

Syllabus

IN THE MATTER OF

CANADIAN FUR TRAPPERS CORPORATION, AND DANIEL DORNFELD, JACOB DORNFELD, AND MORRIS DORNFELD

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

Docket 3424. Complaint, May 13, 1938—Decision, Sept. 16, 1940

Where a corporation and two individuals, who were, and had been since its incorporation, officers thereof, and who participated in controlling and directing its policies and practices, engaged in sale and distribution of furs and fur products 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 as aforesaid, including those selling and distributing their products in commerce who do not in any manner misrepresent their status or nature, or character of their business, or geographical origin of their products, and who do not represent that they are trappers or manufacturing furriers when such is not the case, and do not misrepresent in any manner the nature, character or quality of products sold or offered by them—

- (a) Adopted and used as corporate and trade name, name including words "Canadian Fur Trappers," and carried on their business thereunder continuously in soliciting sale of and selling their said products in commerce as aforesaid, and displayed said name on letterheads, billheads, cards, invoices, and labels, and in newspaper and radio advertising, and featured in certain of their said advertisements word "Canadian" and also words "Fur Trappers," with abbreviation "Corp." in small and inconspicuous type, and displayed in certain advertising matter large seal or emblem simulating Royal Coat of Arms of Great Britain, together with word "Canadian" in conspicuous letters and words "Fur Trappers" less conspicuously and, in very fine print, word "Corp."; notwithstanding fact concern in question was not a Canadian corporation, but a domestic one, and had no connection or association with any organization, group, or interest composed or representing Canadian fur trappers or trappers of fur-bearing animals, and was not engaged in business of fur trapping or otherwise taking or capturing such animals, and furs of Canadian origin dealt in by them did not exceed from 25 percent to 35 percent of such products in which, as a whole, they dealt;

With effect of deceiving and misleading prospective purchasers and purchasers of their said products into the belief that corporation in question was a Canadian one, owned, controlled, and operated by Canadian fur trappers, and that products offered and sold by them were furs and fur products which they had made or manufactured from peltries of animals actually shot, trapped, or killed, or otherwise caught and taken by them in Canada, and were offered and sold to public by them without any intervention of middleman, as preferred by substantial portion of purchasing public, and of deceiving and misleading purchasers into erroneous belief, through such simulation

Complaint

31 F. T. C.

of Royal Coat of Arms, that it was organization or association of trappers of fur-bearing animals in Canada, fur of which, and of animals in other northern countries, is widely believed among purchasers and prospective purchasers to be superior to that of animals living in milder, more temperate climate, and that they were engaged in business of dealing primarily in furs and fur products produced in said country and were trappers of fur-bearing animals and actually shot, killed, trapped, or otherwise caught or took such animals in Canada, and that furs and fur products offered and sold by them were such products, made by them from peltries of animals so shot, etc., by them; and

- (b) Described or represented certain of said corporation's products in newspaper advertisements as "Hudson Seal," "Mendoza Beaver," "Beaverette," and "American Broadtail," and represented thereby that garments in question were made from peltries of seal, beaver or baby lambs of Karakul breed of sheep, respectively, facts being product offered and sold by them as "Hudson Seal" was made from peltries of muskrats, "Mendoza Beaver," and "Beaverette" products were made from peltries of rabbits, so dressed and dyed as to resemble fur products made from peltries of seal and beaver, respectively, and "American Broadtail" products were made from peltries of lambs other than baby lambs of Karakul breed of sheep, so dressed and dyed as to resemble such peltries, and products in question were not, as represented as aforesaid, made from the superior peltries, as recognized by public, of seal, muskrat, or baby lambs of Karakul breed;

With effect of misleading and deceiving purchasers and prospective purchasers of their aforesaid furs and fur products into erroneous belief that they were actually made from peltries of seal, in case of so-called "Hudson Seal," beaver in case of "Mendoza Beaver" and "Beaverette," and baby lamb of Karakul breed of sheep in case of "American Broadtail," and with result, by reason of such mistaken and erroneous beliefs, engendered as above set forth, that substantial portion of purchasing public was induced to buy furs and fur products from them, and trade was thereby unfairly diverted to them from competitors who truthfully represent quality and character of their products, source thereof and nature of their business; to the injury of competition in commerce:

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.

