United States and in the District of Columbia.

When said products are sold, respondent transports them from his place of business in the State of New York to the purchasers thereof

located in the States of the United States other than the State of New York and in the District of Columbia.

There has been for more than 1 year last past, and still is, a constant current of trade and commerce in said products thus sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than 1 year last past has been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture and distribution of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, the respondent in soliciting the sale of and selling his said products, and for the purpose of creating a demand upon the part of the purchasing public for said products, now causes and for more than 1 year last past has caused advertisements to be issued and published in various periodicals and publications having a general circulation in the various States of the United States and in other forms of printed matter and in other ways.

In said advertisements respondent has caused certain of his furs and fur coats to be variously represented or designated as "American Broadtail," "Beaver," "Beaverette," "Black Seal," "Grey Krimmer," "Hudson Seal," "Lapin," "Mink Marmot," "Persian Swagger," and "Seal." In certain of said advertisements, the designations above set out are made without qualifications of any kind. In other of said advertisements, the words "Dyed Coney," or "Dyed Muskrat," or "Processed Lamb" appear as a parenthesized footnote, each such footnote having one or more asterisks before it to correspond with the asterisk or asterisks beside the aforementioned names purporting to refer to furs or fur coats or other furry garments intended to be so described. Said footnotes, which are in such small type as to be practically unreadable, are not in close proximity to said designations above set out, but are widely separated therefrom.

Said designations purport to be descriptive of respondent's furs, fur coats, and other furry garments and serve as representations that said garments are made from furs and skins of seal, beaver, and mink and also to be such garments as otherwise represented.

PAR. 3. 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, beaver, and mink. A number of said garments are made from lamb-skins, processed, dressed, and dyed to resemble garments known to

the trade and purchasing public as "American Broadtail." Garments made of genuine American broadtail are understood by the trade and informed purchasing public to be made from Persian lamb and caracula. The garments thus processed, dressed, and dyed by respondent and offered for sale and sold by him as "American Broadtail" are inferior to genuine American broadtail in pliability and durability of the leather and in the wearing quality and luster of the fur. A number of said garments are made from rabbit and coney skins so processed, dressed, and dyed as to resemble garments made from skins and furs of seal and beaver, in appearance only. Said coney and rabbitskins are inferior to the skins of the seal and beaver in pliability and durability of the leather and in the wearing quality and luster of the fur. A number of said garments are made from marmot, so processed, dressed, and dyed as to resemble and simulate garments made of mink in appearance only. Said marmot skins are inferior to the skins of the mink in pliability and durability of the leather and in the wearing quality and luster of the fur. A number of said garments are made from closely sheared and dyed rabbitskins, so processed, dressed, and dyed as to resemble garments understood by the trade and informed purchasing public to be "Lapin coats." Said closely sheared and dyed rabbitskins are inferior to the skins used in the manufacture of genuine Lapin coats. A number of said garments are made of Persian lamb, so processed, dressed, and dyed as to resemble garments known to the trade and informed purchasing public as "Grey Krimmer." Said Persian lambskins are inferior to genuine grey krimmer coats in pliability and durability of the leather and in the wearing quality and luster of the fur. A number of said garments are advertised, offered for sale, and sold to the purchasing public as "Persian Swagger Coats." The words "Persian Swagger Coats" was not and is not a recognized name among the trade and informed purchasing public for any fur, and the suggestion of Persian origin of the materials entering into the making of such a garment, thus named, was and is misleading and deceiving to purchasers and prospective purchasers thereof. A number of said garments are made from muskrat skins, so processed, dressed, and dyed as to resemble garments made from skins and furs of the seal. Said muskrat skins are inferior to the skins of the seal in pliability and durability of the leather, and in the wearing quality and luster of the fur.

PAR. 4. There are among the competitors of the respondent in commerce as herein set out, manufacturers, sellers, and distributors of like and similar products who truthfully advertise and represent the nature, merit, quality, and value of their respective products

and the furs from which said products are made. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that their products have merits, qualities, or values which they do not have.

PAR. 5. The above-alleged acts and practices of respondent have the capacity and tendency to deceive and mislead purchasers and prospective purchasers into the erroneous belief that the respondent's representations set out in paragraph 2 hereof are true, and into the purchase of respondent's products on account of such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors in commerce as herein set out, referred to in paragraph 4 hereof, and as a consequence thereof, substantial injury is done, and has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and 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 the Federal Trade Commission Act, the Federal Trade Commission, on January 15, 1937, issued and served its complaint in this proceeding upon respondent, Benjamin Tucker, trading as Ben Tucker's and as Hudson Bay Fur Co., 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, and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Archibald Palmer, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; and the Commission having duly considered

the matter, 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. Respondent Tucker, is an individual trading under the names and styles of Ben Tucker's and Hudson Bay Fur Co. His principal place of business is located at 194 Livingston Street, Brooklyn, N. Y. For many years respondent has maintained a retail fur store establishment where he does a substantial business selling fur garments at retail. The fur garments sold by him range from as low as \$35 per garment to not higher than \$150 per garment. His gross annual sales amount to approximately \$60,000. Respondent sells a portion of his said fur garments to customers located in States other than the State of New York, upon orders received at his store in Brooklyn, N. Y.

