

Complaint

IN THE MATTER OF
LEVY BROS. CHINA CO., INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3068. Complaint, Mar. 4, 1937—Decision, Dec. 13, 1938*

Where words "Limoges Dec." had for many years come to signify and mean porcelain or chinaware which had long since been produced at Limoges in France, and been imported therefrom into various countries of Europe and America, and come to be well and favorably known as china or porcelain of superior quality, utility, and beauty, and, as such, had come to enjoy a goodwill and a growing and increasing popular demand; and thereafter a corporation engaged in processing and decorating chinaware and earthenware products and in offering, selling, and distributing the same in commerce among the various States and in the District of Columbia to wholesale and retail dealers, including department stores and auctioneers—

Branded, or caused to be branded, with words "Limoges Dec." on visible surface of its said products, and represented through said words thus branded thereon, that products in question originated in or came from city aforesaid, notwithstanding fact none of such products, thus referred to and branded by it, originated in or were obtained from France or from city of Limoges therein, and no part of the processing or decorating of said products referred to, and including designs and decorations appearing thereon, was done or applied in such city, and such designs and decorations were not peculiar to or characteristic of the artistry and decorations of chinaware products made and decorated in Limoges;

With result of placing in hands of dealers selling such products means of misleading and deceiving consuming public into purchase thereof, and with tendency and capacity to mislead and deceive members of purchasing public and of retail trade dealing in products aforesaid into false and erroneous belief that they originated in or came from Limoges, France, and were decorated at city in question with designs and decorations peculiar to and characteristic of the artistry and decoration of chinaware products there made and decorated, and of thereby causing members of said public and of retail chinaware trade to buy and deal in its products in lieu and in place of those of competitors, and of thus diverting trade to it from its competitors who do not misbrand or falsely or misleadingly mark or represent their products:

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

Mr. Jay L. Jackson for the Commission.

Mr. James W. Bevans, of New York City, for respondent.

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Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade

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Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Levy Bros. China Co., Inc., a corporation, hereinafter referred to as respondent, has been and now is 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, Levy Bros. China Co., Inc., is now, and since 1931 has been, 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 467 Keap Street, in the city of Brooklyn, State of New York. Said respondent is now, and since the date of its said organization has been, engaged in the business of processing, decorating, and selling, offering for sale, and distributing chinaware and earthenware products in commerce among and between the various States of the United States, and in the District of Columbia, and has caused and now causes said products, when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipment, and in and to the District of Columbia. In the course and conduct of the business of respondent, as aforesaid, respondent has been, and is now, in competition with other corporations, firms, partnerships, and individuals engaged in offering for sale and selling chinaware, earthenware, glassware, and other pottery in like commerce.

PAR. 2. There is now, and for more than 150 years approximately there has been, manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which during said time has been, and is now, designated, described, and known as porcelainware, or as china or chinaware by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the nineteenth century, porcelainware, or chinaware as it gradually came to be called, began to be exported from Limoges, in France, into the various countries of Europe and America, particularly into the United States of America and into and through the several States thereof. Such products immediately thereupon acquired a favorable and valuable reputation in the United States as porcelain or china of superior quality, utility, and beauty, resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the said products of Limoges, France. For many years prior to incorporation of respondent herein, and during all times material to this complaint, the said products manufactured

at Limoges, in France, and imported therefrom into the United States, have been and are now widely and generally known, and the word "Limoges" has for many years heretofore come to signify and mean, and now signifies and means, porcelain or china, or porcelain-and china-ware, manufactured at Limoges, in France, and imported into the United States therefrom.

PAR. 3. In the course and conduct of the business of respondent, as aforesaid, respondent did and does purchase and obtain supplies of both foreign and domestic made undecorated chinaware and earthenware products, otherwise known as "blanks," which respondent did and does cause to be processed, decorated, and branded, labeled, or marked, all as more particularly hereinafter set forth, and then offered for sale and sold, in commerce, as aforesaid, to various wholesale and retail dealers in such products, including department stores and auctioneers.

PAR. 4. In the course and conduct of the business aforesaid, respondent did and does misbrand and falsely and misleadingly label, mark, and represent certain of its said products by causing the words "Limoges Dec." to appear on said products, in such a way as to represent on the visible surface thereof that the said products, or the designs or decorations appearing thereon, originated in the city of Limoges, France; that the same were and are decorated in the city of Limoges, France, and that the designs or decorations appearing thereon were and are "Limoges Decorations"; whereas, in truth and in fact, the aforesaid words do not properly and truthfully describe and represent said products, and whereas, in truth and in fact, said products, and the decorations appearing thereon, did and do not originate, and were and are not made or applied in Limoges, France, and whereas further, the decorations appearing thereon were not and are not "Limoges Decorations" or designs, but the same were and are decorated elsewhere than in Limoges, France, and with designs or decorations which were not and are not peculiar to, or characteristic of, the artistry and decorations of chinaware products made and decorated in Limoges, France.