Before *Mr. Edward E. Reardon*, *Mr. Miles J. Furnas*, and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. Harry S. Hall and *Goldstein & Goldstein*, of New York City, for respondents.

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 Canadian Fur Trappers Corporation, a corporation, and Daniel Dornfeld, Jacob Dornfeld, and Morris Dornfeld, as individuals, and as officers of said

corporation, hereinafter referred to as respondents, have 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 Canadian Fur Trappers Corporation is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 156 West Thirty-fourth Street, in the city of New York, in the State of New York. Respondents Daniel Dornfeld, Jacob Dornfeld, and Morris Dornfeld, are officers of said corporation, and individually and as such officers participated and participate in the control and direction of the policies and activities of said corporation and in the acts and practices hereinafter alleged. Respondents also maintain and operate retail establishments in the city of Buffalo, in the State of New York, and in the city of Newark, in the State of New Jersey. They are now, and have been for several years heretofore, engaged in the business of selling and distributing to members of the purchasing public, among other items of merchandise, fur products.

Respondents cause said fur products to be transported from their respective places of business in New York and in New Jersey to purchasers thereof located at points in States of the United States other than the State from which such fur products are shipped and in the District of Columbia. They maintain, and for a period of more than one year last past have maintained, a course of trade and commerce in said fur products, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondents have been and are engaged in substantial competition in the sale and distribution of said fur products with other corporations and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing fur products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as hereinbefore described, said respondents adopted as and for their corporate and trade name the words "Canadian Fur Trappers Corporation," under which to carry on their business, which corporate and trade name they have used continuously for several years last past, and are now using, in soliciting the sale of and selling their fur products in commerce among and between the various States of the United States and in the District of Columbia. Respondents have caused and cause their

said corporate and trade name, "Canadian Fur Trappers Corporation," to appear on their letterheads, billheads, cards, invoices, labels, newspaper advertising matter, and in radio advertising, having interstate distribution.

In certain newspaper advertisements in which said corporate name is used, respondents display the word "Canadian" in very large and conspicuous type. The words "Fur Trappers" also appear in large and conspicuous type, but somewhat smaller than the size type used in printing the word "Canadian," and directly thereunder. In relatively small and inconspicuous type under the word "Canadian" and following the words "Fur Trappers" appears the abbreviation "Corp."

In certain of said advertising matter respondents have caused to be displayed a large seal or emblem simulating the Royal Coat of Arms of Great Britain, on which is printed in large and conspicuous letters the word "Canadian," under which the words "Fur Trappers" appear in smaller but conspicuous letters.

In certain other newspaper advertising matter, radio broadcasts, and in various other ways, respondents have made misleading representations and statements concerning their business status of which the following is representative:

CANADIAN
FUR TRAPPERS

In said newspaper advertisements in which said statements and representations are used respondents display the word "Canadian" in very large and conspicuous type. The words "Fur Trappers" appear also in large and conspicuous type, but somewhat smaller than the size type used in printing the word "Canadian," and directly thereunder.

PAR. 4. The corporate name "Canadian Fur Trappers Corporation," alone or together with the statements appearing in respondents' advertising matter as hereinabove set forth, purports to be descriptive of the business status and character, manner of acquisition, manufacture, and sale of the products offered for sale and sold by respondents. By the use of said corporate name "Canadian Fur Trappers Corporation" or by the use of the words "Canadian Fur Trappers" independently or on or in connection with an emblem, seal or coat of arms simulating the Royal Coat of Arms of Great Britain in their advertising matter, as hereinabove set forth, or otherwise, respondents represent and imply, and the public has been and is led to believe:

1. That respondent Canadian Fur Trappers Corporation is a Canadian corporation.
2. That said corporation is owned, operated, or controlled by Canadians.

