

Complaint

IN THE MATTER OF
W. S. LIBBEY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3638. Complaint, Oct. 27, 1938—Decision, Feb. 24, 1939*

Where a corporation engaged in manufacture of blankets, and in sale and distribution thereof under trade name "Golden Fleece," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in manufacture, sale, and distribution, as aforesaid, of such blankets, and including those who do not, through use of labels, falsely represent that the material from which their blankets are made is composed chiefly, or entirely, of wool, when such is not the fact—

Represented, through use of "fleece" in its trade name and on labels attached to its said blankets, to members of the purchasing public, that such products were made from material composed entirely of wool, or that chief constituent thereof was wool, facts being they were made chiefly, if not entirely, of cotton, and wool content thereof was negligible;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that composition thereof was chiefly, if not entirely, wool, and with result that substantial portion of such public, acting upon such erroneous and mistaken belief and by reason of preference for such blankets made from wool rather than those made from materials containing other products, purchased substantial volume of said goods, and trade was unfairly diverted to it from competitors:

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

Mr. Alden S. Bradley for the Commission.

Skelton & Mahon, of Lewiston, Maine, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that W. S. Libbey Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, W. S. Libbey Co., is a corporation existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business in the city of Lewiston, in the State of Maine. Respondent now is, and for many years last

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past has been, engaged in the manufacture, sale, and distribution of blankets under the trade name "Golden Fleece." Respondent causes, and has caused, its said products, when sold, to be transported from its place of business in the State of Maine to the purchasers thereof located in the various States of the United States other than the State of Maine and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a constant current of trade and commerce in such merchandise into and through the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent now is, and at all times herein mentioned has been, in competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the manufacturing, sale, and distribution of blankets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. A substantial majority of the blankets sold and distributed by the respondent in said commerce, as aforesaid, are labeled "Golden Fleece." Through the use of the word "fleece" in the trade name used on the labels attached to said blankets, respondent represents and implies that the blankets are made from material composed entirely of wool, or that the chief constituent of the material from which said blankets are made is wool.

In truth and in fact the blankets, labeled "Golden Fleece" and sold and distributed by the respondent in said commerce, as aforesaid, are not made from material composed entirely of wool or from material in which the chief constituent is wool, but are made from material composed chiefly, if not entirely, of cotton and the wool content thereof, if any, is negligible.

PAR. 4. There are among the competitors of the respondent those who manufacture and who sell and distribute blankets in said commerce who do not by their labels falsely represent and imply that the material from which said blankets are manufactured is composed chiefly or entirely of wool when such is not the fact.

PAR. 5. A substantial portion of the purchasing public has a preference for blankets made from a material composed of wool rather than for blankets made from materials containing products other than wool. The use of the word "fleece" in the trade name and on the labels attached to said blankets has a tendency and capacity to, and does, lead purchasers and prospective purchasers of said blankets erroneously and mistakenly to believe that the material from which such blankets are made is chiefly, if not entirely, composed of wool.

As a result of the mistaken and erroneous belief, as aforesaid, a substantial portion of the purchasing public has been induced to purchase blankets from the respondent, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not misrepresent the materials from which their products are made.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of the respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 27, 1938, issued, and on October 28, 1938, served, its complaint in this proceeding upon respondent, W. S. Libbey Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices 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 hearings as to said 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 facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. S. Libbey Co., is a corporation existing and doing business under the laws of the State of Maine, with its principal office and place of business located in the city of Lewiston, State of Maine.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing, selling, and distributing blankets under the trade name "Golden Fleece." Said blankets, when sold, are transported by respondent from its office and principal place of business in the State of Maine to purchasers thereof located at

various points in States of the United States other than the State from which said shipments are made, and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a current of trade and commerce in said merchandise distributed and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now and has been in substantial competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the business of manufacturing, selling, and distributing blankets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. A substantial majority of the blankets sold and distributed by respondent, as aforesaid, are labeled "Golden Fleece." Respondent's use of the word "fleece" in its trade name and on labels attached to its blankets serves as a representation to members of the purchasing public that respondent's blankets are made from material composed entirely of wool, or that the chief constituent from which said blankets are made is wool.

