

IN THE MATTER OF
LOUISVILLE POTTERY COMPANY

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

Docket 3296. Complaint, Jan. 11, 1938—Decision, Aug. 6, 1938

Where a corporation engaged in the manufacture, sale, and distribution of pottery wares, in competition with sellers and distributors of like and similar products designed and intended for similar usage who refrain from advertising or representing that their products had an origin which they did not have or that they were made by Indians, when not—

Represented, through words "Cherokee Pottery" imprinted on its products, and in its price lists, catalogs, and other advertising matter, and on its business stationery, together with an Indian head profile on large pieces of its said ware, and through featured words "Cherokee Hand Turned Pottery" on the cover of its catalog and in various places throughout the same, that its said wares were made by the Cherokee Indians;

Notwithstanding fact that its said products were not those wares made by said Indians, and for which a substantial part of the consuming public has long had a marked preference and of which it has bought, by reason thereof, a substantial volume, and no Indian was connected with manufacture of such various articles, all of which were made in its ordinary and common pottery shops at Louisville;

With result of placing in the hands of unscrupulous dealers buying for resale an instrument and means whereby they might commit a fraud upon and deceive a substantial portion of the consuming public by enabling them to represent and to offer for sale its aforesaid wares as genuine Cherokee Indian pottery, and with tendency and capacity to mislead a substantial number of members of the purchasing public into the erroneous and mistaken belief that its aforesaid products, thus described and marked, were made by said Indians, and into the purchase thereof, and with the result thereby of unfairly diverting trade to it from those competitors engaged in like and similar businesses who do not misrepresent their respective products; 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. S. Brogdyne Teu, II for the Commission.

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 Louisville Pottery Co., 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, and it appearing to the 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, Louisville Pottery Co., is a corporation organized and doing business under the laws of the State of Kentucky and having its principal office and place of business at 228 East Bloom Street, city of Louisville, State of Kentucky. It has been for more than 1 year last past engaged in the manufacture, sale, and distribution of pottery wares 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 Louisville, State of Kentucky, to the purchasers thereof located in States of the United States other than the State of Kentucky, and in the District of Columbia.

There is now, and has been at all times mentioned herein, a course 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.

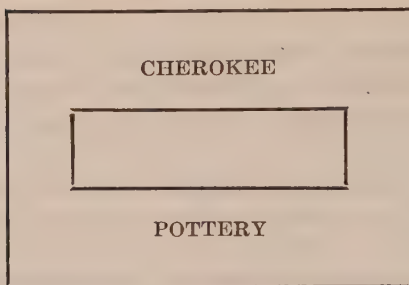
PAR. 3. In the course and conduct of its said business respondent is now and has been in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the business of manufacturing, selling, and distributing pottery wares in commerce among and between the various 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 price lists, catalogs, and other advertising media.

The respondent has caused and still causes to be imprinted on its products and on its price lists, catalogs, and other advertising media, as well as on its business stationery, words and phrases purporting to be descriptive of its products. Among the words and phrases appearing on respondent's products, in its catalogs, price lists, and advertising media the following are representative:

Complaint

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The foregoing statement, together with an Indian head profile, appears on large pieces of respondent's pottery.

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The foregoing appears on small pieces of respondent's pottery.

On the cover of the respondent's catalog and in various and sundry places throughout said catalog, the statement

CHEROKEE
HAND TURNED POTTERY

and appears in very large type.

The foregoing statements and representations made by the respondent are false and misleading and serve as representations to members of the purchasing public that the pottery wares manufactured and sold by respondent are in fact manufactured by the tribe of Indians commonly and officially known as the Cherokee Indians.

By the use of the foregoing false and misleading representations and methods of labeling and branding its products, the respondent places in the hands of unscrupulous dealers buying for resale an instrument and means whereby the said unscrupulous dealers may commit a fraud upon and deceive a substantial portion of the consuming public by enabling such dealers to represent and offer for sale and sell respondent's pottery wares as being genuine Cherokee Indian pottery.

