

Complaint

IN THE MATTER OF
COHEN BROTHERS CORPORATION

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

Docket 3297. Complaint, Jan. 12, 1938—Decision, Sept. 7, 1938

Where a corporation engaged in sale and distribution of knitted outerwear to retailers and others in the various States and in the District of Columbia—Represented to retailers and members of the public that items of wearing apparel were composed of "cashmere," through labels affixed thereto on which appeared featured name "Kashmoor," and through advertisement thereof in newspapers and periodicals of interstate circulation under said featured name, and such as "knitted dresses with that luxuriously soft cashmere feel," notwithstanding fact said items were not in fact that apparel composed of cashmere, i. e., as long definitely understood in minds of consuming public from word, as meaning wool of the Tibetan or Kashmir goat, and, as such, held in great public esteem and confidence on the part of the consuming public and retailers, and preferred by substantial proportion of public over apparel made from other fabrics;

With result of placing in the hands of retailers an instrument and means whereby they might pass off and sell aforesaid products as and for "cashmere," and of misleading and deceiving substantial portion of purchasing public into erroneous belief that aforesaid representations were true, and into purchase of such items by reason of such erroneous beliefs thus brought about, and of thereby unfairly diverting trade to it from competitors engaged in whole-sale sale and distribution of knitted outerwear and who do not misrepresent the material of which their said wear is 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.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. Harold Rogers Lhove, 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 Cohen Brothers Corporation, 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:

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PARAGRAPH 1. Respondent Cohen Brothers Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue, New York, in said State. It is now, and for many years last past has been, engaged in the sale and distribution of knitted outerwear. It sells, and has sold and distributed, such articles of merchandise to retail dealers and others located in the various States of the United States and in the District of Columbia. It causes, and during the time herein mentioned has caused, its said articles of merchandise, when sold, to be shipped from its place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. There is now and has been at all times mentioned herein, a course of trade and commerce by said respondent in said merchandise so sold by it between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of knitted outerwear to retail dealers and others in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 herein, respondent, in soliciting the sale of and selling said merchandise, caused, and now causes, labels to be affixed to certain items thereof and on which labels appear the featured name "Kashmoor." Said products are, and were, advertised by respondent in newspapers and trade publications having an interstate circulation under the featured name "Kashmoor" and as "knitted dresses with that luxuriously soft cashmere feel."

Such statements and representations on the part of the respondent serve as representations to retail dealers and to the members of the public that such items of wearing apparel so advertised and offered for sale are composed of cashmere, the wool from the Tibetan or Kashmir goat. The representations hereinabove set forth are, and were, false and misleading in that said items of wearing apparel so represented, designated, and referred to were not composed of cashmere.

PAR. 3. The word "cashmere" for many years last past has had, and still has, in the mind of the consuming public a definite and specific meaning, to wit: The wool of the Tibetan or Kashmir goat from which the fabric known as cashmere is manufactured. Wearing apparel composed of cashmere for many years has held and still holds great public esteem and confidence in the mind of the consuming public and retail dealers. A substantial portion of the public

and many purchasers of wearing apparel prefer and desire to purchase wearing apparel made of fabric composed of cashmere, the wool of the Tibetan or Kashmir goat as distinguished from wearing apparel made from other fabrics. The said labeling and designating of said products as set out herein places in the hands of retail dealers an instrument and means whereby they may pass off and sell said products as being cashmere.

PAR. 4. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were and are true, and to induce the purchase of such items of wearing apparel on account of such erroneous beliefs brought about as above set forth. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the wholesale sale and distribution of knitted outerwear who do not misrepresent the material of which such wearing apparel offered for sale by them is made. By use of the representations aforesaid, trade has been, and is, unfairly diverted to respondent from said competitors. Thereby, substantial injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States.

PAR. 5. The above alleged acts and practices of respondent are all to the injury and 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 the 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 12, 1938, issued, and on January 13, 1938, served, its complaint in this proceeding upon respondent, Cohen Brothers Corporation, a corporation, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said

Findings

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facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Cohen Brothers Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 498 Seventh Avenue, New York, in said State.

PAR. 2. It is now, and for many years last past has been, engaged in the sale and distribution of knitted outerwear. It sells and has sold and distributed such articles of merchandise to retail dealers and others located in the various States of the United States and in the District of Columbia. It causes, and during all times herein mentioned has caused, its said articles of merchandise when sold to be shipped from its place of business in New York, N. Y., to the purchasers of the same located in the various States of the United States other than the State of New York.

There is now, and at all times herein mentioned has been, a course of trade and commerce by said respondent in said merchandise so sold by it between and among the various States of the United States.

PAR. 3. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of knitted outerwear to retail dealers and others in commerce between and among the various States of the United States.