In truth and in fact the blankets, labeled "Golden Fleece," and sold and distributed by respondent in commerce, as herein set out, are not made from material composed entirely of wool or from material in which the chief constituent is wool. In fact, said blankets are made from material composed chiefly, if not entirely, of cotton. The wool content of respondent's said blankets is negligible.

There are, among the competitors of respondent, corporations, individuals, firms, and copartnerships likewise engaged in the business of distributing and selling blankets in similar commerce, who do not, by use of labels, falsely represent that the material from which their blankets are manufactured is composed chiefly or entirely of wool, when such is not the fact.

PAR. 4. The use of the word "fleece" in the trade name and on the labels attached to respondent's blankets has a tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the material from which respondent's blankets are made is chiefly, if not entirely, composed of wool.

Further, a substantial portion of the purchasing public has a preference for blankets made from a material composed of wool rather than for blankets made from materials containing products other than wool. Acting upon the erroneous and mistaken belief that the said blankets are made of a material whose chief, if not sole, constituent is wool and because of the said preference last above stated a

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substantial portion of the purchasing public have purchased a substantial volume of respondent's blankets, with the result that trade has been unfairly diverted to respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinabove found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the case might proceed to final hearing upon the record, 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, W. S. Libbey Co., 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 blankets and other similar products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "fleece," or any other word or term descriptive of wool, to describe, designate, or in any way refer to, any fabric or product which is not composed wholly of wool, except that in the case of fabrics or products composed in part of wool and in part of other materials, the word "fleece" may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent, and provided that if any particular fiber in said fabrics or products is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

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2. Representing in any manner whatsoever that the fabrics or products manufactured or sold by it contain wool in greater quantity, percentage or degree than is actually the case.

This order shall not be construed as approving the use of the term "fleece" to designate, describe, or refer to any wool which is not virgin wool.

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
SPECIALTIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3248. Complaint, Oct. 20, 1937—Decision, Feb. 25, 1939*

Where a corporation engaged in manufacture and sale of assortments of candy which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to purchasing public, and which were composed of small pieces of candy, together with 4-section punch card for sale and distribution of said candy to the penny purchasers under a plan and in accordance with said card's explanatory legend, pursuant to which purchaser received only 1, or received number of pieces ranging from 2 to 20 in accordance with success or failure in selecting by chance certain numbers, and last sale in each of said card's 3 sections received 5 pieces and last sale on card entitled purchaser to 20 pieces—

Sold to wholesalers and jobbers for display and resale by retail dealer buyers thereof to purchasing public in accordance with aforesaid sales plan, such assortments and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of its said merchandise in accordance with such sales plan above described involving game of chance or sale of a chance to procure merchandise at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the laws of several States, and in competition with many who sell and distribute like or similar candies and are unwilling to offer for sale and sell their said product by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, or any other method contrary to public policy, and refrain therefrom;

With effect of inducing purchasers of its said merchandise to buy same in preference to like or similar products offered and sold by its competitors who do not use such sales plan or method in sale and distribution of their said product, and with result that many purchasers of its said merchandise were attracted by element of chance involved in its said sales plan or method and were thereby induced to buy its said product in preference to like or similar merchandise of competitors who did not or do not use such or equivalent methods, and wholesalers and jobbers, by reason of such preference on part of members of purchasing public, were induced and persuaded to buy its said merchandise in preference to like or similar articles sold or distributed by its said competitors and it sold, as consequence thereof, substantial quantities of its said merchandise and trade was unfairly diverted to it from competitors aforesaid:

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. William C. Reeves*, trial examiner.

Mr. D. C. Daniel and *Mr. Henry C. Lank* for the Commission.