

Complaint

IN THE MATTER OF

HARRY GEMSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3716. Complaint, Feb. 18, 1939—Decision, Apr. 26, 1941

Where an individual engaged in competitive interstate sale and distribution of outer garment materials, cloth, and allied products, acting as selling agent for various woolen manufacturers; in advertising a certain fabric containing approximately 10 percent camel hair, in trade papers and periodicals and in circulars and other printed matter—

- (a) Made use of and featured the designation "Camelite," together with picturizations of a camel and such statements as "a rich lustrous fleece," and "the rich lustrous fleece that has won approval of leading buyers," and
- (b) Set forth on labels which he caused to be placed on the material in question the statement "Genuine Camelite," together with picturization of a camel;

With result of representing falsely through such designations, statements and picturizations that the product in question was composed entirely of camel's hair, and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that his said product was composed entirely of such hair, and with consequence that a number of consuming public purchased a substantial volume of his fabric, and trade was diverted unfairly to him from competitors:

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.

Before *Mr. Miles J. Furnas* and *Mr. John W. Addison*, trial examiners.

Mr. J. R. Phillips, Jr., for the Commission.

Mr. Philip Pearlman, 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 Harry Gemson, an individual, 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:

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PARAGRAPH 1. Respondent, Harry Gemson, an individual, with his office and principal place of business located at 450 Seventh Avenue, New York, N. Y., is now engaged, and for many years last past has been engaged, as a selling and commission agent for outer garment materials, cloth and allied products. Respondent offers for sale, now sells and distributes, and has sold and distributed, such materials and cloth to retail dealers and other customers located in the various States of the United States and in the District of Columbia.

Respondent causes said products when sold to be shipped from his place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in said products so sold by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now and at all times herein mentioned has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of outer garment materials, cloth, and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, and for the purpose of inducing the purchase of said outer garment materials, cloth, and other allied products, respondent has made, by means of labels affixed and attached to said products, and by means of suggesting and assisting in the phrasing or wording of advertisements, and by bearing a part of the cost of said advertisements used by the retailers of said cloth, which are inserted in newspapers and advertising periodicals having a general interstate circulation, representations concerning the character, quality, nature, fiber, and fabric of his cloth or cloths. Among and typical of said representations made by the respondent, are the following:

GENUINE

CAMELITE

(Pictorial Representation of camel)

A

GEM FABRIC

Camelite—the fabric of the hour—the rich lustrous fleece that has won approval of leading buyers of teen coats and girls' coats.

Genuine Camelite—a gem fabric.

Camelite has been created by Harry Gemson.

Today more than ever before Camel-hair is being used by the masses. It is the only staple fabric never getting out of style and is made exclusively for

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us by a high-grade woolen mill established nearly half a century ago, who with their manipulation produced from fibre to finished fabric, insuring uniformity of quality.

USE GENUINE CAMELITE

(s) Harry Gemson.

Said statements, and similar statements, appearing on labels affixed to respondent's outer-garment materials and cloth and in the aforesaid advertising matter, purport to be descriptive of the character, quality, nature, fiber and fabric of said materials and cloth, and represent that the same is made, in whole or predominant part, of camels' hair. There exists among dealers and consumers a substantial demand for materials made in whole or predominant part of camels' hair.

PAR. 4. The representations made by the respondent with respect to the character, quality, nature, fiber and fabric of his cloth, are grossly exaggerated, false, misleading and untrue. In truth and in fact the outer garment materials or cloth of the respondent are not in whole or in predominant part of camels' hair. The true fact is that respondent's cloth contains approximately 10 percent genuine camels' hair.

PAR. 5. There are among respondent's competitors, many who manufacture, distribute and sell cloth for outer garments, who do not in any way misrepresent the quality or character of their respective materials.

PAR. 6. The false and misleading statements set out and referred to in paragraph 3 hereof were and are calculated to, have had and have, a tendency and capacity to deceive and mislead dealers and consumers into the erroneous belief that Camelite cloth is made, in whole or in predominant part, of camels' hair, and unfairly to divert business to respondent from his said competitors who truthfully represent the fiber make-up of the cloth they sell. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 February 18, A. D. 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Harry Gemson, an individual, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Philip Pearlman, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, the report of the trial examiner upon the evidence, brief in support of the complaint (no brief having been filed by the respondent or oral argument requested), 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, Harry Gemson, is an individual, with his office and principal place of business located at 450 Seventh Avenue, New York, N. Y. Respondent is now, and for several years last past has been, engaged in the sale and distribution of outer garment materials, cloth, and allied products in commerce among and between the various States of the United States. During this period the respondent has generally acted as selling agent for various woolen manufacturers on a commission basis and offers for sale and sells such products to retail dealers and other customers located in various States of the United States. Respondent causes said products, when sold, to be shipped from his place of business in the State of New York, or from the places of business of the manufacturer of such merchandise, to purchasers thereof located in various States of the United States other than the State of New York or States in which

such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of outer garment materials, cloth, and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The Commission finds that some time prior to 1937 the respondent, either individually or as a member of a firm, represented the Tingue Manufacturing Co. as selling agent for a woolen fabric designated "Camelite." The Tingue Manufacturing Co. having gone out of business, the respondent later, as an individual, engaged in the sale and distribution of woolen fabrics manufactured by the Wallace Woolen Mills, Inc. At the request of the respondent, the Wallace Woolen Mills, Inc., produced a fabric containing approximately 10 percent camel hair, which fabric was designated "Camelite."

