

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1941, TO OCTOBER 31, 1941

IN THE MATTER OF

ART-WEB MANUFACTURING COMPANY, INC., ET AL.

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

Docket 3471. Complaint, June 30, 1938—Decision, June 2, 1941

Where two corporations and two individuals, who were officers thereof, owned all their capital stock, and controlled and directed their business and policies; engaged in the manufacture and competitive interstate sale and distribution of wearing apparel, including polo shirts—

Made use on a substantial number of such polo shirts of labels inscribed "EDWARD VIII Sportwear 'Fit for a King'" surmounted by a close simulation of the British royal crown, and packaged them in containers bearing a similar label and picture; notwithstanding fact that such goods were all of domestic manufacture, and that they were not holders of a royal warrant authorizing them to supply goods to any member of the British royal family, or indicating approval by any member of such family, as represented and implied through aforesaid labels;

With effect of misleading and deceiving members of the purchasing public into the mistaken belief that their products were those of a British concern enjoying British royal patronage, made in Great Britain and imported into this country, and, because of such belief, into purchasing said products, whereby trade was unfairly diverted to them from their competitors:

Held, That such acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. John J. Keenan*, *Mr. John P. Bramhall*, *Mr. Lewis C. Russell*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Carrel F. Rhodes for the Commission.

Mr. Hyman Lehon, of New York City, for respondents.

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 Art-Web Manufac-

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turing Co., Inc., a corporation, A. M. Webb & Co., Inc., a corporation, and Leon J. Isaacs and Jesse Kohn, individually, and as officers of said corporations, hereinafter referred to as respondents, have 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 Art-Web Manufacturing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 86 Meserole Street, in the city of Brooklyn, State of New York. Said respondent is engaged in the manufacture of knitted underwear, sports clothes, and like products in its said place of business in Brooklyn, N. Y., and in the sale and distribution of such products. Respondent A. M. Webb & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 93 Worth Street, in the city of New York, State of New York. Said respondent is engaged in the sale and distribution of a line of merchandise including knitted underwear, sports clothes, and like products. Respondents Leon J. Isaacs and Jesse Kohn, whose address is 93 Worth Street, in the city of New York, State of New York, are officers of the aforesaid respondent corporations, and manage, control, and direct the sales policies and business affairs of said corporations, and participated in the acts and practices herein charged.

The above-named corporate respondents caused and cause their products, when sold, to be transported from their places of business in Brooklyn and in New York City, in the State of New York, to the purchasers thereof, located in States of the United States other than the State of New York, and in the District of Columbia.

Respondent corporations now maintain, and for more than 5 years last past have maintained, a course of trade in the aforesaid garments and other products so sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, the corporate respondents are now, and for more than 5 years last past have been, in competition with other corporations and with individuals and partnerships engaged in the business of manufacturing, selling, and distributing knitted underwear, sports clothes, and like products in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products by members of the purchasing public, respondents published and circulated among prospective purchasers in the various States of the United States and in the District of Columbia, advertisements in letters, pamphlets, circulars, and by other means, designed and intended to influence purchasers of their products. In said advertisements, and on the labels on their products, and on the boxes and wrappers in which said products are packed when shipped, respondents have used certain names, ciphers, symbols, trade-marks, and pictorial representations, among which are the following:

A pictorial representation of a crown simulating the British Royal Crown and the words "trade-mark," together with the name or cipher designating a head of the British royal family, in the following manner:

EDWARD VIII

EDWARD "fit for a king"

VIII "fit for a king"

EDWARD VIII, sportwear, "fit for a king"

PAR. 4. The British Royal Crown is the property and symbol of the British Government and of the reigning royal family of the British Government, and the name "Edward VIII" is the name used to designate and describe a reigning head of the British Government. The use of the British Royal Crown, or other royal symbols, or the use of words or symbols implying patronage by the British royal family, is strictly limited and guarded by the British Government. Such use in business is confined to those persons who manufacture articles that have been used by members of the royal family and who have, because of such patronage, been granted royal warrants to use such crown, emblems, or statements implying royal patronage. It is generally recognized throughout the British domain that such warrants are granted only to individuals who, as a result of long and continuous faithful service to members of the British royal family have proved the unquestioned uniform high quality of their products and the dependability of their service.

