

Syllabus

IN THE MATTER OF

LOUIS HOFFMAN, TRADING AS L. HOFFMAN

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

Docket 4165. Complaint, June 19, 1940—Decision, Aug. 20, 1940

Where an individual engaged in manufacture, sale, and distribution of desk pads and other office accessories to retail purchasers in the various other States and in the District of Columbia for resale to retail trade and other members of purchasing public, in substantial competition with others engaged in sale and shipment, in commerce as aforesaid, of similar products; in statements and representations in numerous circulars and catalogs circulated generally among prospective purchasers throughout the United States and in said District, and through salesmen traveling through various States and in District aforesaid—

- (a) Made representation and statement "Established 1888," notwithstanding fact business was not established in year in question;
- (b) Made use of words and legends "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," to describe certain desk pads offered and sold by him, and thereby represented and implied to purchasing public that material from which said products were made was the superior and more costly top grain leather, as understood by general public from word "leather" as meaning top or hairy side of hide, notwithstanding fact he made use of no genuine top grain leather for any of his products aforesaid, but employed therefor mostly splits or first and subsequent cuts under deep buff leather, and, for "Flexhide" pads, leather imitation; and
- (c) Made use of legends "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border," to describe his aforesaid products, and represented and implied thereby to purchasing public that the superior and more costly genuine gold leaf was used in process of finishing, embossing, or tooling borders of his said products, notwithstanding fact leaf aforesaid was not employed, but borders thus described were mostly of imitation gold;

With result that retailers were enabled to mislead and deceive purchasing public as to quality of material from which said pads were made and of material with which borders thereof were finished, embossed, or tooled; and

- (d) Published and circulated depiction of various styles of pads offered by him which were identical with certain products of competitors, and indicated genuine and expensive gold leaf embossing or tooling in quality, notwithstanding fact he did not sell such products of design depicted, and pictorial representations in question in some instances were of competitor's higher priced and superior type of pad, both as to design and pattern;

With effect of misleading and deceiving purchasing public into mistaken and erroneous belief that aforesaid various representations were true, and of inducing said public, because of such belief, to purchase his said products and thereby divert trade to him from those of his competitors who do not in any manner misrepresent their products or business status:

Complaint

31 F. T. C.

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

Mr. Charles S. Cox for the Commission.

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 Louis Hoffman, an individual, trading as L. Hoffman, has violated the provisions of 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 Louis Hoffman is an individual, trading as L. Hoffman, with his principal office and place of business at 459 Broadway, New York, N. Y.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in manufacturing, selling, and distributing desk pads and other office accessories. Respondent causes said desk pads and other office accessories, when sold by him, to be transported from his said place of business in New York, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, and in the District of Columbia. Respondent's said desk pads and other office accessories are sold to retailers who in turn resell the same to the retail trade and other members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said desk pads and other office accessories in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and for more than 4 years last past has been, in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the sale and shipment of similar products 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 his aforesaid business and for the purpose of inducing the purchase of his said products, respondent has caused numerous circulars and catalogs to be circulated, containing many statements and representations concerning his said products and as to his said business, generally among prospective purchasers throughout the United States and in the District of Columbia, and through salesmen traveling through various States of the United

States and in the District of Columbia, has made many statements and representations to the purchasing public concerning his said desk pads and other products, and as to respondent's business status. Among and typical of the representations made by the respondent are the following:

Established 1888.

Flexhide Calf Finish Leather.

Genuine Top Grain Leather.

Top Grain Furniture Leather.

Grecian Gold Tooled Border.

Genuine Gold Tooled Border.

Respondent also in the conduct of his said business publishes and circulates through the means aforesaid, a pictorial presentation of various styles of desk pads offered for sale by respondent to the purchasing public. Some of the said pictorial representations of various styles of desk pads sold and offered for sale by respondent are identical with certain of those of respondent's competitors, and indicate genuine and expensive, gold-leaf embossing or tooling in quality.

Respondent in the conduct of said business, in the manner aforesaid, makes various other statements and representations of similar import and meaning concerning the character and quality of the products sold by him.