The Commission further finds that during the year 1937 and for a portion of the year 1938 the respondent was engaged solely in the sale and distribution of woolen fabrics, and particularly of the fabric designated "Camelite," manufactured by the Wallace Woolen Mills, Inc.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of said fabric designated as "Camelite," the respondent placed certain advertisements in various trade papers and periodicals having a general circulation among and between the various States of the United States, describing said fabric designated as "Camelite." Said advertisements were placed in such periodicals in the name of the respondent, a portion of the cost of which having been paid by the Wallace Woolen Mills, Inc. Among and typical of the representations made by the respondent in such advertisements are the following:

CAMELITE

Genuine Camelite

(A pictorial representation
of a camel)

A Gem Fabric

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THE FABRIC OF THE HOUR

A rich lustrous fleece in the
season's latest colors

* * *

A Fabric Created by

HARRY GEMSON

225 West 34th Street New York

CAMELITE

The Fabric
of the Hour

The rich lustrous fleece that has
won approval of leading buyers of
teen coats and girls' coats.

GENUINE CAMELITE

(A pictorial representation
of a camel)

A Gem Fabric

* * * *

Camelite has been created by

HARRY GEMSON

225 West 34th Street New York

CAMELS

in America

Genuine Camelite

(A pictorial representation
of a camel)

A Gem Fabric

* * * *

Today more than ever before, Camel hair is being used by the masses. It is the only staple fabric, never getting out of style, and is made exclusively for us by a high grade woolen mill established nearly half a century ago who with their manipulation produce from fiber to finished fabric insuring uniformity of quality.

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. Use Gemson's Camelite

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PAR. 5. In addition to the advertisements hereinabove described, the respondent has used the name "Camelite," together with the above-described pictorial representation, on various circulars and other printed matter offering for sale and describing fabric designated as "Camelite." The respondent has also caused labels to be placed on said material reading as follows:

Genuine

CAMELITE

(Pictorial representation
of a camel)

A Gem Fabric

PAR. 6. The Commission further finds that the use of the word "Camelite" to designate or describe respondent's product, the use of the representations contained in the advertisements hereinabove set forth, and the use of labels on said product bearing the name "Camelite" and a pictorial representation of a camel constitute representations that the product sold by the respondent under the designation "Camelite" is composed entirely of camel's hair, when in truth and in fact respondent's product designated "Camelite" contains only approximately 10 percent genuine camel's hair.

PAR. 7. The Commission further finds that the use by the respondent of the foregoing false, deceptive, and misleading statements and the designation of respondent's product as "Camelite" in advertising and upon labels and the use of the pictorial representation of a camel in various advertising and upon labels, had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent's product so designated and described was composed entirely of camel's hair. On account of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's fabrics, with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various woolen and camel hair fabrics.

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CONCLUSION

The aforesaid acts and practices of 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 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, answer of the respondent, testimony, and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and report of the trial examiner thereon, and brief filed herein by John R. Phillips, Jr., counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Harry Gemson, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of outer garment materials, cloth, and allied products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "camel's hair" or "camel," or any other term or terms descriptive of camel's hair, in advertising or otherwise, to describe, designate, or refer to any fabric or product which is not composed wholly of camel's hair; provided, however, that in the case of fabrics or products composed in part of camel's hair and in part of other fibers, such terms may be used as descriptive of such camel's hair content if there are used in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber thereof.

2. Using the term "Camelite" or any other term which includes the word "camel" or any colorable simulation thereof, or using any other term of similar import or meaning on labels or otherwise, to describe, designate, or refer to any fabric or product which is not composed wholly of camel's hair; provided, however, that in the case of fabrics or products composed in part of camel's hair and in part of other

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fibers, such term may be used as descriptive of the camel's hair content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

3. Using any pictorial design of a camel in connection with any description of, or reference to, fabrics or products in which camel's hair is not the predominating fiber.

4. Representing, in any manner, that fabrics or products offered for sale or sold by respondent contain camel's hair in greater quantity than is actually the case.

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

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the "Wool Products Labeling Act of 1939."

IN THE MATTER OF

HARTIG DRUG COMPANY, ALSO TRADING AS H. K. PHARMACEUTICAL LABORATORIES, AND A. J. HARTIG, AS PRESIDENT OF HARTIG DRUG COMPANY, INDIVIDUALLY AND TRADING AS H. K. PHARMACEUTICAL LABORATORIES

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

Docket 4406. Complaint, Mar. 4, 1941—Decision, Apr. 26, 1941¹

Where a corporation and an individual, who, as its president, controlled and directed its policies and activities as a family business, engaged in interstate sale and distribution of various medicinal preparations, including certain products purportedly for the relief of delayed menstruation, consisting of five treatments designated as "Menstruaid Nos. 1, 2, 3, 4, and 5"; by means of advertisements disseminated through the mails and by circulars and other printed or written matter—

- (a) Represented that said preparations constituted a competent, effective and positive remedy for delayed menstruation, were harmless, and would normalize the most stubborn menstrual troubles speedily, conveniently, and painlessly; which claims were false, and said preparations were not safe or harmless, in that they contained the drugs ergot, aloes, and cottonroot bark, and use thereof might result in gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning;
 - (b) Represented that said preparations constituted a scientific remedy which was fully guaranteed; facts being they did not constitute a scientific remedy for said conditions, were not fully guaranteed in that all said corporation and individual would do in connection with such guarantee was to furnish an additional supply designated as "Super Strength" at reduced price of \$5 upon failure of purchaser to obtain desired results; and
 - (c) Failed to reveal facts material in the light of said representations, and that use of such preparations under the conditions prescribed therein or under such as are customary or usual, might cause gastrointestinal disturbances, pelvic hemorrhage, uterine infection and blood poisoning, as noted above;
- With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false advertisements were true, and of inducing it, because of such belief, to purchase their medical preparations containing injurious drugs:

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. Eldon P. Schrup for the Commission.

¹ Amended.