3. That respondents are engaged in the business of offering for sale and selling primarily Canadian fur products.

4. That respondents are an organization, association, or business house composed of Canadian fur trappers.

5. That respondents are trappers of fur-bearing animals.

6. That respondents actually shoot, kill, trap, or otherwise catch or take such fur-bearing animals in Canada.

7. That the fur products offered for sale and sold by respondents are the fur products made or manufactured by them from the animals so shot, killed, trapped, or otherwise caught or taken by them.

8. That said fur products are offered for sale and sold to the public by respondents as trappers without the intervention of any middleman.

PAR. 5. There has been and is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer or producer of the merchandise which it buys. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the manufacturer or producer they can secure better prices, superior merchandise, and other advantages which cannot be secured when merchandise is purchased after having gone through the hands of middlemen.

There has been and is a widespread belief among purchasers and prospective purchasers of fur products that the fur of animals in Canada and in other northern countries and parts of the world is superior to that of animals living in milder or more temperate climates, and such persons have had and have a preference for the fur products of animals from such northern countries and parts of the world because of such belief in the superiority of the fur products from such animals over the fur products from animals obtained from more temperate climates.

PAR. 6. Fur products made from the peltries of the seal are properly and commonly designated as Seal or Alaska Sealskin. Fur products made from the peltries of the beaver are properly and commonly designated as Beaver, and fur products made from the peltries of baby lambs of the Karakul breed of sheep are properly and commonly designated as Broadtail.

Fur products made from the peltries of seal and beaver are superior to fur products made from the peltries of muskrat and rabbits. Fur products made from the peltries of baby lambs of the Karakul breed of sheep are superior to fur products made from the peltries of baby lambs of other breeds of sheep. There is a preference on the part of a substantial portion of the purchasing public for fur products made from genuine peltries of the particular fur-bearing animals herein-

Complaint

31 F. T. C.

above referred to, because of their superior quality, and said genuine fur products demand and bring substantially greater prices than fur products made from the peltries of muskrat, rabbits, or other breeds of lambs used to stimulate the genuine fur products.

PAR. 7. In the course and conduct of its business, and for the purpose of inducing the purchase of its fur products by members of the purchasing public, respondents have, from time to time, inserted advertisements in newspapers having an interstate circulation and have made use of other advertising media, including radio broadcasts, designed and intended to influence purchasers of said fur products.

In said advertisements, respondents have caused certain of their fur products to be represented as Seal, Hudson Seal, Mendoza Beaver, or Beaverette. Said designations purport to be descriptive of respondents' fur products and serve as representations that said garments are made from the peltries of seal or of beaver.

In said advertisements, respondents have caused certain of their fur products to be represented as "American Broadtail." Said designation purports to be descriptive of respondents' fur products and serves as a representation that said fur products are made from the peltries of baby lambs of the Karakul breed of sheep.

PAR. 8. (a) In truth and in fact, the representations and implications made by respondents as hereinabove set forth in paragraphs 3 and 4 are and were and each of them was and is false and misleading, for the following reasons:

1. Respondent Canadian Fur Trappers Corporation is not a Canadian corporation.

2. Said corporation is not owned, operated, or controlled by Canadians.

3. Respondents are not engaged in the business of offering for sale and selling primarily Canadian fur products.

4. Respondents are not an organization, association or business house composed of Canadian fur trappers.

5. Respondents are not trappers of fur-bearing animals.

6. Respondents do not actually shoot, kill, trap or otherwise catch or take fur-bearing animals in Canada.

7. The fur products offered for sale and sold by respondents are not made or manufactured by them from peltries of animals shot, killed, trapped, or otherwise caught or taken by them in Canada or elsewhere.

8. Respondents do not make or manufacture the fur products which they offer for sale and sell to the public.

9. Respondents are retail merchants offering for sale and selling to the public fur products made or manufactured by others.