PAR. 5. In the manner aforesaid, the respondent represents and has represented that his said business was established in the year 1888. The words "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Genuine Top Grain Furniture Leather" represent and imply to the purchasing public that the material from which said desk pads are made is top grain leather, or as otherwise described, the outside or surface layer of the hide. Top grain leather is superior in quality, durability, and price to split leather. The general public believes the word leather to mean the top or hairy side of the hide. Retailers are enabled by reason of said representations of respondent to mislead and deceive the purchasing public as to the quality of the material with which said desk pads are made. The words "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border" as used in advertising and describing desk pads sold by respondent represent and imply to the purchasing public that genuine gold leaf is used and applied on the border of said product. Gold leaf finish "embossing" or "tooling" is superior in quality, durability, and price to imitation gold and the public generally believes the words "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" mean that genuine gold leaf is used in the process of finishing, "embossing," or "tooling" the borders of respondent's said desk pads.

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By reason of respondent's said representations, retailers are enabled to mislead and deceive the purchasing public as to the quality of gold material with which said desk pads' borders are finished, "embossed or tooled."

PAR. 6. In truth and in fact, respondent's business was not established in the year 1888 and respondent does not use genuine top grain leather in any of his said desk pads, and his said desk pads are composed of splits, which are the first and subsequent cuts under the deep buff leather, and artificial leather is used in said desk pads which are described as "Flexide." In most cases, respondent's "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" are made of imitation gold, and gold leaf is not used in the process. In truth and in fact, respondent does not sell desk pads of the design presented in pictorial presentations for said desk pads, and said pictorial presentations, in some instances, are those of a competitor's higher-priced, superior type of desk pad both in design and pattern.

PAR. 7. The aforesaid representations have the capacity and tendency to mislead and deceive the purchasing public into the mistaken and erroneous belief that such representations are true; and have the capacity and tendency to, and do, induce the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's products, thereby diverting trade to the respondent from those of his competitors who do not in any manner misrepresent their products or the status of their business.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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 June 19, 1940, issued, and subsequently served, its complaint in this proceeding upon respondent Louis Hoffman, an individual, trading as L. Hoffman, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 12, 1940, the respondent filed his answer, in which answer he 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Louis Hoffman is an individual, trading as L. Hoffman, with his principal office and place of business at 459 Broadway, New York, N. Y.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in manufacturing, selling, and distributing desk pads and other office accessories. Respondent causes said desk pads and other office accessories, when sold by him, to be transported from his said place of business in New York, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York and in the District of Columbia. Respondent's said desk pads and other office accessories are sold to retailers who in turn resell the same to the retail trade and other members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said desk pads and other office accessories in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and for more than 4 years last past has been, in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the sale and shipment of similar products 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 his aforesaid business and for the purpose of inducing the purchase of his said products, respondent has caused numerous circulars and catalogs to be circulated, containing many statements and representations concerning his said products and as to his said business, generally among prospective purchasers throughout the United States and in the District of Columbia, and through salesmen traveling through various States of the United States and in the District of Columbia, has made many statements and representations to the purchasing public concerning his said desk pads and other products, and as to respondent's business status. Among and typical of the representations made by the respondent in said circulars and catalogs are the following:

Established 1888.

Flexhide Calf Finish Leather.

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Genuine Top Grain Leather.
Top Grain Furniture Leather.
Grecian Gold Tooled Border.
Genuine Gold Tooled Border.

Respondent, in the conduct of his said business, also publishes and circulates, through the means aforesaid, a pictorial presentation of various styles of desk pads offered for sale by respondent to the purchasing public. Some of the said pictorial representations of various styles of desk pads sold and offered for sale by respondent are identical with certain of those of respondent's competitors, and indicate genuine and expensive gold-leaf embossing or tooling in quality.

Respondent, in the conduct of his said business, through his salesmen, makes various other statements and representations of similar import and meaning concerning the character and quality of the products sold by him.

PAR. 5. In the manner aforesaid, the respondent represents and has represented that his said business was established in the year 1888. The words "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather" represent and imply to the purchasing public that the material from which said desk pads are made is top grain leather, or as otherwise described, the outside or surface layer of the hide. Top grain leather is superior in quality and durability to, and higher in price than, split leather. The general public believes the word "leather" to mean the top or hairy side of the hide. Retailers are enabled by reason of said representations of respondent to mislead and deceive the purchasing public as to the quality of the material from which said desk pads are made.

The words "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border," used in advertising and describing desk pads sold by respondent, represent and imply to the purchasing public that genuine gold leaf is used and applied on the border of said product. Gold leaf finish "embossing" or "tooling" is superior in quality and durability to, and higher in price than, imitation gold, and the public generally believes the words "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" to mean that genuine gold leaf is used in the process of finishing, "embossing," or "tooling" the borders of respondent's said desk pads. By reason of respondent's said representations, retailers are enabled to mislead and deceive the purchasing public as to the quality of material with which the borders of said desk pads are finished, "embossed" or "tooled."

