

IN THE MATTER OF

MASTERKRAFT GUILD WEAVERS, INC., ASIA MOHI COMPANY, LTD., AND C. JAMES GARFALO, PRESIDENT OF MASTERKRAFT GUILD WEAVERS, INC. AND ASIA MOHI COMPANY, LTD.

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

Docket 4237. Complaint, Aug. 15, 1940—Decision, Feb. 24, 1942

Where one of two corporations, under common control by an individual who was president and principal stockholder of both, engaged in interstate sale and distribution of rugs in substantial competition with others, including many who do not misrepresent their products or business status, or furnish their dealer customers with means for deceiving the public—

- (a) Made use, in invoices, catalogues, and price lists addressed to dealers, and on labels attached to rugs, of words "Hong Kong" and "Canton" to designate certain rugs which closely resembled Chinese Orientals, and of words "Mahah," "Numda," "Kirma," "Orienta," and "Bagdad" to designate rugs which closely resembled Orientals;

Notwithstanding fact said rugs were not, as thus indicated, true Chinese Oriental or Oriental rugs made by hand in China or the Orient, of pleasing texture and beautiful design, with pile of wool or silk and wool, threads of which were individually knotted in a special manner; but, while so closely resembling such rugs as to be indistinguishable therefrom by a large portion of the purchasing public, were made on power looms in Italy or Belgium, of cotton;

With result that said various rugs were readily accepted as being Chinese Oriental, Oriental, and true Indian "Numdah" rugs, notwithstanding fact that, pursuant to the United States Customs laws, they also bore labels indicating country of origin, which, being wholly inconsistent with other labels showing aforesaid names, could not properly qualify latter; and

- (b) Represented and implied that certain of their rugs were reproductions and copies, except as to material, of true Oriental, Chinese Oriental and Indian Numdah rugs, through furnishing to dealers catalogues and price lists containing such statements (along with such words as "Suez," "Orienta," "Dagdad," "Canton," etc.) as "The all rayon Oriental reproduction," "Cotton Oriental reproduction," "Cotton Chinese reproduction," "High pile cotton Numdah reproductions," etc.; and that others were true Oriental Mahal and Kirman rugs in all but material, through such statements, in connection with such names as "Mahah" and "Kirma," as "Heavy cotton Oriental" and "High quality cotton Oriental;"

Notwithstanding fact said rugs, as hereinbefore indicated, merely simulated Oriental, Chinese Oriental, or Numdah rugs, and particularly as respects last two, did not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material be disregarded;

- (c) Furnished to dealers purchasing their said cotton European rugs advertising copy which was intended to be, and was, inserted by them in news-

papers and other publications of general circulation, containing statements falsely representing and implying that rugs in question were in all respects reproductions and copies of true Orientals, through such typical statements as "9 x 12 Oriental Reproductions;" and

Where aforesaid corporation and second corporate concern above referred to, engaged, prior to its acquisition of tangible assets of the other, in rug designing merely, but thereafter in designing, selling and distributing such products—

(d) Made use of names "Chatham," "Dixie," and "New Cape Colony" to designate hooked rugs made in Japan, in invoices and catalogues supplied to dealers, and in advertisements and other publications of general circulation, and on labels attached to rugs;

Thereby implying that such rugs were made in the United States, notwithstanding presence thereon of other labels displaying country of origin pursuant to the customs laws, which were wholly inconsistent with those naming the rugs, and could not properly qualify latter; and

(e) Represented that certain of the rugs sold by them were made by said second corporate concern, through such statements in magazine advertisements, catalogues, price lists, invoices and labels, as "See these creations of the Masterkraft Guild Weavers," "In one of the greatest advertising schedules ever sponsored by any producer of hooked rugs, etc.," and "Masterkraft Guild Weavers * * * was organized to specialize in the design and manufacture of hooked rugs. Beginning as a small group of skilled weavers working * * * to revive the ancient art of fine rug making, the Guild Weavers have grown to be the largest body of craftsmen engaged in this activity today;" and

Where said second concern—

(f) Represented itself to be an association of weavers, established for mutual aid in carrying out a common purpose, through use of the words "Guild Weavers" in its corporate name, on letterheads and invoices, in advertising and otherwise;

The facts being that—while rugs in question were, at different periods, produced by weavers having an interest in their respective associations, organized by said president of the two corporations herein concerned, who was further responsible for arrangements under which the individual weavers worked and were compensated, including such matters as design and supervision—individual weavers did not function through corporations immediately herein involved, but through their own organizations from which corporations here immediately concerned purchased the rugs, and such corporations were not, under said facts, either manufacturers or weavers, nor was second corporate concern a guild; and

Where corporation first referred to—

(g) Represented that certain of its rugs had been approved and accepted by a disinterested independent agency qualified to pass judgment on such matters, through such statements on labels attached thereto as "Approved and accepted by American Bureau of Home Standards;"