(b) In truth and in fact, fur products offered for sale and sold by respondents bearing the designations Seal and Hudson Seal are made from the peltries of rabbit and muskrat, respectively, and fur products offered for sale and sold by respondents bearing the designations Mendoza Beaver, Beaver, and Beaverette are made from the peltries of rabbits, so dressed and dyed as to resemble fur products made from the peltries of beaver. Said muskrat and rabbit peltries are inferior to the peltries of the beaver and the seal in pliability and durability and in the lustre of the fur.

In truth and in fact, the fur products offered for sale and sold by respondents bearing the designation "American Broadtail" are made from the peltries of lambs other than baby lambs of the Karakul breed of sheep. Said fur products are so dressed and dyed as to resemble the peltries of baby lambs of the Karakul breed of sheep. Said peltries are inferior and less acceptable to the buying public than the peltries of baby lambs of the Karakul breed of sheep.

In truth and in fact, the fur products offered for sale and sold by respondents bearing designations descriptive of other fur-bearing animals are made from peltries other than the peltries of the animals so designated. Said fur products are so dressed and dyed as to resemble peltries from superior fur-bearing animals but are inferior in pliability and durability of the leather and in wearing quality and luster of the fur.

PAR. 9. There are now and have been competitors of respondents selling and distributing fur products in commerce among and between the various States of the United States and in the District of Columbia who do not in any manner misrepresent their status or the nature or character of their business or the geographical origin of their products and who do not represent that they are trappers or manufacturing furriers when such is not the fact and who do not misrepresent in any manner the nature, character or quality of the products sold or offered for sale by them.

PAR. 10. The use by respondents in their corporate and trade name, or otherwise, of the words "Canadian Fur Trappers Corporation" had and has a capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their fur products into the belief that Canadian Fur Trappers Corporation is a Canadian corporation, owned, controlled, and operated by Canadian fur trappers, and that the products offered for sale and sold by respondents are the fur products which they have manufactured from animals actually shot, killed, trapped, or otherwise caught or taken by them in Canada.

The use by respondents of the words "Canadian Fur Trappers" in their trade name or in their advertising matter as aforesaid, or the use by respondents of an emblem, seal, or coat of arms simulating the Royal Coat of Arms of Great Britain, on which the words "Canadian Fur Trappers" appear, had and has the capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their fur products into the erroneous belief that respondents are an organization or association of trappers of fur-bearing animals in Canada; that it is owned, controlled, and operated by Canadians; that it is engaged in the business of dealing primarily in fur products produced in Canada; that its members are trappers of fur-bearing animals; that its members actually shoot, kill, trap, or otherwise catch or take such fur-bearing animals in Canada; and that the fur products offered for sale and sold by respondents are the fur products made or manufactured by them from the animals so shot, killed, trapped, or otherwise caught or taken by them and are offered for sale and sold to the public by them without the intervention of any middleman; and that said fur products are actually made from the peltries of seal, beaver, or baby lamb of the Karakul-breed of sheep.

On account of such mistaken and erroneous beliefs hereinabove set forth, a substantial portion of the purchasing public has been induced to purchase fur products from respondents and thereby trade has been unfairly diverted to respondents from competitors named in paragraphs 2 and 9 hereof. As a result thereof, substantial injury has been and now is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. 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 May 13, 1938, issued and served its complaint in this proceeding upon the respondents, Canadian Fur Trappers Corporation, a corporation, and Daniel Dornfeld, Jacob Dornfeld, and Morris Dornfeld, as individuals and as officers of said corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of answer and amended answer to said complaint by the re-

