

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.

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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 Sol. Raphael, 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, Sol. Raphael, 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 333 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 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 among and between the 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. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese oriental rugs to be made in China, by hand, in the same manner and possessing the same qualities and characteristics

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as the oriental rug. Both oriental and Chinese 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 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 or Chinese oriental rugs in appearance by the names of "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamura," and "Chinese." There are rugs known as "Khandah" and "Aristan," which are made in the true oriental manner, in India. A true oriental rug, made in Persia, is known as the "Karachi," and a felted woolen rug, made in India, is known as the "Numdah."

The use by respondent of the designations "Khandah," "Aristan," "Karachi," and "Numdah" have the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact the genuine oriental and Indian rugs of the same names. The other designations, used as aforesaid, connote places in the Orient and China, and have the capacity and tendency to induce the mistaken and erroneous belief that the "Chinese" rugs are made in China, that the others are made in the Orient, that all are made by hand and are, in all respects, including materials, true Chinese oriental or oriental rugs. Respondent uses said names to designate its said rugs in invoices and letters addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Calcutta" are firmly attached labels upon which that name appears in connection with a depiction of the coat of arms of Persia; to the rugs designated "Bagad" are firmly attached labels upon which that name appears in connection with the depiction of an oriental scene. 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 said rugs are woven on power looms in factories in France and Belgium. They are not made by hand, nor are the individual threads knotted in the distinctive manner of the true oriental or Chinese oriental rug. Said rugs are made of cotton or of jute or of the two combined. They do not possess all the characteristics of the true oriental or Chinese oriental rug, but do in fact so closely simulate them 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 or Chinese 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 mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing 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 genuine oriental, Chinese oriental, and domestic rugs, who truthfully represent their products 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 July 31, 1940, issued, and on August 1, 1940, served its complaint in this proceeding upon respondent, Sol. Raphael, 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. After the issuance of said complaint and filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Sol. Raphael, 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 333 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 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 among and between the 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. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese oriental rugs to be made in China, by hand, in the same manner and possessing the same qualities and characteristics as the oriental rug. Both oriental and Chinese 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

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reason thereof there is a decided preference on the part of many 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 or Chinese oriental rugs in appearance by the names of "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," and "Chinese." There are rugs known as "Khandah" and "Aristan," which are made in the true oriental manner, in India. A true oriental rug, made in Persia, is known as the "Karachi," and a felted woolen rug, made in India, is known as the "Numdah."

The use by respondent of the designations "Khandah," "Aristan," "Karachi," and "Numdah" have the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact the genuine oriental and Indian rugs of the same names. The other designations, used as aforesaid, connote places in the Orient and China, and have the capacity and tendency to induce the mistaken and erroneous belief that the "Chinese" rugs are made in China, that the others are made in the Orient, that all are made by hand and are, in all respects, including materials, true Chinese oriental or oriental rugs. Respondent uses said names to designate its said rugs in invoices and letters addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Calcutta" are firmly attached labels upon which that name appears in connection with a depiction of the coat of arms of Persia; to the rugs designated "Bagad" are firmly attached labels upon which that name appears in connection with the depiction of an oriental scene. 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 said rugs are woven on power looms in factories in France and Belgium. They are not made by hand, nor are the individual threads knotted in the distinctive manner of the true oriental or Chinese oriental rug. Said rugs are made of cotton or of jute or of the two combined. They do not possess all the characteristics of the true oriental or Chinese oriental rug, but do in fact so closely simulate them 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 or Chinese 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 mislead purchasers and prospective purchasers thereof

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into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing 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 genuine oriental, Chinese oriental, and domestic rugs, who truthfully represent their products 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.

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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, Sol. Raphael, Inc., 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 "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," or "Chinese," or any other words or names indicative of the Orient or

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pictorial representations or simulations of the coat of arms of Persia or other oriental arms or of typically oriental scenes, 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.

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IN THE MATTER OF
ALTMAN NECKWEAR CORPORATION

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

Docket 4226. Complaint, Aug. 7, 1940—Decision, June 4, 1941

Where a corporation engaged in the manufacture of neckties and in the interstate sale and distribution thereof to members of the purchasing public—

- (a) Represented that a certain style of tie sold by it was made from materials woven by the Cherokee Indians, through labeling same "Cherokee Indian Homespun Wool," with likeness of an Indian depicted thereon, facts being said products were not made from materials woven or manufactured by the Cherokee or any other Indians;
 - (b) Represented that another style of tie was made wholly of silk, through labeling same "Duo-Silk-All-O Lined Throughout," when said product was not made entirely from silk, product of the cocoon of the silkworm, long held in great public esteem and in substantial demand, but consisted instead of a mixture of silk and rayon, the rayon predominating, so made as to simulate silk and practically indistinguishable by the purchasing public therefrom, with lining of rayon; and
 - (c) Failed to disclose in labeling and designating its said neckwear that lining thereof was composed of rayon and that tie materials consisted of mixture of rayon, predominating usually, with silk;
- With tendency and capacity to mislead purchasers and prospective purchasers into the erroneous belief that such representations were true and to induce them to purchase substantial numbers of its said neckties:

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. Lewis C. Russell*, trial examiner.

Mr. Donovan R. Divet for the Commission.

Mr. Herbert L. Slote and *Mr. Harold M. Goldblatt*, 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 Altman Neckwear Corporation, a corporation, hereinafter referred to as the 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, Altman Neckwear Corporation, is a corporation organized and existing under and by virtue of the laws of the