In truth and in fact, the pottery wares manufactured, sold, and distributed by the respondent are not manufactured by Indians, and no Indian is connected with the manufacture of said pottery. All of said pottery is manufactured in the ordinary and common pottery shops of the respondent at Louisville, Ky.

PAR. 5. For many years a substantial part of the consuming public has had and has so expressed a marked preference for pottery wares made by the Cherokee Indian tribe. As a result of such preference, it has purchased a substantial volume of such merchandise because of this preference.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out manufacturers and distributors of like and similar commodities designed and intended for similar usage who refrain from advertising or representing through their price lists, brand marks, and other advertising media that their products have an origin which they do not have, or are made by Indians when they are not actually so made.

PAR. 7. The use of the foregoing false and misleading statements and representations on the part of the respondent has a tendency and capacity to mislead a substantial number of purchasers into the erroneous belief that the products so described and marked by respondent are made by Cherokee Indians, and into the purchase of the products offered for sale, sold, and distributed by respondent. As a result thereof, trade has been unfairly diverted to respondent from those competitors engaged in like or similar businesses who do not misrepresent their respective products. 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. 8. The above methods, 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 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 January 11, 1938, issued, and on January 13, 1938, served its complaint in this proceeding upon the respondent corporation, Louisville Pottery Co., 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 of the Federal Trade Commission and Keith P. Snyder, president of the respondent

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corporation, Louisville Pottery Co., which said stipulation was thereafter approved by the Commission and duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer thereto, and the stipulation as to the facts (respondent having waived the filing of brief) and the Commission having duly considered the same and being now fully advised in the premises finds that the 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, Louisville Pottery Co., is a corporation organized and doing business under the laws of the State of Kentucky. It has its principal office and place of business at 228 East Bloom Street, city of Louisville, State of Kentucky. It has been for more than 1 year last past engaged in the manufacture, sale, and distribution of pottery wares in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When respondent's products are sold it transports them or causes them to be transported from its principal place of business in the city of Louisville, State of Kentucky, to the purchasers thereof located in States of the United States other than the State of Kentucky, and in the District of Columbia.

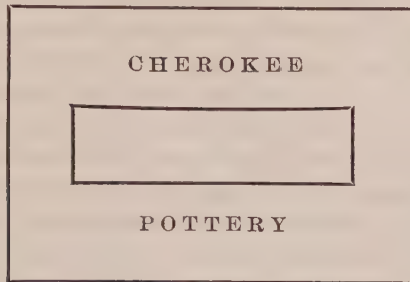
There is now and has been at all times mentioned herein a course of trade in commerce in the above described pottery products sold by respondent between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is now and has been in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing pottery wares 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 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 price lists, catalogs, and other advertising media.

Respondent has caused and still causes to be imprinted on its products in its price lists, catalogs, and other advertising media, as well as on its business stationery, words and phrases purporting to be descriptive of its products. Among the words and phrases appearing on the

respondent's products and in its advertising media, the following are representative:



The above statement together with an Indian head profile, appears on large pieces of respondent's pottery.

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CHEROKEE
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The above appears on small pieces of respondent's pottery.

On the cover of respondent's catalog and in various places throughout the catalog the statement

CHEROKEE
HAND TURNED POTTERY

appears in very large type.

The foregoing statements and representations made by the respondent are false and misleading and serve as representations to members of the purchasing public that the pottery wares manufactured and sold by respondent are manufactured by the tribe of Indians commonly and officially known as the Cherokee Indians.

Through the use of the foregoing false and misleading representations and methods of labeling and branding its products the respondent places in the hands of unscrupulous dealers buying for resale an instrument and means whereby such dealers may commit a fraud upon and deceive a substantial portion of the consuming public by enabling them to represent and offer for sale and sell respondent's pottery wares as being genuine Cherokee Indian pottery.