spondents, testimony, and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of said complaint by Goldstein & Goldstein, attorneys for respondents, before trial examiners of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently a stipulation of facts was entered into between counsel for the respondents and W. T. Kelley, the Commission's chief counsel, subject to the Commission's approval. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and said amended answer thereto, testimony and other evidence, including said stipulation as to the facts, briefs in support of the complaint, and in opposition thereto, and the oral arguments of counsel aforesaid; 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, Canadian Fur Trappers Corporation, is a corporation, organized in 1922, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 156 West Thirty-fourth Street, in the city of New York, State of New York. The office of president of said corporate respondent has been vacant for several years but one Samuel Dornfeld and one Harry Dornfeld are vice presidents and respondent Morris Dornfeld and respondent Jacob Dornfeld are secretary and treasurer, respectively, of said corporate respondent. Respondent Daniel Dornfeld is not an official of said corporate respondent, but has from time to time been employed by it. The aforementioned officers have held their respective offices since the incorporation of respondent corporation in 1922. During this time the corporate respondent, Canadian Fur Trappers Corporation and its aforesaid officers have also maintained and operated retail establishments in Buffalo, N. Y., and in Newark, and Paterson, N. J.

PAR. 2. In the course and conduct of their business said respondents are now, and have been for more than 5 years last past, engaged in the business of selling and distributing to members of the purchasing public, along other items of merchandise, furs and fur products, and cause said furs and fur products, when sold, to be transported from their respective places of business in New York and New Jersey to purchasers thereof located at points in States of the United States other than said States of New York and New Jersey and in the District of

Findings

31 F. T. C.

Columbia. Said respondents maintain, and for many years have maintained, a course of trade and commerce in said furs and fur products, between and among the various States of the United States and in the District of Columbia. The aforesaid individual respondent officers, together with Samuel Dornfeld and Harry Dornfeld, control and direct the policies and practices of Canadian Fur Trappers Corporation, the corporate respondent herein.

PAR. 3. Respondents have been, and are, engaged in substantial competition in the sale and distribution of said furs and fur products with other corporations, and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing furs and fur products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, said respondents adopted as and for their corporate and trade name the words "Canadian Fur Trappers Corporation," under which they carry on their business, which said corporate and trade name they have used, continuously in soliciting the sale of and selling their furs and fur products in commerce among and between the various States of the United States and in the District of Columbia. Respondents have caused and cause their said corporate and trade name "Canadian Fur Trappers Corporation," to appear on letterheads, bill heads, cards and invoices, labels, and in newspaper and radio advertising. In certain newspaper advertisements in which said corporate and trade name is used, respondents display the word "Canadian" in very large and conspicuous type. The words "Fur Trappers" also appear in large and conspicuous type, but somewhat smaller than the size type used in printing the word "Canadian," and directly thereunder. In relatively small and inconspicuous type under the word "Canadian" and following the words "Fur Trappers" appears the abbreviation "Corp." In certain of said advertising matter respondents have caused to be displayed a large seal or emblem simulating the Royal Coat of Arms of Great Britain, on which is printed in large and conspicuous letters the word "Canadian" under which the words "Fur Trappers" appear in smaller but conspicuous letters and below the words "Fur Trappers," in very fine print, is the word "Corp." In its newspaper advertisements respondents have caused certain of their fur products to be represented as "Hudson Seal," "Mendoza Beaver," "Beaverette," and "American Broadtail." "Hudson Seal" is the trade name for dyed muskrat, and "Mendoza Beaver" and "Beaverette" are trade names for dyed coney or rabbit. "American Broadtail" is a trade name for processed lamb. Said trade names purport to be descriptive of respondents fur products and, unless modified by the use

of the true name of the fur, such as "Hudson Seal—Dyed Muskrat," "Mendoza Beaver—Dyed Coney," "Beaverette—Dyed Coney," or "American Broadtail—Processed Lamb," serve as representations that said garments are made from the peltries of seal, beaver or of the peltries of baby lambs of the Karakul breed of sheep, respectively.

PAR. 5. The respondent, Canadian Fur Trappers Corporation, is not a Canadian corporation, nor does it have any connection or association with any organization, group, or interest composed of or representing Canadian fur trappers or trappers of fur-bearing animals. Said respondent company is in fact an American corporation, wholly American owned, controlled, and operated. Respondent does not trap and is not engaged in the business of trapping or otherwise taking or capturing fur-bearing animals. While many of the fur products offered for sale and sold by respondents are not made or manufactured from peltries of fur-bearing animals shot, killed, trapped, or otherwise caught or taken in Canada, a substantial percentage of the furs and fur garments sold by respondents, that is to say, from 25 to 35 percent thereof, are made from peltries of fur-bearing animals shot, killed, trapped, or otherwise caught or taken in Canada. Respondents are, in fact, retail merchants offering for sale and selling to the public furs and fur products made or manufactured for them by others.