PAR. 5. The aforesaid misbranding, false and misleading labeling, marking, representations, acts, and conduct of respondent have placed and place, and each of them has placed and places, in the hands of dealers selling products of respondent the means to mislead and deceive the consuming public into the purchase of respondent's said products as and for chinaware products made and decorated in Limoges, France, and as and for chinaware products bearing a design or decoration which is peculiar to, and characteristic of, the artistry

and decorations of chinaware products made and decorated in Limoges, France.

PAR. 6. The aforesaid misbranding, false and misleading labeling, marking, representations, acts, and conduct of respondent in the sale and distribution of its said products have had and have the tendency and capacity to mislead and deceive, and do mislead and deceive, members of the public and of the wholesale and retail trades into the false and erroneous belief that the aforesaid representations are true; that the said products, and the decorations appearing thereon, originated in the city of Limoges, France; that the same were and are decorated in the city of Limoges, France, and that the designs or decorations appearing thereon were and are "Limoges Decorations," thereby causing said members of the public and of the wholesale and retail trade to buy and deal in said products of respondent in lieu and in place of competing products of respondent's competitors, and in consequence thereof unfairly to divert trade to respondent from its competitors who do not misbrand or falsely and misleadingly label, mark, and represent their products.

PAR. 7. The above acts, conduct, and things done by respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce 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 the 4th day of March 1937, issued and thereafter served its complaint in this proceeding upon respondent, Levy Bros. China Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 23d day of March 1937, respondent filed its answer in this proceeding. Thereafter, a stipulation as to the facts was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Clarence Levy, the president of the respondent company, 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 Commission may proceed upon said statement of facts, together with the facts admitted by respondent's said answer to the complaint, 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 hearing before the Commission on said complaint, answer and stipulation, the said stipulation having been approved, accepted and filed, 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Levy Bros. China Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 467 Keap Street, in the city of Brooklyn of said State.

Since 1931, said respondent has been, and now is, engaged in the business of processing and decorating chinaware and earthenware products, and in offering for sale, selling, and distributing the same in commerce among and between the various States of the United States, and in the District of Columbia, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from the State of New York to various States of the United States other than the State of New York, and in and to the District of Columbia, in the course and conduct of which said respondent has been, and is, in competition with other corporations, and with firms, partnerships, and individuals engaged in the business of offering for sale, selling, and distributing chinaware and earthenware products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. There is now, and approximately for 150 years has been, manufactured at Limoges, in France, a vitreous and translucent ware which during said time has been, and now is, described, designated, and known as porcelainware, and as china or chinaware by reason of its origin or initial manufacture in China before its introduction into Europe. In the early part of the nineteenth century, china, as it gradually came to be called, began to be exported from Limoges in France into the various countries of Europe and America, and into and through the several States thereof. Such chinaware immediately thereupon acquired a favorable reputation in the United States as china or porcelain of superior quality, utility, and beauty, resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the products of

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Limoges, France. For many years past, the said products manufactured at Limoges, France, and imported therefrom into the United States, have been, and now are, widely and generally known, and the word "Limoges" has for many years heretofore come to signify and mean, and now signifies and means, a porcelainware or chinaware product manufactured at Limoges, in France.

PAR. 3. It has been, and is, the practice of respondent to offer for sale, sell, and distribute its aforesaid products to wholesale and retail dealers, including department stores and auctioneers, and purchasers of such products located in the various States of the United States and in the District of Columbia. With respect to certain of said products, it has been the practice of respondent to brand the same with the words "Limoges Dec.," or cause said words to appear on the visible surface thereof, in such a way as to represent to said purchasers thereof that the said products originated in the city of Limoges, France, that the same were and are decorated in the city of Limoges, France, and that the designs and decorations appearing thereon were and are peculiar to, or characteristic of, the artistry and decorations of chinaware products made and decorated in Limoges, France.

The words "Limoges Dec." when branded or appearing on chinaware products represent, and are understood by members of the retail chinaware trade and members of the purchasing public to mean, that said products bearing these words originated in or from the city of Limoges, France. The word "Dec.," standing alone or combined with the word "Limoges," when branded or appearing on chinaware products, and as branded and appearing on respondent's products, has no meaning or significance which is recognized by the members of the retail chinaware trade in general or by members of the purchasing public.

The words "Limoges Dec.," as caused by respondent to appear upon its said chinaware products, were and are intended by respondent to refer to, and be descriptive of, the designs and decorations appearing on said products. As so used, however, the said words further represent to members of the retail chinaware trade and members of the buying public that the designs and decorations appearing on said products originated, and are applied to said products, in the city of Limoges, France, and that the same are peculiar to, and characteristic of, the artistry of the city of Limoges, France.

Designs and decorations which have been, and are, applied to chinaware products in the city of Limoges, France, vary greatly in kind and number and are such as possess no recognized characteristics or peculiarities by which the same are, or may be, distinguished

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from designs and decorations originating in, or applied by decorators located in, the United States or elsewhere outside of the city of Limoges, France.

