

IN THE MATTER OF

JOSEPH GLUCK & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket #221. Complaint, Aug. 6, 1940—Decision, May 29, 1941

Where a corporation engaged in importing rugs and in competitive interstate sale and distribution thereof to various wholesale and retail dealers—

Made use of names "Kirman," "Irak," "Mossoul," or "Mosul" and "Karavan" to designate and describe their said products in invoices and in circulars to dealers and in otherwise referring thereto, and set forth designation "Kirman" conspicuously on labels attached to said "Kirman" rugs together with depiction of an Oriental scene, and on labels attached to its "Karavan" and "Irak" rugs set forth one or the other of those designations together with the familiar Turkish star and crescent and writing in what appeared to be Arabic, with the words "Made in France" in smaller type and on smaller labels on all such rugs;

Notwithstanding fact, the rugs in question, while they so closely simulated true Oriental rugs as to be indistinguishable therefrom by a large portion of the purchasing public, were not, as indicated and suggested by designations employed, and as long understood by a substantial portion of the purchasing public, those products made in the Orient and more particularly in certain parts of southwestern Asia, with pile of silk and wool, threads of which are knotted by hand in a special manner and which, because of their texture, beauty and durability, are decidedly preferred by many members of the purchasing public, but were woven on power looms at factories in France, of cotton or jute or a combination of both, and did not possess all the characteristics of genuine Orientals;

With capacity and tendency to mislead purchasers and prospective purchasers into the erroneous belief that the rugs thus designated were true Oriental rugs and to induce their purchase by reason thereof, and thereby to divert trade unfairly to it from competitors engaged in interstate sale of rugs of various kinds, both genuine Oriental and domestic, who truthfully represent their products, and with effect of placing in the hands of retail dealers means of misleading and deceiving the public, 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.

Mr. Randolph W. Branch for the Commission.

Diamond, Rabin, Botein & Mackay, of New York City, for respondent.

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Complaint

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 Joseph Gluck & Co., Inc., 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, Joseph Gluck & Co., Inc., is a corporation organized and existing under the laws of the State of New York and having an office and principal place of business at 305 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now and has been for more than 2 years last past, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers and causes them, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rugs in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their products and the place or method of manufacture thereof, or who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have

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been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a decided preference on the part of many members of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble true Oriental rugs in appearance by the names of "Kirman," "Karavan," "Mossoul," and "Irak."

There are true Oriental rugs known as "Kirman," "Irak," and "Mossoul" or "Mosul" and the use by respondent of these designations has the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact the genuine Oriental rugs of the same names. The use of the name "Karavan," which connotes the Orient, and is similar in sound to "Karaman" and "Gorevan," which are names of true Oriental rugs, has the capacity and tendency to induce the mistaken and erroneous belief that the rugs so designated are made in the Orient, by hand; and are in all respects, including materials, true Oriental rugs. Respondent uses said names to designate its said rugs in invoices and circulars to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Kirman" are firmly attached labels upon which that name appears in connection with a depiction of an Oriental scene; to the rugs designated as "Karavan" and "Irak" are firmly attached labels upon which one or the other of said names appears in connection with a depiction of the familiar Turkish star and crescent, and a writing in what appears to be Arabic letters. All said labels are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

In truth and in fact respondent's rugs referred to herein are woven on power looms at factories in France. They are not made by hand nor are individual threads knotted in the distinctive manner of the true Oriental rug. Said rugs are made either of cotton or of jute, or of the two combined. They do not possess all the characteristics of the true Oriental rug, but do, in fact, so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and are in consequence readily accepted as being true Oriental rugs.

PAR. 6. The use by respondent of the designations, depictions and representations, as set forth herein, in connection with the offering for sale and sale of its said rugs, has had, and now has, the tendency and capacity to and does mislead purchasers and prospective pur-

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chasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and that the rugs so designated and represented are true or genuine Oriental rugs, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices place in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their wares as set forth in paragraph 3 hereof. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between 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 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 6th day of August 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Joseph Gluck & Co., 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 the 27th 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 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 filing of a report upon the

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evidence by the trial examiner, the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission upon 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. Respondent, Joseph Gluck & Co., Inc., is a corporation organized and existing under the laws of the State of New York and having an office and principal place of business at 305 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers and causes them, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rugs in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their products and the place or method of manufacture thereof, or who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special

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manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a decided preference on the part of many members of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble true Oriental rugs in appearance by the names of "Kirman," "Karavan," "Mossoul," and "Irak."

