

Complaint

IN THE MATTER OF
CHENILLE CORPORATION OF AMERICACOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3201. Complaint, Aug. 10, 1937—Decision, July 21, 1939*

Where a corporation engaged in manufacture of chenille yarns and of loom rugs and hooked rugs for sale to jobbers and department stores, and, in selling same to purchasers in various States, in substantial competition with those engaged in manufacture and sale of hooked rugs similar thereto—

Represented as "hand-hooked" or "hand-made" rugs, machine-made rugs sold by it to department stores, and, in other instances, left with buyer, without direct representation, impression that such rugs, cost of which to it was lower than that of its former genuine hand-made rugs, were hand hooked or hand made;

Notwithstanding fact said rugs, thus represented by it and advertised by department store purchasers, thus misled, in newspapers, as "Hand-hooked, Requiring Hours and Hours to Produce," and "Hand-Made," etc., were not, as aforesaid, fashioned and produced by craftsmen expert in the art of making rugs by hand, as long understood in the rug industry from term "hand-hooked" as meaning "hand-made," and as similarly associated by purchasing public with former term and latter meaning, with their valuable good will as thus applied;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such rugs were genuine hand-made or hand-hooked rugs, purchased and used by many among the public, and especially decorators and antique collectors, in preference to the machine-made product, as much superior in quality and in durability, and into purchase of such rugs because of such erroneous and mistaken belief, and of thereby diverting trade unfairly to it from its competitors aforesaid who truthfully represent the manner of manufacture of their respective products:

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

Before *Mr. Arthur F. Thomas* and *Mr. Miles J. Furnas*, trial examiners.

Mr. DeWitt T. Puckett, *Mr. Joseph C. Fehr*, and *Mr. R. A. McQuat* for the Commission.

Mr. Samuel R. Wittelle, of Chicago, Ill., 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 Chenille Corporation of America, 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, 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:

PARAGRAPH 1. Respondent, Chenille Corporation of America, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at 3945 North Western Avenue, in the city of Chicago, in the State of Illinois. Respondent, for more than 2 years last past has been, and still is engaged in the business of manufacturing rugs, and in offering said rugs for sale and selling the same in commerce between the State of Illinois and the several States of the United States, and in the District of Columbia. When said rugs are sold, respondent transports, or causes the same to be transported from its place of business in the State of Illinois to the purchasers thereof located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than 2 years last past, and still is, a constant current of trade and commerce in said rugs, thus manufactured, sold, and distributed by respondent between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than 2 years last past has been in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the manufacture, or in the sale and distribution of rugs in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent in soliciting the sale of and selling its said rugs, caused and now causes said rugs to be represented to retail store customers, located in various States of the United States as "hand-hooked" or "hand-made." Pursuant to these representations by the respondent, certain of said store customers advertised, and now advertise, respondent's rugs as being "hand-hooked" and "hand-made" through the use of statements such as "Every Rug is a Work of Art, Hand-Hooked, Requiring Hours and Hours to Produce," and "Every Rug Hand-Hooked."

PAR. 3. The statements and representations of respondent referred to in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to deceive purchasers and prospective purchasers of

respondent's said rugs into the false and erroneous belief that said rugs were and are "hand-made," "hand-woven," "hand-hooked" and are hooked rugs within the common understanding of those terms as set out in paragraph 4.

PAR. 4. In the rug industry, the term "hooked rug" has for many years been understood to mean, and does mean, "hand-made rug," and the purchasing public has long associated, and still associates, with the term "hooked rug" the idea and meaning of a "hand-made" or "hand-woven" rug, fashioned and produced by craftsmen expert in the art of weaving rugs by hand. The value of the hand-made output of these craftsmen is substantial, and their rugs, designated as hooked rugs, have acquired a reputation for superior wearing qualities, and there is a valuable good will in the terms "hooked," "hand-hooked," and "hand-made" as applied to said rugs. There are also among the public many purchasers who buy and use hand-woven, hand-made, and hand-hooked rugs in preference to machine-made rugs, believing that hand-woven, hand-made, and hand-hooked rugs are superior in quality and more durable than rugs made by machine.

PAR. 5. In truth and in fact, respondent's said rugs were not, and are not made by hand, so as to be properly represented, designated, and referred to as "hand hooked," "hand-made," or as "hooked" rugs. Respondent's said rugs are not the product of hand labor nor of handcraft or artistry, but are rugs made with the aid of a machine in the form of an electrically powered needle, and are of lower cost and less beauty than rugs actually "hand-made," "hand-woven," or "hand-hooked."

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof, many manufacturers, sellers, and distributors of rugs who truthfully advertise and represent their rugs as being hand-woven, hand-made, or hand-hooked. There are also among said competitors many manufacturers, sellers, and distributors of machine-made rugs who do not advertise and represent that their rugs are or have been hand-woven, hand-made, or hand-hooked when such is not the case.