PAR. 4. In truth and in fact none of the products above referred to, and branded by respondent with the words "Limoges Dec.," originated in, or were obtained from, the country of France, more particularly in or from the city of Limoges, France, and no part of the processing or decorating of said products referred to, inclusive of the designs and decorations appearing thereon, was done or applied in the city of Limoges, France, and the designs and decorations appearing thereon were not and are not peculiar to, or characteristic of, the artistry and decorations of chinaware products made and decorated in the city of Limoges, France.

PAR. 5. The branding, imprinting, and representations of respondent as set forth and referred to in the foregoing paragraphs have placed and place in the hands of dealers selling products of this kind the means with which to mislead and deceive the consuming public into the purchase of respondent's chinaware products, and the same have had and have the tendency and capacity to mislead and deceive members of the purchasing public and of the retail trade dealing in such products into the false and erroneous belief that said products originated in or from the city of Limoges, France, that the same were decorated in the city of Limoges, France, and are decorated with designs and decorations peculiar to, and characteristic of, the artistry and decorations of chinaware products made and decorated in Limoges, France, thereby causing members of the purchasing public and of the retail chinaware trade to buy and deal in the products of the respondent in lieu and in place of the products of competitors of respondent. As a consequence thereof trade is diverted to respondent from its competitors who do not misbrand, or falsely and misleadingly mark or represent their products.

CONCLUSION

The aforesaid acts and practices of the respondent, Levy Bros. China Co., Inc., 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 the respondent, and a stipulation as to the facts entered into between

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respondent herein 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 proceed upon said statement of facts, together with the facts admitted by respondent's answer to the complaint herein, to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding, 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 respondent Levy Bros. China Co., Inc., its officers, agents, employees, and representatives, in connection with the offering for sale, sale and distribution of its chinaware or earthenware products, in interstate commerce or in the District of Columbia, do forthwith cease and desist, directly or indirectly, from :

1. Representing that said products are "Limoges" or originated in or from the city of Limoges, France, when such is not the fact;

2. Representing that said products have been decorated in the city of Limoges, France, when such is not the fact;

3. Representing that said products are decorated with designs or decorations which are peculiar to, or characteristic of, the artistry of the city of Limoges, France.

4. Representing, through the use of the words and letters "Limoges Dec.," or any other word or words of similar import and meaning, or in any other manner, that said products were manufactured in the city of Limoges, France, or are decorated with designs or decorations which are peculiar to, or characteristic of, chinaware or earthenware products made in the city of Limoges, France, when such are not the facts.

It is further ordered, That 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

R. E. LEADERBRAND AND GLADYS M. LEADERBRAND,
TRADING AS F. B. PRODUCTS COMPANY AND F. B.
DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3292. Complaint, Jan. 4, 1938—Decision, Dec. 13, 1938*

Where two individuals engaged in sale and distribution of certain medical preparations for use in treatment of diseases, ailments, and conditions peculiar to women, and in conducting their said business principally by mail and express, and in selling their said products to purchasers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products and others designed and intended for similar use by women, in commerce as aforesaid, and including those who do not in any way misrepresent the nature or character of their products and do not make use of any misleading representations as hereinbelow set out, or make other representations with respect to therapeutic value thereof; in advertising, through booklets, pamphlets, and circulars, certain products offered, sold, and distributed as aforesaid, which were variously known and described as "F. B. Regulators," "F. B. Tablets," "F. B. Relief Compound," "F. B. Vagettes," and "F. B. Vagi-Tabs," and which were purchased by said individuals in bulk from manufacturing chemists who made no representations as to purpose or efficacy of said products, other than stating chemical formulae thereof—

- (a) Represented that said pharmaceutical preparations designated "F. B. Regulator," "F. B. Tablets," and "F. B. Relief Compound," formed safe, competent, or reliable cures, remedies, or effective treatments for delayed, sluggish, painful or suppressed menstruation, and for menstrual disorders generally, and were effective to tone up generative organs, and whole system, and constituted abortifacients and competent and effective contraceptives, and were safe and harmless and produced no bad after effects or other injury, and were recommended by famous doctors, facts being they were not thus recommended and were not effective as competent and reliable treatments or remedies for aforesaid purposes, and would not accomplish results above claimed and represented, and were not absolutely safe or harmless treatments, or always effective, as aforesaid, and might cause serious injury if used as set out by it; and
- (b) Represented that said pharmaceutical preparations designated "F. B. Vagettes" and "F. B. Vagi-Tabs," constituted effective, potent or powerful germicides under the conditions of use for so-called feminine hygiene purposes, and were effective in the prevention of venereal or other diseases and as prophylactics, and were positive dependable contraceptives, and served as competent and effective deodorants, and might be used safely and without fear of harmful after effects or other injury, facts being said products were not safe, competent, and effective preventives of object above set forth, and were not composed of medicinal agents which were effective to