PAR. 4. Respondent in the course and conduct of its business in soliciting the sale of and selling its said merchandise, caused and now causes labels to be affixed to certain items thereof on which labels appear the featured name "Kashmoor." Said products were and are advertised by the respondent in newspapers and trade publications having an interstate circulation under the featured name "Kashmoor," and as "knitted dresses with that luxuriously soft cashmere feel."

PAR. 5. Such statements and representations on the part of the respondent serve as representations to retail dealers and to the members of the public that such items of wearing apparel so advertised

and offered for sale are composed of cashmere, the wool from the Tibetan or Kashmir goat.

Such representations were and are false and misleading in that said items of wearing apparel so represented, designated, and referred to were not composed of cashmere.

PAR. 6. The word "cashmere" for many years last past has had, and still has, in the minds of the consuming public, a definite and specific meaning, to wit, the wool of the Tibetan or Kashmir goat, from which the fabric known as cashmere is manufactured.

Wearing apparel composed of cashmere for many years has held, and still holds, great public esteem and confidence on the part of the consuming public and retail dealers, and a substantial portion of the public and many purchasers of wearing apparel prefer and desire to purchase wearing apparel made of fabric composed of cashmere, the wool of the Tibetan or Kashmir goat, as distinguished from wearing apparel made from other fabrics.

The said labeling and designation by respondent of its said products as set out herein places in the hands of retail dealers an instrument and means whereby they may pass off and sell such products as being cashmere.

PAR. 7. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were, and are, true, and to induce the purchase of such items of wearing apparel on account of such erroneous beliefs brought about as herein set forth.

PAR. 8. There are among the competitors of respondent other corporations and individuals, partnerships, and firms engaged in the wholesale sale and distribution of knitted outerwear who do not misrepresent the material of which such knitted outerwear offered for sale by them is made.

PAR. 9. By the use of the representations herein found to have been made, trade has been and is unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Cohen Brothers Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of knitted outerwear in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Kashmoor" or "cashmere" or any other words, legends, or symbols of similar import and meaning, to describe or refer to its said outerwear, that such outerwear is made from a fabric composed of the wool of the Tibetan or Kashmir goat, unless such outerwear is actually so made from a fabric so composed.

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.

Syllabus

IN THE MATTER OF
BERRY SEED COMPANY ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2873. Complaint, July 7, 1936—Decision, Sept. 9, 1938*

Where a corporation engaged in offer and sale, through catalogs distributed to farmers and other prospective purchasers, of garden and field seed such as oats, wheat, alfalfa, etc., and two individuals, officers thereof and in control of its affairs and business activities; in its aforesaid annual mail order catalogs distributed as above set forth—

- (a) Falsely represented that it was established in the year 1895, or in the year 1905, through such statements as "Berry Seed Company, Established 1895," etc., "Forty Years of Knowing Seeds Safeguards Berry Customers," and statement to effect that one of aforesaid individuals had associated himself with such Berry Seed Co. "the year they incorporated in 1905," facts being corporation in question was not incorporated until 1926, and then succeeded to and carried on business theretofore established;
- (b) Represented, as aforesaid, that all seeds sold to customers had tags attached to containers thereof setting forth percentage of purity and percentage of germination, and that their seed-testing facilities were such that corporation was able to determine exact germination of seed sold by it, and that all seed offered by it was tested "with painstaking accuracy" in its seed-testing laboratories, and that such seed was distinctly a superior product and that germinating power thereof was of the highest and every pound guaranteed to grow, and that customers could rely upon representations appearing on tags and labels, facts being not all containers were tagged and labeled as aforesaid, and every pound of seed sold by it as aforesaid did not grow, many of its said seeds were not of superior quality represented, nor, in many cases, high in germination, and seed labeled and shipped by said corporation as aforesaid was in fact misbranded under the laws of States into which shipped as respects standards of germination and purity and recognized and established tolerances therefor;
- (c) Represented that they were experts in cleaning seed and possessed finest equipment for such purpose, and that all seed sold or offered by them was cleaned with corporation's own cleaning equipment, and featured words "RECLEANED SEED," and repeatedly asserted and called attention to alleged fact that its said seed was re-cleaned and freed of weed seeds and seeds declared noxious under provisions of pure seed laws of many of the States, and emphasized its supposedly superior cleaning machinery used in its cleaning and its expertness in such operations, facts being it did not clean all seed sold or offered by it with its aforesaid equipment, but sold, without cleaning, seed purchased from other houses and dealers engaged in sale of such products and cleaned by them prior to purchase by it, its said seed did in fact contain considerable quantities of weed seed, including noxious weeds and other foreign matter, contrary to its