PAR. 5. There is a preference among a portion of the purchasing public, particularly among persons of British descent and others having a predilection for products processed or fabricated of British materials and manufactured or made in Great Britain, for products of

royal warrant holders, or members of the Royal Warrant Holders Association. Such preference is the result of the belief that royal warrants are granted only to those manufacturers whose products are uniformly of the highest quality and whose service is absolutely dependable in every respect.

PAR. 6. The use by the respondents of the name, cipher, symbols, and pictorial representation set out in paragraph 3, on or in connection with their products and in their advertising matter, serves as a representation to the members of the purchasing public that said products are manufactured by or under the authority of the British Government, the British Crown, a royal warrant holder, or member of the Royal Warrant Holders Association, and that said products are of British manufacture.

PAR. 7. In truth and in fact the products offered for sale and sold by respondents as hereinabove described are not of British manufacture, nor are said products manufactured or sold by or under the authority of the British Government, the British Crown, or a royal warrant holder, or member of the Royal Warrant Holders Association. Respondents are not royal warrant holders or members of the Royal Warrant Holders Association and have no authority to use any names or symbols so indicating in connection with their business or in connection with the products offered for sale and sold by them.

PAR. 8. There are among the competitors of the respondents, hereinbefore described, corporations, partnerships, and individuals likewise engaged in the manufacture, sale and distribution of knitted underwear, sports clothes, and like products, in commerce between and among the various States of the United States and in the District of Columbia, who do not misbrand or falsely represent their products, but truthfully represent the same.

PAR. 9. The use by respondents of "Edward VIII," "Edward 'fit for a king'," "VIII 'fit for a king'," "Edward VIII, sportwear 'fit for a king'," together with the representation of a crown and the words "trade-mark" is deceptive and misleading, and had, and now has, the capacity and tendency to, and did and does, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondents' said products so marked or advertised are the products of well known and long established British concerns which enjoy British royal patronage, and, by reason thereof, are royal warrant holders, and that the products so marked or advertised were manufactured or made in Great Britain and imported into this country. On account of such mistaken and erroneous beliefs, a substantial portion

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of the purchasing public has been and is now being induced to purchase said products from respondents, and thereby trade has been and is now being diverted unfairly to respondents from competitors designated in paragraphs 2 and 8 hereof. As a result thereof, substantial injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition 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 June 30, 1938, issued and subsequently served its complaint upon respondents Artwebb Manufacturing Co., Inc., a corporation, A. M. Webb & Co., Inc., a corporation, and Leon J. Isaacs and Jesse Kohn, individuals, charging them with unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, testimony, and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission, and in opposition thereto by attorney for respondents, before examiners 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, report and supplemental report of the trial examiners and exceptions thereto, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been 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 Artwebb Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of New York. This company is not at present actively engaged in business, but during a substantial portion of the time alleged in the complaint

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was engaged in the manufacture of wearing apparel, particularly polo shirts, and had its principal place of business at 86 Meserole Street, Brooklyn, N. Y. The correct spelling of respondent's name is Art-Web Manufacturing Co., Inc.

Respondent A. M. Webb & Co., Inc., is a corporation organized and existing under the laws of the State of New York engaged in acting as a selling agent for various manufacturers and having its office and principal place of business at 93 Worth Street, New York, N. Y.

Respondent Leon J. Isaacs, an individual, is vice president and secretary of respondent Art-Web Manufacturing Co., Inc., and president and treasurer of respondent A. M. Webb & Co., Inc., and together with respondent Jesse Kohn owns all the capital stock of both corporate respondents.

Respondent Jesse Kohn, an individual, is president and treasurer of respondent Art-Web Manufacturing Co., Inc., and vice president and secretary of respondent A. M. Webb & Co., Inc., and together with respondent Leon J. Isaacs owns all the capital stock of both corporate respondents.

The two individual respondents, by reason of the offices which they hold and their ownership of the capital stock of the two corporate respondents, own, control, and direct the business and policies of both corporate respondents.

PAR. 2. During a substantial portion of the time alleged in the complaint respondents have been engaged in the manufacture, sale, and distribution of articles of wearing apparel, including polo shirts, and in the course and conduct of such business have caused said articles of wearing apparel to be transported from the State of New York to purchasers in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business respondents have been engaged in substantial competition with other corporations and individuals, and with partnerships engaged in the business of manufacturing, selling, and distributing wearing apparel, including polo shirts, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. A substantial number of polo shirts sold and distributed in commerce by respondents between and among the several States of the United States and in the District of Columbia bore labels inscribed.

