

Syllabus

IN THE MATTER OF

SEYMOUR BURN, ARTHUR POLLAK AND FRANZ BEER,
TRADING AS BURN, POLLAK & BEERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3696. Complaint, Jan. 26, 1939—Decision, Mar. 18, 1939*

Where partners engaged in soliciting orders for line of fabrics known as "Loden Cloth," for principals without United States, and in importing said cloth into United States and transporting same from warehouses to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in sale and distribution of such cloth in commerce and in said District, and including some who sell and distribute such cloth loomed in the Tyrol in that territory formerly part of Austria, and others who sell and distribute such cloth loomed in other Central European localities and countries; with intent that tailoring concerns would use and disseminate such statements and representations in connection with sale and distribution of commodities made by said concerns from such loden cloth—

- (a) Represented, through statements which they disseminated or caused to be disseminated throughout the United States to such concerns purchasing such cloth, that term Tyrolean woven loden cloth can be truthfully applied only to product of one famous Austrian mill, and that genuine Tyrolean loden cloth can be procured in United States only through themselves; and
- (b) Represented, as aforesaid, that the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it magnificent finish and stamp of authenticity which defies imitation elsewhere, and that such cloth is loomed only from the wool of sheep grown in the Tyrol;

Facts being such cloth is made in many countries other than in the Alps in Tyrol in that territory formerly part of Austria, genuine Tyrolean loden cloth is produced by many mills in the Tyrol, and, during times involved, was not offered in the United States exclusively by or through them, waters in Tyrol do not give to such cloth any peculiar or distinctive qualities which cannot be obtained in such cloth produced elsewhere, and loden cloth fabric sold and distributed by them in the United States contained some wool from sheep grown in localities other than in Tyrol;

With effect of causing members of purchasing public situated in the various States and in said District to have an erroneous and mistaken belief that such false and misleading statements and representations were true, and to purchase substantial quantities of such cloth because of such erroneous and mistaken belief, and of thereby unfairly diverting trade to themselves from their said 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.

Mr. Charles S. Cox for the Commission.

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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 Seymour Burn, Arthur Pollak, and Franz Beer, hereinafter referred to as respondents, have 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. Respondents, Seymour Burn, Arthur Pollak, and Franz Beer, are copartners trading as Burn, Pollak & Beer, with their office and principal place of business at 381 Fourth Avenue, New York, N. Y.

PAR. 2. The respondents are now, and for more than 18 months last past have been engaged in the business of soliciting orders for a line of fabrics known as loden cloth for principals located outside the United States. Respondents cause said cloth, when ordered, to be shipped by the foreign principals into the United States from foreign countries and cause said cloth to be transported from warehouses in the State of New York to customers located in other States of the United States and in the District of Columbia.

Respondents sell and have sold said cloth to tailoring concerns and at all times mentioned herein have caused said tailoring concerns to maintain a course of trade in said cloth in commerce between and among the various States of the United States and in the District of Columbia, some of which handle loden cloth loomed in the Province of Tyrol and others of which handle loden cloth loomed in other Central European localities and countries.

PAR. 3. In the course and conduct of their business, respondents are in active and substantial competition with other individuals and with corporations, firms, and other partnerships engaged in the sale and distribution of loden cloth in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of said loden cloth the respondents have made many representations concerning the character and nature of said loden cloth. Respondents, aforesaid, have made representations to tailoring concerns to induce tailoring concerns to purchase said loden cloth and were calculated and intended to induce tailoring concerns to act thereon and that tailoring concerns would republish and use the same representations in advertising and selling commodities made by said tailoring concerns from said loden cloth

in commerce between and among the various States of the United States and in the District of Columbia.

Among said representations made by the respondents are those of the following import and effect:

(a) Tyrolean woven loden cloth can only be applied to genuine fabric which is only the product of one famous Austrian mill.

(b) Genuine Tyrolean loden cloth can only be procured in the United States through respondents.