PAR. 6. The fur products offered for sale and sold by respondents, bearing the designations "Hudson Seal" is made from the peltries of muskrats, and "Mendoza Beaver" and "Beaverette" are made from the peltries of rabbits, so dressed and dyed as to resemble the fur products made from the peltries of seal and beaver respectively. The fur products offered for sale and sold by respondents bearing the designation "American Broadtail" are made from the peltries of lambs other than baby lambs of the Karakul breed of sheep and are so dressed and dyed as to resemble the peltries of baby lambs of the Karakul breed of sheep.

PAR. 7. Fur products made from the peltries of seal are properly and commonly designated as "Seal" or "Alaska Sealskin." Fur products made from the peltries of beaver are properly and commonly designated as "Beaver," and fur products made from the peltries of baby lambs of the Karakul breed of sheep are properly and commonly designated as "Broadtail." Fur products made from the peltries of seal are superior to fur products made from the peltries of muskrat and are so recognized by the purchasing public. Fur products made from the peltries of beaver are superior to fur products made from the peltries of rabbits and are so recognized by the public. Fur products made from the peltries of baby lambs of the Karakul breed of

Findings

31 F. T. C.

sheep are superior to fur products made from the peltries of baby lambs of other breeds of sheep, and this fact is recognized by the purchasing public.

PAR. 8. There has been and is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer or producers of the merchandise which it buys and there has been and is a widespread belief among purchasers and prospective purchasers of fur products that the fur of animals in Canada and in other northern countries and parts of the world is superior to that of animals living in milder or more temperate climates.

PAR. 9. There are now and have been competitors of respondents selling and distributing fur products in commerce among and between the various States of the United States and in the District of Columbia who do not in any manner misrepresent their status or the nature or character of their business or the geographic origin of their products and who do not represent that they are trappers or manufacturing furriers when such is not the fact, and who do not misrepresent in any manner the nature, character or quality of the products sold or offered for sale by them.

PAR. 10. The use by the respondents in their corporate and trade name of the words "Canadian Fur Trappers Corporation" had, and has, the capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their furs and fur products into the belief that the Canadian Fur Trappers Corporation is a Canadian corporation, owned, controlled, and operated by Canadian fur trappers, and that the products offered for sale and sold by respondents are furs and fur products which they have made or manufactured from the peltries of animals actually shot, killed, trapped, or otherwise caught or taken by them in Canada and are offered for sale and sold to the public by them without the intervention of any middleman.

The use by respondents of the emblem, seal or coat of arms simulating the Royal Coat of Arms of Great Britain, on which the words "Canadian Fur Trappers Corporation" appear, had, and has, the capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their fur products into the erroneous belief that respondents are an organization or association of trappers of fur-bearing animals in Canada; that they are engaged in the business of dealing primarily in furs and fur products produced in Canada; that they are trappers of fur-bearing animals; that they actually shoot, kill, trap, or otherwise catch or take such fur-bearing animals in Canada; that the furs and fur products offered for sale and sold by them are furs and fur products made or manufactured

859

Order

by them from the peltries of animals so shot, killed, trapped, or otherwise caught or taken by them.

Respondents' acts and practices in representing and describing their furs and fur products manufactured of muskrat as "Hudson Seal," rabbit peltries as "Mendoza Beaver" and "Beaverette," and peltries of ordinary lambs or sheep as "American Broadtail," have had, and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of such furs and fur products into the erroneous and mistaken belief that said furs and fur products are actually made from the peltries of seal in the case of "Hudson Seal," beaver in the case of "Mendoza Beaver" and "Beaverette," and baby lamb of the Karakul breed of sheep in the case of "American Broadtail."