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EDWARD VIII

Sportswear

"Fit for a King"

surmounted by a pictorial representation closely simulating the British royal crown, and were packaged in containers bearing labels reading,

EDWARD VIII

Sportswear fit for a King

with a pictorial representation closely simulating the British royal crown imprinted above the word and figures "Edward VIII."

During a portion of the time that respondents used the aforesaid labels, including said pictorial representations, the reigning head of the British Empire was Edward VIII, King of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India. The labels used by respondents represented and implied that such use was by authority or right and signified to members of the consuming public that the articles bearing such labels, or the manufacturer thereof, had the approval of the head of or some member of the British royal family and that the goods bearing such labels were of English manufacture and were imported into this country.

There is a preference among a portion of the purchasing public for products manufactured in Great Britain or by holders of royal warrants. Respondents' goods bearing said labels were in fact of domestic manufacture and respondents are not holders of a royal warrant authorizing them to supply goods to any member of the British royal family or indicating approval by any member of the British royal family.

PAR. 5. The aforesaid representations are deceptive and misleading and have the capacity and tendency, to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondents' products are those of a British concern enjoying British royal patronage and were manufactured or made in Great Britain and imported into this country. Because of such mistaken and erroneous belief a substantial portion of the purchasing public was induced to purchase said products from respondents, and thereby trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices are all to the prejudice of the public and of respondents' 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, the answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before examiners of the Commission theretofore duly designated by it, report and supplemental report of the trial examiners and exceptions thereto, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Art-Web Manufacturing Co., Inc. (Artwebb Manufacturing Co., Inc.), a corporation, A. M. Webb & Co., Inc., a corporation, their officers, agents, representatives, and employees, respondents Leon J. Isaacs and Jesse Kohn, individuals, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and offering for sale of articles of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the designation "Edward VIII," either separately or in conjunction with any pictorial representation simulating the British crown, as a label for, or to designate or describe, any article of wearing apparel; or otherwise representing or implying that such products are of British manufacture, or imported from Great Britain, or have the approval of or warrant from any member of the British royal family.

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

Syllabus

IN THE MATTER OF
SOL. RAPHAEL, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4205. Complaint, July 31, 1940—Decision, June 4, 1941*

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

Made use of designations "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," and "Chinese," in describing and designating certain of its products in invoices and letters addressed to dealers, and in otherwise referring thereto, and on labels attached to rugs designated "Calcutta," set forth said name with depiction of coat of arms of Persia, and on labels attached to its "Bagad" rugs, said name together with depiction of an oriental scene;

Notwithstanding the fact that aforesaid rugs designated, as case might be, by names "Khandah" and "Aristan," which were those of the genuine product, made in the true oriental manner in India; by name "Karachi" which was that of true oriental rug made in Persia; by name "Numdah" which was that of felted woolen rug made in India; and by other names or designations which, used as aforesaid, connoted places in the Orient and China, were not, as long understood from such designations, oriental rugs made in the Orient, or more particularly certain parts of southwestern Asia, or Chinese oriental rugs made in China, by hand, with pile of wool, or silk and wool, threads of which were knotted by hand in a special manner, long held in great public esteem because of texture, beauty, and durability and therefore decidedly preferred on the part of many of the purchasing public, but were made on power looms in factories in France and Belgium of cotton or jute, or of a combination of both, and did not possess all the characteristics, as aforesaid indicated, of the true oriental or Chinese oriental rugs, which they so closely simulated in appearance as to be indistinguishable therefrom by a large portion of the purchasing public;

With capacity and tendency to mislead purchasers and prospective purchasers into the erroneous belief that said representations and designations were true, and to induce them to purchase said rugs, by reason thereof, as the genuine product, in all respects, and with effect of placing in the hands of retail dealers means of misleading the public in aforesaid particulars, and with further result that trade was unfairly diverted to it from its competitors engaged in interstate sale of rugs of various kinds, including genuine oriental, Chinese oriental, and domestic rugs, who truthfully represent their said products; to the injury of competition in commerce:

Held, That said 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.

Mary Rehan, of New York City, for respondent.