

IN THE MATTER OF
JOHN J. TRACEY COMPANY

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

Docket 4315. Complaint, Sept. 16, 1940—Decision, Apr. 19, 1941

Where an individual engaged in interstate sale and distribution of toilet articles and soap to retailers—

Represented that his said product was of English origin or made in England, through printing on the cartons and boxes in which it was packed for shipping, and stamping on the cakes thereof, various names indicative of flower scents, with which were included word "English," such as "English Lilac," "English Honeysuckle," "English Orchid," "English Carnation," and "Flaroma English Cold Cream Soap," facts being none of such soaps were made in or imported from England, or of English origin, such as preferred by a substantial portion of the purchasing public, but were produced in the United States;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and implications were true, and thereby cause purchase of his said products by it:

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

Mr. Clark Nichols for the Commission.

Mr. Harris F. Williams, of Chicago, Ill., 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 John J. Tracey Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, John J. Tracey Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business located at room 11102, Merchandise Mart, Chicago, Ill. Respondent is now and during the year last past has been engaged in the sale and distribution of toilet articles and soap. Respondent sells its products to

retail dealers located in the various States of the United States and in the District of Columbia, and causes said products when sold by it to be transported from its place of business in the city of Chicago, Ill., to purchasers at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent sells and distributes soap packed in cartons bearing the labels "English Lilac," "English Honeysuckle," "English Orchid," "English Carnation," and other names bearing the word "English," thereby representing that said soap contained in said cartons is of English origin or is made in England. The individual cakes of soap are also marked "English lilac," "English Honeysuckle," "English Orchid," and "English Carnation."

Respondent has also distributed in commerce as aforesaid certain soaps packed in cartons bearing the label "Cold Cream Soap—More Than a Soap, A Beauty Treatment," and the individual cakes bear the wording "Cold Cream Soap." Respondent thereby represents that such soap is made of cold cream or contains a sufficient amount of cold cream to possess added detergent or emollient properties by reason of the inclusion of such ingredient.

PAR. 3. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact, none of the soaps labeled "English" are made in or imported from England, nor are they of English origin, but are made by a soap manufacturer in the United States. The soap labeled "Cold Cream Soap" contains insufficient cold cream to have any beneficial or emollient effects whatsoever in excess of those possessed by soaps not containing such ingredient.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for soaps made in England or which are of English origin and imported into the United States.

PAR. 5. The acts and practices of respondent as herein set forth have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's soaps are of English origin and that said soaps possess qualities and benefits which they do not in fact possess, and the capacity and tendency to cause the public to purchase substantial quantities of respondent's products.

PAR. 6. The aforesaid acts and practices of the 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 16th day of September 1940, issued and served its complaint in this proceeding upon said respondent, John J. Tracey Company, 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 7th day of October 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 Harris F. Williams, attorney of record for said 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 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. The filing of a trial examiner's report on the evidence was expressly waived.

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 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. The respondent, John J. Tracey Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business located at room 11102, Merchandise Mart, Chicago, Ill. Respondent is now and during the year last past has been, engaged in the sale and distribution of toilet articles and soap. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the city of Chicago, State of Illinois, to purchasers at their respective points of location in various States of the United States, other than the State of Illinois and in the District of Columbia.

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Conclusion

PAR. 2. The Commission finds that in the course and conduct of its business, the respondent has represented that its soap is of English origin or is made in England by printing on the cartons and boxes in which it is packed for shipping, and by stamping on the cakes of soap so packed for shipping, the following representations, among others, descriptive thereof:

English Lilac
English Honeysuckle
English Orchid
English Carnation
Flaroma English Cold Cream Soap

Other names indicative of other flower scents, which names included the word "English," have been used by respondent.

The Commission further finds that none of the soaps sold and distributed by the respondent and labeled "English" are made in or imported from England, or have an English origin, but, instead, such soaps have at all times been manufactured and produced in the United States.

There is a preference on the part of a substantial portion of the purchasing public for soaps made in England, or which are of English origin, and imported into the United States.

PAR. 3. The Commission further finds that respondent's cold cream soap has emollient properties over that possessed by ordinary soap only to the extent of the effect of its cold cream content under conditions of use.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications that its said soap products are of "English" origin has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's products.

CONCLUSION

The 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

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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 proceedings, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, John J. Tracey Co., 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 its soap, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Using the word "English," or any other word or term of similar import and meaning, in any way to refer to or describe soap which is not made in England.

2. Representing in any manner that soap which is made in the United States is made in England or in any country other than the United States.

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.

Syllabus

IN THE MATTER OF

SOMERSVILLE MANUFACTURING COMPANY, AND J. J.
O'DONNELL AND CLINTON ELLIS, TRADING AS O'DON-
NELL AND ELLISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4324. Complaint, Sept. 27, 1940—Decision, Apr. 19, 1941*

Where a corporation engaged in manufacture and interstate sale and distribution of various fabrics, and two individuals engaged as its selling agents in soliciting and filling orders from manufacturers of coats and other garments and in supplying to purchasers of said fabrics certain labels, as hereinafter described, furnished by said corporation and attached to garments in question when they were displayed and sold to retailers and purchasing public—

- (a) Represented that their fabrics and garments made therefrom were composed entirely of fiber made from camel hair, through labels containing such legends, along with and preceding words "SOMERSVILLE FABRIC," as "GENUINE CAMEL'S HAIR," "CAMEL'S HAIR," and "KING CAMEL," together with depiction, in case of last, of camel and palm trees, notwithstanding fact none of said fabrics were made entirely from camel hair, but contained substantial percentages of wool, mohair and other fibers, and best cloth made by it in its mills and designated by it as "genuine camel hair" had never been made with more than 85 to 90 percent of said content, with balance of wool and other fibers; and
- (b) Made use, also, on fabric generally containing 50 percent camel hair, 25 percent kid mohair and 25 percent wool of label featuring, in large script letters, words "CAMEL'S HAIR" and also setting forth, in much smaller, less conspicuous type, which would be entirely overlooked by many purchasers, words "Kid Mohair & Wool";

With effect of placing in the hands of uninformed or unscrupulous manufacturers or retail dealers a means and instrumentality whereby they were enabled to deceive and mislead members of the purchasing public by representing garments made from such fabrics and bearing such labels as being made entirely of camel hair, long possessed of high repute for warmth, lightness and other superior qualities and therefore decidedly preferred by substantial portion of purchasing public, and of similarly misleading and deceiving a substantial number of manufacturers and dealers and members of purchasing public, whereby they were respectively induced to and did purchase substantial quantities of said products and garments made therefrom:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Robert Mathis, Jr. for the Commission.

Schatz & Schatz, of Hartford, Conn., for respondents.