When such orders are received respondent ships his garments from his aforesaid place of business in New York, N. Y., to the purchasers thereof at their respective locations in States of the United States other than the State of New York and in the District of Columbia. Such shipments are made by both parcel post and express.

PAR. 2. Respondent is now, and for several years last past has been, in competition with other individuals, and with firms, partnerships, and corporations engaged in the distribution and sale of like and similar fur garments in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In soliciting the sale of and selling his said fur garments, and for the purpose of creating a demand upon the part of the purchasing public for said fur garments the respondent now causes, and for several years last past has caused, advertisements to be issued and published, principally by way of circulars, and also in newspapers and in other forms of printed matter.

In said advertisements respondent has caused certain of his fur garments to be variously represented or designated as "American Broadtail," "Beaver," "Beaverette," "Black Seal," "Grey Krimmer," "Hudson Seal," "Mink Marmot," "Persian Swagger," and "Seal." In certain of said advertisements, the designations above set out are made without qualifications of any kind. In other of said advertisements, the words "Dyed Coney," or "Dyed Muskrat," or "Processed Lamb" appear as a parenthesized footnote, each such footnote having one or more asterisks before it to correspond with the asterisk or asterisks beside the aforementioned names purporting to describe and refer to such furs or fur coats or other fur garments. Said foot-

notes, which are in such small type as to be practically unreadable, are not in close proximity to said designations above set out, but are widely separated therefrom. The aforesaid qualifying words sometimes used in respondent's advertisements are not sufficiently informative to place purchasers and prospective purchasers on notice that the aforesaid garments described by use of the designations "Seal," "Black Seal," "Beaver," "Beaverette," "American Broadtail," "Mink Marmot," "Persian Swagger," and "Grey Krimmer," are in fact made from coney, dyed muskrat, or processed lamb.

Said designations purport to be descriptive of respondent's furs, fur coats, and other fur garments, thus advertised and sold by respondent, and serve as representations to prospective customers that said garments are made from furs and skins of seal, beaver, and mink and also are such garments as otherwise represented.

PAR. 4. 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 of seal, beaver, and mink. Garments known as "American Broadtail" are made from processed lambskins sheared so as to give the appearance and effect of true broadtail, which comes from the baby Persian lamb of the Karakul breed of sheep. A number of respondent's said garments are made from lambskins, processed, dressed, and dyed to resemble garments made from the baby Persian lamb. The garments thus processed, dressed, and dyed by respondent and offered for sale and sold by him as "American Broadtail" are inferior to genuine broadtail in pliability and durability of the leather and in the wearing quality and luster of the fur.

A number of respondent's said garments are made from rabbit and coney skins so processed, dressed, and dyed as to resemble and simulate garments made from skins and furs of seal and beaver, in appearance only. Said coney and rabbitskins are inferior to the skins of the seal and beaver in pliability and durability of the leather and in the wearing quality and luster of the fur.

A number of respondent's said garments are made from marmot skins, so processed, dressed, and dyed as to resemble and simulate garments made from skins and furs of mink, in appearance only. Said marmot skins are inferior to the skins of the mink in pliability and durability of the leather, and in the wearing quality, and luster of the fur.

A number of respondent's said garments are made of lambskins, so dressed and dyed as to resemble garments known to the trade and purchasing public as "Grey Krimmer" made from a species of lamb related to the Persian lamb group. Respondent's said garments so

made are inferior to grey krimmer coats in pliability and durability of the leather and in the wearing quality and luster of the fur.

A number of respondent's said garments are advertised, offered for sale, and sold to the purchasing public as "Persian Swagger Coats." The words "Persian Swagger Coats" were not and are not a recognized name among the trade and purchasing public for any fur, and the suggestion of Persian origin of the materials entering into the making of such garment, thus named, was and is misleading and deceptive to purchasers and prospective purchasers thereof.

A number of respondent's said garments are made from muskrat skins, so processed, dressed, and dyed as to resemble and simulate garments made from skins and furs of the seal. Said muskrat skins are inferior to the skins of the seal in pliability and durability of the leather and the wearing quality and luster of the fur.