(c) That the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it a magnificent finish and a stamp of authenticity that defies imitation by man elsewhere.

(d) Tyrolean loden cloth is loomed only from wool of sheep grown in the Tyrol.

All said statements, together with similar statements, purport to be descriptive of respondents' product.

PAR. 5. The representations made, or caused to be made, by respondents with respect to the nature of its product are grossly exaggerated and untrue. In truth and in fact, loden cloth is made in many countries and is not confined to the Alps in the Tyrol in that territory which was formerly Austria. Genuine Tyrolean loden cloth is produced by many mills in the Tyrol in the territory which was formerly Austria. At the time of the making of said representations by respondents, genuine Tyrolean loden cloth was not offered exclusively in the United States by or through respondents. The waters in the Tyrol do not give to the Tyrolean loden cloth any peculiar or distinctive qualities that defy imitation by man or otherwise. The loden fabrics used and sold by respondents in the United States of America are not woven of fine Tyrolese wool, and in truth and in fact, contain the wool from sheep grown in and from other regions.

PAR. 6. The false and misleading statements and misrepresentations made as alleged in paragraph 4 hereof are calculated to, and have had, and now have, a tendency and capacity to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs that only respondents and those to whom they sell have genuine Tyrolean loden cloth in the United States; that only one mill in the Province of Tyrol produces genuine loden cloth; that only that loden cloth, the fiber of which has been washed in the waters of the Tyrolean streams, has the appearance and finish of genuine loden cloth; and that genuine Tyrolean loden cloth is made only from the wool of sheep grown in the Tyrol; and were, and are, calculated to, and have had, and now have, the tendency and capacity to, cause,

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and have caused, business to be unfairly diverted to respondents from their said competitors. As a consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition 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 January 26, 1939, issued and thereafter served its complaint upon the respondents Seymour Burn, Arthur Pollak, and Franz Beer, copartners, trading as Burn, Pollak & Beer, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 23, 1939, respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Seymour Burn, Arthur Pollak, and Franz Beer, are copartners, trading as Burn, Pollak & Beer, and having their office and principal place of business at 381 Fourth Avenue, New York City, N. Y.

PAR. 2. Respondents are now and have been for more than 18 months last past engaged in the business of soliciting orders for a line of fabrics known as "Loden Cloth" for principals located outside the United States. Respondents cause said cloth when ordered to be imported into the United States and to be transported from warehouses in the State of New York to purchasers thereof, in their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have main-

tained, a course of trade in commerce in said loden cloth between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents are in active and substantial competition with other individuals and partnerships and with corporations and firms engaged in the sale and distribution of loden cloth in commerce between and among the various States of the United States and in the District of Columbia. Some of said competitors of the respondents sell and distribute loden cloth loomed in the Tyrol in that territory which was formerly a part of Austria, and others of said competitors sell and distribute loden cloth loomed in other Central European localities and countries.

PAR. 4. In the course and conduct of their said business, and to induce the purchase of said loden cloth, respondents have disseminated, or caused to be disseminated, throughout the United States various statements and representations relative to the quality and nature of said loden cloth. Respondents have made such statements and representations to tailoring concerns, purchasers of said loden cloth, with the intention that said concerns would use and disseminate such statements and representations in connection with the sale and distribution of commodities, made by said concerns from said loden cloth, in commerce between and among the various States of the United States and in the District of Columbia.

The statements and representations by the respondents, used and disseminated in the manner aforesaid, are as follows:

(a) That the term Tyrolean woven loden cloth can be truthfully applied only to the product of one famous Austrian mill.

(b) That genuine Tyrolean loden cloth can be procured in the United States only through respondents.

(c) That the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it a magnificent finish and a stamp of authenticity that defies imitation by man elsewhere.

(d) That Tyrolean loden cloth is loomed only from the wool of sheep grown in the Tyrol.

The aforesaid statements and representations, together with others similar thereto not herein set out, purport to be descriptive of the quality and nature of respondents' products.

