

Syllabus

IN THE MATTER OF
ELY & WALKER DRY GOODS COMPANY

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

Docket 4216. Complaint, Aug. 5, 1940—Decision, Nov. 12, 1940

Where a corporation engaged in sale and distribution of men's clothing in commerce among the various States—

(a) Advertised in two periodicals, in connection with offer, sale and distribution of certain men's robes, in commerce, as aforesaid, said products as "Camel Suede Robe," and featured said words in large display type across the top of the page, and set forth, near the bottom thereof, in comparatively small type and, except as otherwise indicated, "Constructed of North American Brushed Rayon. * * * Soft rich colors have been specially dyed for the CAMEL SUEDE ROBE, of Natural Tan, Dubonnet Wine, * * * YOU MUST SEE THE CAMEL SUEDE ROBE * * *," and displayed, between featured words "CAMEL SUEDE ROBE" and aforesaid explanatory matter, several relatively large depictions of men attired in such robes, with result of thus widely separating the two; and

(b) Permanently attached, during period concerned, to robes aforesaid, yellow labels reading "CAMEL SUEDE Tailored by COURTLEIGH" and bearing illustrations of a camel with a background of palm trees and pyramids;

Notwithstanding fact robes aforesaid, thus labeled and described, were not composed in any part of the hair or wool of the camel, as might be implied by designation "Camel Suede," and were not garments thus made from hair or wool of the camel, believed generally by many dealers and retailers and members of general purchasing public to be more desirable than those made from any other materials for similar uses, and for which, when thus made in whole or in predominant part, there is a preference, consequently, on part of substantial number of purchasing and consuming public, but were made of rayon, which, when so manufactured as to simulate hair or wool of camel, has appearance and feel thereof and is, by purchasing and consuming public, without rayon designation, practically indistinguishable therefrom, and, under such circumstances, may be considered and accepted by some dealers and retailers and purchasing and consuming public as being such hair or wool; and

(c) Attached, by means of sewing, to above described yellow label, small black cloth tabs or labels with single word "Rayon" in white, and also, to guard of belt of said robes, paper string ticket bearing words, on one side, "Brushed Rayon," and on the other, "To be dry cleaned";

With result, through method of attaching by sewing aforesaid black cloth tab or label, and of attaching by string aforesaid label and ticket to belt of said robes, of supplying means of misleading and deceiving prospective purchasers, dealers in and retailers of said robes by means of fact that such labels and paper string tickets were capable of being easily removed through cutting or tearing, leaving on garment only aforesaid illustrated label "Camel Suede, Tailored by Courtleigh," and with capacity and tendency, through its said acts and practices in using such statements in advertise-

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ments and on labels in connection with offer, etc., of said robes, to mislead and deceive purchasing public into erroneous and mistaken belief that robes so advertised and labeled were in fact composed of hair or wool of the camel, and to cause substantial portion of such public to purchase said robes from it as result of such erroneous and mistaken belief:

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

Mr. George W. Williams, 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 the Ely & Walker Dry Goods Co., a corporation, hereinafter referred to as respondent, 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. The Ely & Walker Dry Goods Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 1520 Washington Avenue, St. Louis, Mo. It is now, and for a number of years last past has been, engaged in the sale and distribution of men's clothing in commerce, as commerce is defined in the Federal Trade Commission Act. It causes its products, when sold, to be shipped from its said place of business in the State of Missouri to purchasers in various other States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in connection with the offering for sale, sale and distribution in commerce of certain of its men's robes, has published advertisements in trade magazines or journals, which advertisements feature the words

CAMEL SUEDE ROBE

in large display type, an inch high and running out to a foot in length, across the top of the page. Towards the bottom of the page in comparatively small type, except as otherwise exhibited, appears the following:

Constructed of North American Brushed Rayon. It has that soft velvety touch that is immediately captivating. Styled with a drop stitch stripe and piped with contrast cord trimming, it is indeed a charming picture. Soft rich colors have been specially dyed for the CAMEL SUEDE ROBE, of Natural Tan, Dubonnet Wine, Seafoam Green, Myrtle Green, Navy Blue and Teal Blue. YOU MUST SEE THE CAMEL SUEDE ROBE—it's different.

Between the featured words "Camel Suede Robe" and the above mentioned explanatory matter are several relatively large pictorial representations of men attired in said robes, which widely separate the featured words and the explanatory matter.

To said robes respondent has permanently attached yellow labels or bands reading as follows:

CAMEL SUEDE

Tailored by Courtleigh

which said labels bear illustrations of a camel with background of palm trees and pyramids. Small black tabs with a single word "Rayon" are separately attached to the above described labels or bands.

By means of such advertisements featuring the words "Camel Suede Robe", and through the use of the labels or bands marked "Camel Suede" and bearing illustrations of a camel, respondent has represented and represents that its said men's robes were and are made of camel's hair or camel's wool, or are made of predominant part of camel's hair or camel's wool.

As a matter of fact, the robes thus labeled and described were not, and are not, composed in any part of the hair of the camel, as implied by the designation "Camel Suede," but were, and are, made wholly of rayon.

PAR. 3. Garments made from camel's hair or camel's wool are generally believed by many retail dealers and members of the general purchasing public to be more desirable than garments made from any other material for similar usage. Garments made from genuine camel's hair or camel's wool are light in weight and are warm, and possess other qualities which make them more desirable than other similar garments not made from camel's hair or camel's wool. Consequently, there is a preference on the part of a substantial number of the purchasing public for garments that are made of camel's hair or camel's wool, or are made in predominant part of camel's hair or camel's wool.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate wool, such as camel's hair or camel's wool, and, when so manufactured, it has the appearance and feel of such hair or wool, and is by the purchasing public practically indistinguishable therefrom. By reason of these qualities, rayon, when manufactured to simulate camel's hair or camel's wool, and not designated as rayon, is readily believed and accepted by dealers and the purchasing public as being wool.

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PAR. 4. The false and misleading statements set out and referred to in paragraph 2 hereof, were, and are, calculated to, have had, and have, a tendency and capacity to deceive and mislead dealers and consumers into the erroneous and mistaken belief that said robes labeled and advertised as "Camel Suede Robes" are in fact made of camel's hair or camel's wool. Through the use of the illustrative label "CAMEL SUEDE Tailored by Courtleigh," to which is attached the easily removed small tab bearing the word "Rayon," respondent places in the hands of dealers the means of misleading and deceiving the purchasing public into the erroneous and mistaken belief that said robes were, and are, composed of camel's hair or camel's wool.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute 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 the 5th day of August 1940, issued and served its complaint in this proceeding upon said respondent, Ely & Walker Dry Goods Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 22d day of August 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its finding as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission, having duly considered the same, 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. The respondent, Ely & Walker Dry Goods Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 1520 Washington Avenue, St. Louis, Mo. It is now, and for a number of years last past has been, engaged in the sale and distribution of men's clothing in commerce between and among the various States of the United States. It causes said clothing, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, and within the past 3 years, respondent, in connection with the offering for sale, sale, and distribution of men's robes made of rayon in said commerce, advertised said robes in two magazines as "Camel Suede Robe," which said words were featured in large display type 1 inch in height, the legend running out to a foot in length across the top of the page. Near the bottom of the page in comparatively small type, except as otherwise indicated, appeared the following:

Constructed of North American Brushed Rayon. It has that soft velvety touch that is immediately captivating. Styled with a drop stitch stripe and piped with contrast cord trimming, it is indeed a charming picture. Soft rich colors have been specially dyed for the CAMEL SUEDE ROBE, of Natural Tan, Dubonnet Wine, Seafoam Green, Myrtle Green, Navy Blue and Teal Blue. YOU MUST SEE THE CAMEL SUEDE ROBE—it's different."

In between the featured words "CAMEL SUEDE ROBE" and the above-mentioned explanatory matter are several relatively large pictorial representations of men attired in said robes, thus widely separating the said featured words and the explanatory matter.

Also, in the course and conduct of its said business and during the time aforesaid, respondent had permanently attached to said robes yellow labels reading as follows:

CAMEL SUEDE
Tailored by COURTLEIGH

and bearing illustrations of a camel with a background of palm trees and pyramids. Small black-cloth tabs or labels with the single word "Rayon" in white were attached, by means of sewing, to the above-described yellow label.

Respondent also attached to the guard of the belt of said robes a paper string ticket bearing the words "Brushed Rayon" on one side

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of the ticket and the words "To be dry cleaned" on the reverse side of said ticket. The said robes, thus labeled and described, were not composed in any part of the hair or wool of the camel, as might be implied by the designation "Camel Suede," but were made wholly of rayon. By reason of the method of attaching, which was by sewing the small black-cloth tab or label to the said yellow cloth label, and of attaching to the guard of the belt of said robes with a string said label and ticket, means of misleading and deceiving prospective purchasers were supplied to dealers in, and retailers of, said robes, for said rayon label and paper string ticket were capable of being easily removed by cutting or tearing, leaving on the garment only the illustrative label "Camel Suede, Tailored by Courtleigh."

PAR. 3. Garments made from the hair or wool of the camel are generally believed by many dealers and retailers and members of the general purchasing public to be more desirable than garments made from any other materials for similar uses. Consequently, there is a preference on the part of a substantial number of the purchasing and consuming public for garments that are in truth and in fact made of the hair or wool of the camel, or at least made up in predominant part of the hair or wool of the camel.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate wool, such as camel's hair or camel's wool, and when so manufactured it has the appearance and feel of such hair or wool, and is, by the purchasing and consuming public, practically indistinguishable from such hair or wool unless designated as rayon. By reason of these qualities, rayon, when manufactured to simulate the hair or wool of the camel, and not designated as rayon, may be considered and accepted by some dealers and retailers and the purchasing and consuming public as being such hair or wool.

PAR. 4. The acts and practices of the respondent in using the statements contained in said advertisements, and the statements on the labels attached to said robes, in connection with the offering for sale, sale and distribution of said robes, as hereinabove set out, have had, and have, a tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that the robes so advertised and labeled were, and are, in fact, composed of the hair or wool of the camel, and to cause a substantial portion of the purchasing public to purchase said robes from respondent as the result of this erroneous and mistaken belief. After the institution of the Commission's investigation of this matter and prior to the issuance of the complaint herein, respondent ceased using the type of advertising and labeling hereinabove described.

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute 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 the respondent, and a stipulation as to the facts entered into between the respondent and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that, without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Ely & Walker Dry Goods Company, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of men's robes or other garments, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's garments are composed of fabrics or materials other than those of which such garments are actually composed.

2. Advertising garments composed in whole or in part of rayon without clearly disclosing the fact that such garments are composed of rayon, and, when such garments are composed in part of rayon and in part of other fibers or material, such fibers or material including the rayon shall be named in the order of their predominance by weight, beginning with the largest single constituent.

3. Using the word "camel," or pictorial representations of a camel with a background of palm trees and pyramids, in advertisements, on labels, tags, or otherwise, or any other words or representations of like import or meaning to designate or describe any garment which is composed entirely of materials other than the hair or wool of the camel.

4. Labeling and tagging garments in such a manner as to enable dealers and retailers easily and readily to remove part of the fiber

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or material identification matter, leaving matter which would inform or indicate to the purchasing public that such garments are composed of fibers or materials of which they are not in fact composed.

5. Using the term "Camel Suede Robe" or the term "Camel Suede," alone or in connection with a picturization of a camel with a background of palm trees and pyramids, or any other term, words or scene indicating or implying that the material from which such garments are made contains the hair or wool of the camel, to designate, describe or refer to robes or other garments composed of rayon and which do not contain the hair or wool of the camel.

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.

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IN THE MATTER OF
LOUIS FARBEN TRADING AS GOLD STAR NOVELTY
HOUSE

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

Docket 3449. Complaint, May 27, 1938—Decision, Nov. 15, 1940

Where an individual engaged in sale and distribution of manicure sets, electric lamps, leather wallets, and various other articles to purchasers in the various other States and in the District of Columbia—

- (a) Sold various of his said articles by means of a game of chance, gift enterprise or lottery scheme under which he distributed to representatives and prospective representatives sales circulars depicting a number of his said articles, together with printed matter descriptive thereof, and also listing on page in question 22 of said products and prices thereof with spaces provided for the recording of the names of each purchaser opposite name of product purchased, and including as a part of each said circular, a pull card for use in sale and distribution of such articles under a plan in accordance with which particular article to be secured by purchaser and price to be paid therefor were determined by lot or chance, by legend disclosed by removal of tab selected, and operator had alternative of retaining specified amount of total collected as compensation for his service and remitting balance or remitting entire amount thus collected for the 22 articles and receiving a premium as selected from those described in his said circular; and

Supplied thereby to and placed in the hands of others, a means of selling and distributing his said merchandise through sale thereof in accordance with the aforesaid sales plan by persons or representatives whom he furnished said sales circulars containing such pull cards, and who used same in purchasing, selling, and distributing said 22 articles in accordance with such plan or method, constituting game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, and notwithstanding notice to purchasers advising them of privilege of securing any article described at price shown thereon, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with those selling and distributing like or similar merchandise in commerce as aforesaid, and who are unwilling to and do not use said or any other sales plan or method involving game of chance or sale of a chance to win something by chance or any sales plan or method contrary to public policy and refrain therefrom;

With the result that many, because of such element of chance involved in said sales plan employed by said individual as above described, were induced to buy and sell his merchandise in preference to that offered and sold by such competitors and trade was unfairly diverted to him therefrom to their substantial injury;

- (b) Made such false, deceptive and misleading statements and representations in its said circulars as "Gifts for all at no cost to you" and "Beautiful, useful