PAR. 5. The commission finds from the testimony of experts on furs and on the use of fur nomenclature that the proper and correct way to describe furs, fur coats, and other fur garments made from furs and skins dyed or processed so as to resemble and simulate in appearance other furs and skins is to designate or describe such garments where in the fur has been dyed or processed to resemble and simulate another fur by using the correct name of the fur as the last word of the description or designation thereof, immediately preceded by the words "Dyed" or "Processed" as the case may be, compounded with the name of the simulated fur, as follows: "Seal-Dyed Coney," "Hudson Seal-Dyed Muskrat," "Beaver-Dyed Coney," "Beaverette-Dyed Coney," "Grey Krimmer-Dyed Lamb," "American Broadtail-Dyed Lamb," or "American Broadtail-Processed Lamb," or "Persian Swagger-Dyed Lamb," and "Mink-Dyed Marmot." It is further found that respondent's method of advertising and representing his furs and fur garments has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of his said fur garments into the mistaken and erroneous belief that said garments designated as "Beaver," "Beaverette," "Black Seal," "Hudson Seal," "Mink Marmot," and "Seal," thus offered for sale and sold by respondent, are made from seal, beaver, and mink furs and skins, and that other fur garments described as "Grey Krimmer," and "Persian Swagger" are made from genuine Persian lambskins.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out, manufacturers, sellers, and distributors of like and similar products who truthfully advertise and represent the nature, merit, quality, and value of their respective products and the furs from which said products are made and who do not advertise

and otherwise represent that their products have merits, qualities, or values which they do not have.

PAR. 7. The deceptive and misleading statements and representations used by respondent as hereinabove set forth, in offering for sale and selling his fur garments, were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a consequence of such mistaken and erroneous beliefs, induced by the aforesaid representations of the respondent, a number of the purchasing public have purchased a substantial volume of respondent's said fur garments, with the result that trade has been diverted unfairly from other individuals, partnerships, firms, and corporations also engaged in offering for sale and selling fur garments, who truthfully advertise the fur garments sold by them. As a result thereof, substantial injury has been and is now being done by the 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, Benjamin Tucker, an individual trading as Ben Tucker's, and as Hudson Bay Fur Co., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, in violation 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 of respondent, testimony, and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by counsel for the Commission and counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Benjamin Tucker, trading as Ben Tucker's and as Hudson Bay Fur Co., his representatives, agents, and employees, in connection with the advertising, offering for sale, and selling of furs and fur garments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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 or processed 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" or "Processed" compounded with the name of the simulated fur.

3. Using the words "Seal," "Black Seal," "Hudson Seal," "Beaver," "Beaverette," "American Broadtail," "Mink Marmot," "Persian Swagger," and "Grey Krimmer," as descriptive of furs and fur garments made from muskrat, coney (rabbit), marmot, or lamb, alone or in connection, combination, or conjunction with any other word or words unless and until the word "Seal," or the words "Black Seal," "Hudson Seal," "Beaver," "Beaverette," "Mink Marmot," "American Broadtail," "Persian Swagger," "Grey Krimmer" are compounded with the word "Dyed" or "Processed," and such words so compounded are immediately followed by the true name of the fur, as "Hudson Seal-Dyed Muskrat," "Seal-Dyed Coney," "American Broadtail-Processed Lamb," "Mink-Dyed Marmot," "Grey Krimmer-Dyed Lamb."

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

ROY B. DAVIS, INDIVIDUALLY AND TRADING AS GREAT LAKES NOVELTY COMPANY AND GREAT LAKES RADIO AND NOVELTY COMPANY¹

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

Docket 3323. Complaint, Feb. 3, 1938—Decision, July 21, 1938

Where an individual engaged in the sale and distribution of radios, washing machines, electric razors, other electrical appliances, and other articles of merchandise, in commerce among the various States and in the District of Columbia—

Sold said merchandise under a plan involving the sale of push card chances by operators compensated by premiums or prizes, and in accordance with which plan the number punched by chance determined the amount paid, if any, for his chance by the purchaser, and also whether or not by virtue of such chance selection of a number the person making such selection received certain merchandise, and in which chance selection of one of a large number of feminine names corresponding with name concealed under master seal, following sale of all chances, gave recipient choice of certain specified articles without further charge; and fact as to whether customer paid nothing or a sum of money ranging from 1 cent to 35 cents for article of merchandise included, value of which in any case exceeded said larger figure, or received nothing, and particular article received, were determined wholly by lot or chance; in violation of established public policy of United States, and contrary to criminal statutes of many of the States, and in competition with many who were unwilling to offer or sell their merchandise so as to involve game of chance, and refrained from so doing;

With result that many purchasers were attracted by element of chance involved in his said sales method, and thereby induced to buy his merchandise in preference to same or similar goods of competitors who do not use such or equivalent methods, and with tendency and capacity unfairly to divert to him, because of said game of chance, trade and custom from competitors who do not use such or equivalent methods, to exclude from said merchandise trade all competitors who are unwilling to, and do not, use same, lessen competition in said trade, tend to create a monopoly thereof in him and in such other competitors as use same or equivalent methods, and deprive purchasing public of benefits of free competition in said trade, and with tendency and capacity unfairly to eliminate therefrom all actual competitors, and exclude therefrom all potential competitors, who do not adopt and use such or any method involving game of chance or sale of chance thus to win merchandise, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of purchasers:

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

¹ Through error respondent Roy H. Davis was named in the complaint as Roy B. Davis. See findings, *infra*, at p. 484.