The pottery wares sold and distributed by respondent are not manufactured by Indians and no Indian is connected with the manufacture of the pottery products. All of them are manufactured in

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the ordinary and common pottery shops of the respondent at Louisville, Ky.

PAR. 5. For many years a substantial part of the consuming public has had and has so expressed a marked preference for pottery wares made by the Cherokee Indian tribe. As the result of such preference it has purchased a substantial volume of such merchandise.

PAR. 6. There are among the competitors of the respondent in commerce, as herein set out, sellers and distributors of like and similar products designed and intended for similar usage who refrain from advertising or representing, through their price lists, brand marks or other advertising media, that their products have an origin which they do not have or that they are made by Indians unless they are actually so made.

PAR. 7. The use of the false and misleading statements and representations herein set out on the part of the respondent has a tendency and capacity to mislead a substantial number of members of the purchasing public into the erroneous and mistaken belief that the products so described and marked by respondent are made by Cherokee Indians and into the purchase of the products offered for sale, sold, and distributed by respondent. As a result thereof, trade has been unfairly diverted to respondent from those competitors engaged in like and similar businesses who do not misrepresent their respective products. As a consequence, 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.

CONCLUSION

The aforesaid acts and practices of respondent, Louisville Pottery Co., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 of respondent and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission and Keith P. Snyder, president of the respondent, Louisville Pottery Co., and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent corporation, Louisville Pottery Co., its officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of pottery products in interstate commerce or in the District of Columbia do forthwith cease and desist from representing in any manner:

1. That the pottery products manufactured, sold, and distributed by it are Indian products;

2. That Indians are, in any way, connected with the manufacture of the pottery products sold and distributed by the respondent;

3. That the pottery products sold and distributed by the respondent are Cherokee pottery or Cherokee hand pottery.

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.

IN THE MATTER OF
J. W. PINCUS AND J. DAN SILVER, TRADING AS THE
NOVELCRAFTS COMPANY, AND LOU ROTH

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

Docket 3216. Complaint, Aug. 27, 1937—Decision, Aug. 8, 1938

Where two individuals and their employee engaged in sale and distribution of candy to wholesalers in various States, and in sale of so-called "break-and-take," "pick-and-take," "draw," or "deal" assortments, purchase of which candy is preferred by consumers because of the gambling feature connected with the sale thereof, and principal purchasers of which lot-or chance-sold candy are children, and sale of which, in competition with the "straight merchandise" of many candy manufacturers who do not make and sell the other, has been followed by a marked decrease in sale of such "straight merchandise" whenever or wherever other has appeared in its markets, due to said gambling or lottery feature connected therewith—

Sold to wholesalers certain assortments, which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were so packed, arranged, and designed as to be especially attractive to children, and included, as illustrative, penny pieces of uniform size and shape, the concealed colored center of a small number of which differed from that of the majority, together with certain articles of merchandise to be given as prizes to those procuring by chance such different colored centers, and together with still other articles of merchandise to be thus given to those procuring by chance certain other colored centers, relative number of which was even smaller; assembled and packed in such a manner that, with its knowledge and intent, they might be and were used by such wholesalers' retail-dealer customers for distribution to purchasing public by lot or chance without alteration or rearrangement; contrary to public policy, and in competition with many who regard such sale and distribution as injurious to the industry concerned, and some of whom, for such reason and because such sale and distribution supplies to and places in the hands of retailers means of conducting lotteries in violation of the laws of the several States, refuse to sell candy so packed that it can be resold to public by lot or chance; With result that such refusing competitors were placed at a competitive disadvantage, and purchasing public was deprived of the benefits of fair competition in trade in question, retailers, finding such "break-and-take," "pick-and-take," "draw," or "deal" candy more saleable, bought from them and others employing the same or an equivalent method of sale, and trade was unfairly diverted thereby from aforesaid competitors to them and to others using such or equivalent practice or method:

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