PAR. 11. On account of such mistaken and erroneous beliefs engendered as hereinabove set forth, a substantial portion of the purchasing public has been induced to purchase furs and fur products from the respondents, and thereby trade has been unfairly diverted to respondents from competitors who truthfully represent the quality and character of their products, the source of their products, and the nature of their business. In consequence thereof, injury has been done, and now is being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before duly designated examiners of the Commission briefs filed herein, and oral argument by Joseph C. Fehr, counsel for the Commission, and by Harry S. Hall, counsel for respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Canadian Fur Trappers Corporation, a corporation, its officers, representatives, agents, and employees.

directly or through any corporate or other device, and Jacob Dornfeld and Morris Dornfeld, individually and as officers of said corporation, and their respective agents, representatives or employees, individual or corporate, in connection with the offering for sale, sale, and distribution of furs and fur garments, in commerce as commerce is defined in in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "trappers" or the words "fur trappers," either independently or in connection or conjunction with any other word or words, as descriptive of their said business.

2. Using a pictorial design simulating the Royal Coat of Arms of Great Britain, or any emblem or seal suggesting or implying that the business of respondents is conducted by an organization or association formed in Canada or composed of inhabitants of Canada or any other part of the British Empire.

3. Describing furs in any other way than by the use of the correct name of the fur as the last word of the description thereof; and when any dye or blend is used in simulating another fur, the true name of the fur appearing as the last line of the description shall be immediately preceded by the word "dyed" or "blended," compounded with the name of the simulated fur, as: Seal—Dyed Coney; Hudson Seal—Dyed Muskrat; Mendoza Beaver—Dyed Coney; Beaverette—Dyed Coney; and American Broadtail—Processed Lamb.

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; and

It is further ordered, That complaint hereby be and the same hereby is, dismissed as to the respondent Daniel Dornfeld.

Syllabus

IN THE MATTER OF
EMPIRE STYLE DESIGNERS LEAGUE, INC. 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 4136. Complaint, May 21, 1940—Decision, Sept. 17, 1940

Where a corporation, members of which were engaged in the creation of styles and the designing and making of patterns for women's fur coats and in the grading and copying of such patterns, and in the sale and distribution thereof in commerce, and which was formed with intent and effect of serving as clearing house for such members who acted in cooperation with it in matters as below indicated, and said members, who constituted dominant factors in business in question, and represented 75 percent of the output and sale of the products involved, and who, but for matters and things below set forth, would be naturally and normally in competition with each other, and with others in the business of producing patterns and gradings, and copies thereof, and in the sale thereof to customers throughout the several States and in the District of Columbia—

Entered into and carried out, as case might be, agreement, combination, and conspiracy with each other and with others including said corporation first referred to, to hinder and suppress competition in interstate sale and distribution of products in question and to create monopoly in themselves in the manufacture and sale thereof; and in pursuance of such agreement, combination and conspiracy,

- (1) Collectively and cooperatively arranged for and fixed uniform prices at which their said products were to be sold;
- (2) Collectively and cooperatively published, or caused to be published, said price lists in newspapers, periodicals, and circulars of general circulation, in various States and in the District of Columbia; and
- (3) Collectively and cooperatively adhered to such uniform prices at which their said products were to be sold as set forth in their price lists issued, exchanged and published as above described;

With the result that they sold at fixed and uniform prices to their respective customers, in the various States and in the District of Columbia, their said products and thus delivered same, and their customers and users thereof were forced and compelled to pay them prices in accordance with such arbitrarily fixed and maintained artificial price levels for products in question and were deprived, to their detriment, of normal and free competition between and among said members in the purchase of products in question, price competition between and among themselves in the sale of such articles was hindered and prevented, and power was placed in them to control and enhance prices thereof, and with tendency unduly to create in themselves monopoly in sale of patterns and in gradings and copies thereof, and with effect of unreasonably restraining commerce therein:

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