PAR. 7. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof, and into the purchase of respondent's said rugs in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 6 as herein described. As a consequence thereof substantial

injury is done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 8. Said acts and practices of respondent are all to the 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 an 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 August 10, 1937, issued and served its complaint in this proceeding upon respondent, Chenille Corporation of America, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, Joseph C. Fehr, and R. A. McOuat, attorneys for the Commission, and in opposition to the allegations of the complaint by Samuel R. Wittelle, attorney for the respondent, before A. F. Thomas and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on before the Commission on said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); 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, Chenille Corporation of America, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located in the city of Chicago, State of Illinois. Respondent is now, and has been since the year 1925, engaged in the manufacture of chenille yarns, and in the manufacture of loom rugs and hooked rugs for sale to jobbers and department stores. Respondent has caused, and now

causes, said rugs, when sold, to be transported from its principal place of business in Chicago, State of Illinois, to the purchasers thereof located in the various States of the United States other than the State of Illinois. There is now, and has been for many years last past, a course of trade in commerce in said hooked rugs by respondent between and among the several States of the United States, and in the District of Columbia. Respondent is now, and has been since the year 1925, in substantial competition with other corporations and with firms and individuals also engaged in the manufacture and sale of hooked rugs, similar to those of respondent, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In 1935 respondent employed in Chicago, and in the States of North and South Carolina, 200 or 300 home workers. It supplied or furnished yarns to these workers who made the rugs in their homes, and respondent sold the finished product. In 1935 respondent ceased this practice and used thereafter a recently invented machine, under a license from the patentee. This machine contains an electric motor which supplies the power to drive the needle. This machine is hand-guided and its product is a machine-made rug in contradistinction to a "hand-hooked" or "hand-made" rug which is made without any implement other than a simple punch, and the operator uses his own manual labor or muscular force to fabricate the rug. The cost of manufacture of a machine-made rug is about 45¢ per square foot; and the cost of a hand-made rug is from 75¢ to \$1.25 a square foot.

PAR. 3. In the course and conduct of its business as herein described, respondent sold the machine-made rugs to department stores and in some instances represented them to be "hand-hooked" or "hand-made" rugs, and in other instances without direct representation left with the buyer the impression that the rugs were "hand-hooked," or "hand-made." These department stores acting under said representations or impressions then proceeded to advertise respondent's rugs in newspapers and pamphlets as "Hand-hooked, Requiring Hours and Hours to Produce," and "Hand-Made," etc.

PAR. 4. In the rug industry the term "hand-hooked" has for many years been understood to mean and does mean "hand-made." The purchasing public has long associated and still associates with the term "hand-hooked" the idea and meaning of a "hand-made" rug, fashioned and produced by craftsmen expert in the art of making rugs by hand. There is a valuable good will in the terms "hand-hooked" and "hand-made" as applied to said rugs. There are also among the public many purchasers, especially decorators and antique collectors, who buy and

use hand-made and hand-hooked rugs in preference to machine-made rugs believing that hand-made and hand-hooked rugs are very much superior in quality and more durable than rugs made by machine.

PAR. 5. There are among the competitors of the respondent many manufacturers, sellers, and distributors of rugs who truthfully advertise and represent their rugs as being hand-made or hand-hooked. There are also among said competitors many manufacturers, sellers, and distributors of machine-made rugs who do not advertise and represent that their rugs are or have been hand-made or hand-hooked when such is not the case.

PAR. 6. The aforesaid acts and practices of respondent have the capacity and tendency to, and do, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such rugs, sold and distributed by respondent, are "hand-made" or "hand-hooked," and into the purchase of such rugs because of such 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 diverted unfairly to the respondent from its said competitors who truthfully represent the manner of manufacture of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Chenille Corporation of America, 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before A. F. Thomas and Miles J. Furnas, examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondent not having filed brief and oral argument not having been requested); 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 the respondent, Chenille Corporation of America, a corporation, its officers, representatives, agents, and employees directly or through any corporate or other device, in connection with

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Order

the offering for sale, sale, and distribution of rugs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "hand-made" or "hand-hooked" or any other terms of similar import or meaning to designate, describe or refer to rugs which have not been made entirely by hand labor and hand craft.

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

ADELE MILLAR, DOING BUSINESS AS MME. ADELE AND
CHEZ ADELE

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

Docket 3346. Complaint, Mar. 3, 1938—Decision, July 21, 1939

Where an individual engaged in sale and distribution of her "Wonder Peel Paste" for various skin ailments and conditions, to purchasers in various other States; in advertising said product in newspapers, periodicals and other publications of general circulation throughout the United States, and in circulars, booklets, and other printed matter distributed to prospective purchasers in various States—

Represented that use of said product was effective in withdrawing toxins from the skin and accelerating the chemical changes in the living cells, and in supplying new materials to repair waste tissues, and that use thereof normalized tissues by metabolic control and would prevent or remove blemishes such as wrinkles, puffs, freckles, crepey neck, pimples, blackheads, scars, pits, liver spots, and acne, facts being it was not effective for withdrawing toxins from the skin or accelerating chemical changes as aforesaid, or supplying new materials, as above set forth, to repair waste tissues, did not have any beneficial effect on metabolism of tissues or on nutrition thereof or of the skin, and would not prevent blemishes on the skin or remove or aid in the removal of blemishes such as pimples, blackheads, puffs, scars, pits, acne, or crepey neck when such blemishes were due to or persisted because of a systemic disorder or condition, or prevent, remove or aid in removal of any blemishes due to or persisting because of such condition;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantities of her said preparation because of such erroneous and mistaken belief, and of thereby diverting trade unfairly to her from her competitors who truthfully represent effectiveness of their respective products:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Joseph C. Fehr and *Mr. Reuben J. Martin* for the Commission.

Mr. Laurenz J. Krueger, of San Francisco, Calif., 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