There are true Oriental rugs known as "Kirman," "Irak," and "Mossoul," or "Mosul" and the use by respondent of these designations has had the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated were in fact the genuine Oriental rugs of the same names. The use of the name "Karavan," which connotes the Orient, and is similar in sound to "Karaman" and "Gorevan," which are names of true Oriental rugs, has had the capacity and tendency to induce the mistaken and erroneous belief that the rugs so designated were made in the Orient, by hand; and were in all respects, including materials, true Oriental rugs. Respondent has used said names to designate its said rugs in invoices and circulars to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Kirman" were firmly attached labels approximately 6" in length and 3" in width, upon which the name "Kirman" conspicuously appeared in letters approximately $\frac{3}{4}$ inch in height, in connection with the depiction of an Oriental scene. Such labels were plainly discernible to members of the purchasing public when said rugs were displayed for sale by retail dealers. Also attached to said rugs were labels approximately $2\frac{5}{8}$ " by $1\frac{1}{4}$ " upon which the words "Made in France" appeared in letters approximately $\frac{3}{32}$ " in height. To the rugs designated as "Karavan" and "Irak" were firmly attached labels upon which one or the other of said names appeared in connection with a depiction of the familiar Turkish star and crescent and a writing in what appear to be Arabic letters. Such labels were plainly discernible to members of the purchasing public when said rugs were displayed for sale by retail dealers. Also attached to said "Karavan" and "Irak" rugs were labels approximately $4\frac{1}{8}$ " in length by $2\frac{1}{8}$ " in width upon which the words "Made in France" appeared in letters approximately $\frac{1}{4}$ " in height.

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The respondent has not engaged in the practice aforesaid since on or about August 15, 1940.

In truth and in fact respondent's rugs referred to herein were woven on power looms at factories in France. They were not made by hand nor were individual threads knotted in the distinctive manner of the true Oriental rug. Said rugs were made either of cotton or of jute, or of the two combined. They did not possess all the characteristics of the true Oriental rug, but did, in fact, so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and were in consequence readily accepted as being true Oriental rugs.

PAR. 6. The use by respondent of the designations, depictions, and representations, as set forth herein, in connection with the offering for sale and sale of its said rugs has had the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations were true and correct, and that the rugs so designated and represented were true or genuine Oriental rugs, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have had the effect of placing in the hands of retail dealers who purchased said rugs and resold the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

Respondent's said acts and practices have had the tendency and capacity to divert trade unfairly to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their wares as set forth in paragraph 3 hereof. In consequence thereof, injury has been done by respondent to competition in commerce among and between various States of the United States and in the District of Columbia.

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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

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 facts and conclusion based thereon and 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, Joseph Gluck & Co., Inc., 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 rugs and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "Kirman," "Karavan," "Mossoul," "Irak," or any other words or names indicative of the Orient, or pictorial representations of a star and crescent simulating the Turkish emblem, or of other Oriental emblems, to mark, designate, describe, or refer to rugs not made in the Orient and which do not possess all the essential characteristics and structure of the type of Oriental rug which they purport to be.

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.

IN THE MATTER OF
WOOD & HYDE COMPANY

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

Docket 4235. Complaint, Aug. 14, 1940—Decision, May 29, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution to glove manufacturers of capeskin and cabretta glove leather made by an improved and secret process of tanning the skin of the South African capeskin sheep and the Brazil cabretta, member of the sheep family, whereby there was produced instead of the theretofore heavy, coarse-appearing leather, one so similar in appearance to kid that only experts could distinguish gloves made therefrom from those made of genuine kid—

- (a) Made use of trade name "Kinkid" in connection with the branding, labeling, advertising, and sale of its capeskin and cabretta leathers, with no indication on such leathers or in gloves made therefrom or in the advertising thereof of their true nature as produced from sheep skins and not from skins of young goats; and sold and shipped many of its best pieces, thus labeled, to glove manufacturers, various of whom it supplied with "Kinkid" transfer stamps to be used on the inside of gloves made from leathers in question; and
- (b) With a view to creating consumer demand for "Kinkid" gloves, advertised its said capeskin and cabretta glove leathers extensively in various well-known and widely circulated magazines and in trade publications, and mailed reprints of magazine advertisements to department stores, which it also supplied with envelope stuffers, to be enclosed by them in letters to their customers;

Notwithstanding fact that said leathers were not the light weight, fine grain, thin and flexible leather, made from the skin of young goats, long favorably associated in minds of the consuming public with the word "kid" as applied to leather and the more costly and preferred gloves made therefrom, but were made, as aforesaid, from the skins of the South African capeskin sheep and Brazil cabretta;

With effect of leading a substantial portion of the consuming public into the mistaken belief that gloves made from said last named leathers were made from genuine kidskin, and with consequence, as result of such belief, that members of such public were induced to buy substantial quantities of its said "Kinkid" products, and with further effect of placing in the hands of manufacturers and retailers means whereby they might mislead and deceive the purchasing public as to the true origin and character of said products:

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. Merle P. Lyon for the Commission.

Mr. James H. Wood, of Gloversville, N. Y., for respondent.