PAR. 5. The aforesaid statements and representations by the respondents, used and disseminated as aforesaid, are grossly exaggerated and untrue. In truth and in fact, loden cloth is made in many countries other than in the Alps and Tyrol in that territory which was for-

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merly a part of Austria. Genuine Tyrolean woven loden cloth is produced by many mills in that territory known as the Tyrol. During the times mentioned herein genuine Tyrolean loden cloth was not offered in the United States exclusively by or through the respondents. The waters in the Tyrol do not give to the Tyrolean loden cloth any peculiar or distinctive qualities which cannot be obtained in loden cloth produced elsewhere. The loden cloth fabrics sold and distributed by the respondents in the United States contain some wool from sheep grown in localities other than in the Tyrol.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations have the tendency and capacity to, and do, cause members of the purchasing public situated in various States of the United States and in the District of Columbia to have the erroneous and mistaken belief that said false and misleading statements and representations are true and into purchasing substantial quantities of said loden cloth because of said erroneous and mistaken belief. As a result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been, and is now, unfairly diverted to the respondents from their said competitors.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Seymour Burn, Arthur Pollak, and Franz Beer, individually and as copartners, trading as Burn, Pollak & Beer, or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of loden cloth, or any cloth or fabric of similar weave or

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content, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly:

(a) That any mill or plant located in that European territory known as the Tyrol is the sole producer of Tyrolean woven loden cloth.

(b) That Tyrolean woven loden cloth can be procured in the United States only through or from the respondents.

(c) That the water in the Tyrol gives Tyrolean woven loden cloth distinctive qualities which can not be obtained in loden cloth produced elsewhere.

(d) That said loden cloth is made wholly of Tyrolese wool unless and until said cloth is made wholly and exclusively from the wool of sheep grown in the Tyrol.

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

IN THE MATTER OF
GRAND GASLIGHT, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2596. Complaint, Oct. 23, 1935—Decision, Mar. 21, 1939

Where a corporation engaged in sale of incandescent lamps for general lighting service and operation in connection with electric current supplied by public service corporations, and in selling its said products through salesmen and the mails to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such products in commerce and in said District, and including many who correctly brand their said products as to wattage and voltage—

- (a) Represented and implied to purchasers of its said bulbs that it was the manufacturer thereof and owned and operated, or directly and absolutely controlled manufacturing plant in which such products were made, through statement "Manufacturers and importers of electric light bulbs" on folders, statements, and letterheads sent to prospective purchasers and to purchasers, facts being it did not make any such bulbs during period in question, but purchased same from domestic corporation and from foreign sources, and did not own, operate, nor control plant in which such bulbs were manufactured; and
- (b) Caused bulbs offered and sold by it to be marked with figures and letters misleadingly and prejudicially indicative of wattage and voltage of particular product, facts being its said bulbs, marked in accordance with custom and practice in industry, did not, due allowance made for recognized and established tolerances, produce light and consume current as thus indicated, but, excepting those marked "25-W, 120-V," produced less light and consumed more current than indicated, purchasers of such bulbs would, with exception aforesaid, use substantially more electricity and secure substantially less light from bulbs than indicated by markings thereon, bulbs excepted as aforesaid produced less light and consumed less current, and all bulbs tested were, as compared with recognized standards, of inferior quality as producers of light;

With tendency and capacity to mislead and deceive many members of purchasing public and cause them erroneously and mistakenly to believe that it was the manufacturer of the bulbs offered and sold by it, and that said bulbs were of wattage and voltage indicated by letters and figures thereon, on which ordinary purchaser must rely in determining value or efficiency of such products, and to cause such members, because of said erroneous and mistaken belief, to purchase substantial quantities of its said products and thus unfairly divert trade in commerce to it from its competitors who do not misrepresent their business status, and who truthfully brand and mark their products:

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

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

Mr. Clark Nichols for the Commission.