PAR. 6. In truth and in fact, respondent's business was not established in the year 1888. Respondent does not use genuine top grain

leather in any of his said desk pads. Most of his said desk pads are composed of splits, which are the first and subsequent cuts under the deep buff leather. Imitation leather is used in the desk pads which are described as "Flexhide." In most cases, the borders described as "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" are made of imitation gold, and gold leaf is not used in the process. In truth and in fact, respondent does not sell desk pads of the design presented in pictorial presentations for said desk pads, and said pictorial presentations, in some instances, are those of a competitor's higher priced, superior type of desk pad both in design and pattern.

PAR. 7. The aforesaid representations of respondent have the capacity and tendency to, and do, mislead and deceive the purchasing public into the mistaken and erroneous belief that such representations are true; and have the capacity and tendency to, and do, induce the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's products, thereby diverting trade to the respondent from those of his competitors who do not in any manner misrepresent their products or the status of their business.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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 fact set forth in said complaint, and states that he 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, Louis Hoffman, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of desk pads and other office accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's business was established in the year 1888, or at any other date prior to the time that such business was in fact established.

2. Using the terms "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," or any other terms of similar import and meaning to designate, describe, or refer to desk pads made from the inner split of leather.

3. Using the terms "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," or any other terms of similar import and meaning to designate, describe, or refer to desk pads made in whole or in part from the outer split of leather without revealing that split leather has been used in the manufacture of such desk pads.

4. Representing, through the use of the words "Flexhide," "Top Grain," "Leather," or any other word or words of similar import and meaning, alone or in conjunction with other words, or in any other manner, that desk pads manufactured in whole or in part from the under layer or flesh side of hides, known as split leather, are made from the outside or surface layer of the hide.

5. Using the phrase "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border," or any other phrase containing the word "gold," or the word "gold" alone, to designate, describe, or refer to borders of desk pads, which borders are not in fact manufactured from gold leaf.

6. Using pictorial representations of desk pads not offered for sale and sold by respondent as representative of the desk pads offered for sale and sold by respondent.

7. Representing, through the use of statements, pictures, or otherwise, that respondent's desk pads or other office accessories are of a grade, quality, and value greater than that which actually exists.

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

Syllabus

IN THE MATTER OF

NATIONAL CONVERTERS INSTITUTE 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 3897. Complaint, Sept. 19, 1939—Decision, Aug. 28, 1940

Where nine corporations which were engaged in converting for sale transparent cellulose sheets and rolls, such as cellophane, sylphrap, kodapak, protectoid, and other similar transparent materials, and in sale thereof to customers and users throughout the several States of the United States, and which represented, in the aggregate, 90 percent of the output and sale of said products, and were members of a voluntary unincorporated trade association or institute—

- (a) Filed with their said Institute, for cellulose sheets and rolls, base price lists and discounts and deviations thereupon not available to the public, and agreed that they would sell said products in the course and conduct of their business at approximately prices stated on price lists, and would maintain such prices and discounts to best of their ability, and exchanged information as to conduct of their businesses by reporting orders received from and invoices issued to customers in sale of products in question through medium of said Institute, as clearing house, and secretary thereof, by whom current price lists submitted by members were checked against price information contained in such orders and invoices, and by whom said information and reports were summarized and weekly bulletin issued to each member showing dollar volume of sales to all participating members and total number of orders taken by all such members, and by whom, in addition to aforesaid summarizing and distribution of such reports, data, and information not available to public, there were issued monthly summary reports showing total volume of sales of all participating members and, to each member, his own proportion in comparison therewith; and
- (b) Furnished information, upon request of member, as to instances where other members had sold products at prices and discounts other than those set forth in their respective price lists, in order to maintain net prices and discounts which such member corporations had theretofore agreed to maintain, through setting forth, in instances involved, (1) percentage of filed price over or under price at which sale was made, (2) date of sale, and (3) size of sale; and through supplying further, upon request, and on forms supplied by Institute, detailed information as to sales of products in question;

With the result that such acts and practices hindered and prevented price competition between and among corporations aforesaid in sale of their said products made and converted from cellulose sheets as aforesaid, and had dangerous tendency so to hinder and prevent, and placed in said corporations power and control to enhance prices in question, and tended dangerously to create in them and said Institute and individual, monopoly of said products in commerce involved, and unreasonably restrained interstate commerce therein: