

Syllabus

IN THE MATTER OF
MENDOZA FUR DYEING WORKS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3824. Complaint, June 16, 1939—Decision, Jan. 4, 1941*

Where a corporation engaged in dyeing furs for fur coats, fur-trimmed coats and fur clothing, and in furnishing to some customers, in course and conduct of its business and to induce customers to forward pelts to it for dyeing and processing, various sketches or designs for use in manufacture of fur garments, and in furnishing also labels to be attached to such garments and designating same under trade name "Mendoza Furs," in harmony with corporate name thereof, and in causing, as thus engaged, its said sketches or designs and labels, together with such processed furs in some instances, to be transported from its place of business in New York to customers in various other States, and in substantial competition, in the course and conduct of its said business, with others likewise engaged in fur dyeing—

- (a) Represented, in advertisements in various circulars, newspapers and periodicals distributed to customers and prospective customers in the various States, that the sketches supplied by it were adaptations of designs by famous Parisian couturiers, and, in a few instances, that such sketches were designed by such couturiers;
- (b) Represented, in general advertising to acquaint public and trade with trade name aforesaid, that various garments, thus labeled, were adaptations from designs of various famous Parisian couturiers, and that furs processed by it had won a prize or award in active competition in Paris, France; and
- (c) Depicted or set forth in its various advertisements, reproductions of the various labels which it furnished and which purported to be those of Parisian couturiers, such as Schiaparelli, Vionnet, Heim, Max and Jeanne Lavin and others, and furnished to customers labels in the French language and which it reproduced as above set forth in its advertisements, and which purported to carry signatures and trade marks of certain Parisian couturiers, and which included, as typical, such labels as "d'apres un modele MADELIENE VIONNET (in longhand) pour Mendoza Furs";

Facts being sketches and designs furnished by it were not prepared by any Parisian couturier and labels supplied by it were not those of the particular Parisian couturiers named, it was not authorized by them to use such labels and garments to which they were attached were not made in Paris, France, nor designed by either Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin, or any other person or persons in Paris, and no such persons had any connection with designing or manufacture of products in question, and, while it was, in 1923, awarded Grand Prix, gold medal and diploma by the "Exposition d'Economie Domestique" held at Paris, France, "for its excellent process of the imitation of skins of beaver, fox" and other furs, none of its garments had ever won a prize or award in competition with garments of others in Paris, except as above stated;

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With result that, through use of such practice of furnishing unauthorized labels, it placed in hands of uninformed or unscrupulous retailers and manufacturers means and instrumentality whereby they might deceive and mislead members of purchasing public into erroneous belief that fur garments bearing labels as above described had been designed and created and originated in Paris, France, by the famous Parisian couturiers named on labels in question, for which more expensive garments there is a preference over the less costly fur coats and fur clothing designed and made in the United States, as there is on part of substantial portion of purchasing public for such products generally which were designed, created and originated in Paris, France, and with effect, through its use of such misleading statements, representations, and labels, as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous belief that garments containing labels supplied by it were made in France and designed by French couturiers and had other preeminent qualities, and with consequence, as result of such belief, that a number of consuming public purchased substantial volume of garments containing its labels and trade was thereby diverted unfairly to it from its competitors likewise engaged in fur dyeing business in commerce, and who truthfully advertise their respective products; to the injury of competition in commerce:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. George J. Beldock, of New York City, for respondent.

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 Mendoza Fur Dyeing Works, Inc., 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. Respondent, Mendoza Fur Dyeing Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 135 West Twenty-ninth Street, New York City, in the State of New York.

PAR. 2. Respondent, Mendoza Fur Dyeing Works, Inc., for several years last past has been engaged in the business of dressing and dyeing furs chiefly for fur coats and fur clothing. In the course and

conduct of its business and for the purpose of inducing customers to forward pelts to the respondent for dyeing and processing, the respondent furnishes to such customers various sketches or designs for use in the manufacture of fur garments and also labels to be attached to such garments designating them as "Mendoza Furs." Respondent causes said sketches or designs and labels, together with such processed furs, to be transported from its place of business in the State of New York to customers located in various other States of the United States.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said furs processed by it and in sketches or designs and labels to be attached to finished garments in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of its business respondent for more than 1 year last past has been in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with persons, firms, and partnerships likewise engaged in the business of dressing and dyeing furs and of selling and distributing fur garments.

PAR. 3. In the course and conduct of its aforesaid business, the respondent advertises in various circulars, newspapers, and periodicals all of which are distributed to customers and prospective customers located in various States of the United States. In such advertising, the respondent represents that the sketches supplied by it are designed by famous Parisian couturiers; that the labels supplied by it are the labels of famous Parisian couturiers and that the use of such labels is authorized by them. In addition to such advertising, the respondent also does general advertising in the same manner for the purpose of acquainting the public and the trade with the trade name "Mendoza Furs." In this advertising, respondent represents that various garments labeled "Mendoza Furs" are designed by various famous Parisian couturiers, that Mendoza fur garments are manufactured in Paris, France, and have won a prize or award in competitive competition in Paris, France. These various advertisements carry reproductions of the various labels which respondent furnishes and which purport to be labels of Parisian Couturiers such as Schiaparelli, Vionnet, Heim, Max and Jeanne Lavin and others.

In the same manner and for the purpose of misleading members of the purchasing public and also members of the trade, the respondent furnishes to its customers labels in the French language. It reproduces such labels which purport to carry the signature and trade mark of certain Parisian couturiers in its advertising in the manner

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aforesaid. Such practices have a tendency to mislead and deceive purchasers into the belief that the garment containing such label has been manufactured in France by or under the direction of the couturier named thereon. A typical example of this form of label is the following:

d'apres un modele

MADELIENE VIONNET

(in longhand)

pour Mendoza Furs

PAR. 4. In truth and in fact the sketches and designs furnished by the respondent are not prepared by any Parisian couturier and the labels supplied by the respondent are not the labels of the particular Parisian couturiers named, nor have such couturiers authorized the respondent to use such labels. The garments to which such labels are attached have not been manufactured in Paris, France, nor have they been designed by either Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin or any other person or persons in Paris, France, and no such persons have any connection with the designing or manufacturing of such products. No garments made of furs dyed or processed by respondent have ever won a prize or award in a competitive competition in Paris, France, and the use of the term "Grand Prix, Paris" appearing in certain of the respondent's advertising is misleading and untrue.

PAR. 5. By the use of the aforesaid practice of furnishing unauthorized labels the respondent places in the hands of uninformed or unscrupulous retail dealers and manufacturers, a means and instrumentality whereby said dealers and manufacturers may deceive and mislead members of the purchasing public into the erroneous belief that fur garments bearing the labels hereinbefore described have been designed, created, and originated in Paris, France, by the famous Parisian couturiers named on such labels.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for fur coats and fur clothing designed, created and originated in Paris, France. There is also a preference for garments designed or made by those couturiers named by the respondent in said advertising and on said labels, and such garments command a higher price in the United States than those fur coats and fur clothing designed and made in the United States.

PAR. 7. The use by respondent of the foregoing false statements, representations and labels as hereinabove described has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that gar-

ments containing the labels supplied by the respondent are manufactured in France, designed by French couturiers and have other preeminent qualities. As a result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of garments containing respondent's labels with the effect that trade has been diverted unfairly to the respondent from its competitors likewise engaged in the business of dressing and dyeing furs and of manufacturing and selling fur coats and fur clothing in commerce among and between the various States of the United States who truthfully advertise their respective products. As a consequence thereof, injury has been done and is now being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury 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 the 18th day of June 1939, issued and served its complaint in this proceeding upon said respondent, Mendoza Fur Dyeing Works, Inc., charging it 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 August 2, 1939, 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 findings 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

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premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mendoza Fur Dyeing Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 722 East One Hundred and Thirty-third Street, New York City, in the State of New York.

PAR. 2. Respondent, Mendoza Fur Dyeing Works, Inc., for several years last past has been engaged in the business of dyeing furs for fur coats, fur trimmed coats, and fur clothing. In the course and conduct of its business and for the purpose of inducing customers to forward pelts to the respondent for dyeing and processing, the respondent furnishes to some customers various sketches or designs for use in the manufacture of fur garments and also labels to be attached to such garments designating them as "Mendoza Furs." Respondent causes said sketches or designs and labels, together with such processed furs, in some instances, to be transported from its place of business in the State of New York to customers located in various other States of the United States.

In the course and conduct of its business respondent for more than one year last past has been in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with persons, firms, and partnerships likewise engaged in the business of dyeing furs.

PAR. 3. In the course and conduct of its aforesaid business, the respondent advertises in various circulars, newspapers, and periodicals all of which are distributed to customers and prospective customers located in various States of the United States. In such advertising, the respondent represents that the sketches supplied by it are adaptations of designs by famous Parisian couturiers; in a few instances which were immediately discontinued, the respondent represented that the sketches were designed by famous Parisian couturiers; in addition to such advertising, the respondent also does general advertising in the same manner for the purpose of acquainting the public and the trade with the trade name "Mendoza Furs." In this advertising, respondent represents that various garments labeled "Mendoza Furs" are adaptations from designs of various famous Parisian couturiers, and that furs processed by respondent have won a prize or an award in competitive competition in Paris, France. These various advertisements carry reproductions of the various labels which respondent furnishes and which purport to be labels of Parisian couturiers such as Schiaparelli, Vionnet, Heim, Max and Jeanne Lavin, and others.

In the same manner and tending to mislead members of the purchasing public and also members of the trade, the respondent furnishes to its customers labels in the French language. It reproduces such labels which purport to carry the signature and trade mark of certain Parisian couturiers in its advertising in the manner aforesaid. Such practices have a tendency to mislead and deceive purchasers into the belief that the garment containing such label has been manufactured in France by or under the direction of the couturier named thereon. A typical example of this form of label is the following:

d'apres un modele

MADELIENE VIONNET

(in longhand)

pour Mendoza Furs

PAR. 4. In truth and in fact the sketches and designs furnished by the respondent are not prepared by any Parisian couturier and the labels supplied by the respondent are not labels of the particular Parisian couturiers named, nor have any such couturiers authorized the respondent to use such labels. The garments to which such labels are attached have not been manufactured in Paris, France, nor have they been designed by either Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin or any other person or persons in Paris, France, and no such persons have any connection with the designing or manufacturing of such products. No garments of respondent have ever won a prize or award in a competition with garments of others in Paris, France, except as hereinafter stated, and the use of the term "Grand Prix, Paris" appearing in its present form in certain of the respondent's advertising may tend to mislead.

Respondent was in 1928 awarded Grand Prix, a gold medal and diploma by the "Exposition d'Economie Domestique," held at Paris, France, "for its excellent process of the imitation of skins of beaver, fox" and other furs.

PAR. 5. By the use of the aforesaid practice of furnishing unauthorized labels the respondent places in the hands of uninformed or unscrupulous retail dealers and manufacturers, a means and instrumentality whereby said dealers and manufacturers may deceive and mislead members of the purchasing public into the erroneous belief that fur garments bearing the labels hereinbefore described have been designed, created or originated in Paris, France, by the famous Parisian couturiers named on such labels.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for fur coats and fur clothing designed,

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created and originated in Paris, France. There is also a preference for garments designed or made by those couturiers named by the respondent in said advertising and on said labels, and such garments command a higher price in the United States than fur coats and fur clothing designed and made in the United States.

PAR. 7. The use by the respondent of the foregoing misleading statements, representations and labels as hereinabove described has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that garments containing the labels supplied by the respondent are manufactured in France, designed by French couturiers and have other preeminent qualities. As a result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of garments containing respondent's labels with the effect that trade has been diverted unfairly to the respondent from its competitors likewise engaged in the business of dyeing furs in commerce among and between the various States of the United States who truthfully advertise their respective products. As a consequence thereof, injury has been done and is now being done by the respondent to competition in commerce among and between the various States in the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent 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 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, the answer of the respondent and a stipulation as to the facts entered into between the respondent herein 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 herein 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, Mendoza Fur Dyeing Works, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the business of processing furs, designing garments, or the sale or distribution of sketches or designs of fur garments or of labels for use in garments made of fur, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Representing, through the use of their names on labels, or in any other manner, that garments made of furs processed by the respondent are made or designed by Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin, or any other couturier, when such is not the fact.

2. Using the names Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin, or the name of any other well-known designer of women's clothing, on labels, or in any other manner, to designate, describe or refer to garments not in fact designed by the person or persons whose names are used.

3. Representing that sketches or designs furnished by the respondent to its customers are sketches or designs prepared by Parisian couturiers, and that the labels supplied with such sketches or designs are the labels supplied by such couturiers for use in garments made from such sketches or designs, and that respondent is authorized to use their names in connection with the manufacture and sale of fur garments.

4. Using the term "Grand Prix Paris" or other words of similar import or meaning to designate, describe or refer to an award or prize received by respondent from "Exposition d'Economie Domestique" in 1928, Paris, France, unless accompanied by a statement, equally conspicuous, showing the nature of said award or prize and the date thereof or representing that garments made from furs dyed or processed by the respondent have received a prize or award in competition with other garments in Paris, France, or at any other place, unless such is a fact, and any reference to such prize or award is accompanied by a statement, equally conspicuous, showing the nature of said prize or award and the date thereof.

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

PRONTO FILE CORPORATION

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

Docket 3717. Complaint, Feb. 18, 1939—Decision, Jan. 8, 1941

Where a corporation engaged in manufacture of steel card cabinets and in interstate sale and distribution thereof, in competition with others engaged in sale and distribution in commerce of such products—

Stated in and on folders, cards, and circulars which it distributed and caused to be distributed to its dealer-purchasers and prospective purchasers in various States and in the District of Columbia, and in which its products were pictorially and descriptively represented, that same were being offered at a 50 percent reduction in price, and set forth, in juxtaposition to such pictorial representations and descriptions, price in black numerals which was struck through with red lines and for which, in each case, was substituted, in red numerals, price of half as much, and furnished to dealer-customers, for a consideration, and for distribution to consuming public, such cards, and represented, as aforesaid, as generally understood by dealers and consuming public, that price in black, canceled as above set forth, was regular and customary selling price for product to which it applied, and substituted price, in red, a reduced one, facts being prices set forth in red type, as above set forth, constituted usual and customary prices quoted and charged consuming public by it, and black type prices, canceled as aforesaid, were not its regular and customary prices;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous belief that its products were being offered at a reduced price equal to 50 percent of their retail value and usual and customary retail selling price, and with result, as consequence of such misrepresentation of customary selling price of its products and offer thereof at pretended reduced price, that trade was diverted unfairly to it from many competitors who do not misrepresent usual and customary selling price of their products and do not offer same at pretended reduced prices; to the injury of competition in commerce:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Weisman & Doskow, of New York City, for respondent.

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