The facts being said Bureau was not disinterested or independent, but was originally created and operated by aforesaid president and controlling stockholder of the two corporations involved, and later by an individual under his control and guidance, and had thereafter become nonexistent; and

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(h) Made use, in catalogues, price lists, invoices and labels, of name "Wool-Tex" to designate certain of its rugs made of cotton rolls or tubes filled with waste wool, thereby implying falsely that such rugs were composed wholly of wool;

Tendency and capacity of which acts and practices, not engaged in by many competitors, were to mislead and deceive a substantial portion of the purchasing public with respect to rugs of said corporations and individual, and business status thereof, and to cause it to purchase substantial quantities of their said products as a result of such belief thus engendered; whereby substantial trade was diverted from competitors to them:

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

Mr. Randolph W. Branch for the Commission.

Mr. David Easton, 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 Masterkraft Guild Weavers, Inc., a corporation, Asia Mohi Co., Ltd., a corporation, and C. James Garofalo, individually, and as president, of Masterkraft Guild Weavers, Inc., and Asia Mohi Co., Ltd., hereinafter referred to as respondents, have 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, C. James Garofalo, is an individual who is now, and at all times mentioned herein has been, president and a principal stockholder both of respondent, Masterkraft Guild Weavers, Inc., and of respondent Asia Mohi Co., Ltd., and in control of the management policies and operation of said corporations, particularly in respect to the acts and practices herein alleged.

Respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., are corporations organized and existing under the laws of the State of New York. On or about July 1, 1939, respondent, Masterkraft Guild Weavers, Inc. acquired all the tangible assets of respondent Asia Mohi Co., Ltd.

The said respondents maintain offices and principal places of business at 295 Fifth Avenue, city and State of New York.

PAR. 2. Respondent, Masterkraft Guild Weavers, Inc., is now, and has been, for more than 2 years last past, engaged in the business of designing, selling, and distributing rugs; from 1937 to on or about July 1, 1939, the selling and distributing phases of its business were

conducted in association with respondent, Asia Mohi Co., Ltd. In the course and conduct of their businesses, respondents sold said rugs to various wholesale and retail dealers and caused them, when sold, to be transported from their 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, Masterkraft Guild Weavers, Inc., maintains, and at all times mentioned herein has maintained, and respondent, Asia Mohi Co., Ltd., from 1937 to on or about July 1, 1939, 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 their said business, respondent, Masterkraft Guild Weavers, Inc., is now, and has been at all times mentioned herein, and respondent, Asia Mohi Co., Ltd., was, during the period mentioned above, 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 their business status, or the facts as to their "acceptance" or "approval" by a disinterested, independent agency or organization qualified to pass judgment on such matters, and 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 south-western 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 rugs made in China, by hand, in the same manner and possessing the same qualities and characteristics as the Oriental rug. Both Oriental and Chinese 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 of the purchasing public for such rugs.

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PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain of their rugs, which closely resemble Chinese Oriental rugs in appearance, by the names of "Hong Kong" and "Canton," which are cities in China. The use of said names has the tendency and capacity to, and does in fact, induce the mistaken and erroneous belief that the rugs so designated are made in China, by hand, and are in all respects, including materials, true Chinese Oriental rugs.

In like manner, said respondents have engaged in the practices of describing and designating certain of their rugs, which closely resemble Oriental rugs in appearance, by the names of "Mahah," "Kirma," "Numda," "Orienta," and "Bagdad." There are true Oriental rugs known as "Mahal" and "Kirman" and felted woolen rugs made in India known as "Numdah." "Bagdad" is a city in the Orient, and "Orienta," "Mahah," and "Kirma" simulate, respectively, the words "Oriental," "Mahal," and "Kirman."

The use by respondents of the said designations has the tendency and capacity to, and does in fact, induce the mistaken and erroneous belief that respondents' "Kirma" and "Mahah" rugs are true Oriental "Kirman" and "Mahal" rugs; that respondents' "Numda" rugs are the true Indian "Numdah," and that respondents' "Orienta" and "Bagdad" rugs are made in the Orient, by hand, and are in all respects, including materials, true Oriental rugs.

Respondents have used said names to designate said rugs in invoices, catalogs and price lists addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To certain of said rugs are firmly attached labels upon which one or another of said names appears, which are plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

PAR. 6. In truth and in fact, respondents' said "Hong Kong," "Mahah," and "Bagdad" rugs are made in Italy, and their "Canton," "Kirma," "Numda," and "Orienta" rugs in Belgium, of cotton, and on power looms. The "Hong Kong" and "Canton" rugs do not have the structure or all the characteristics of the true Chinese Oriental rug, the individual threads are not knotted in the distinctive manner of the true Chinese Oriental rug, and they are made from different materials. Respondents' "Mahah" and "Kirma" rugs are not true Oriental "Mahal" or "Kirman" rugs, and neither they nor respondents' "Bagdad" and "Orienta" rugs have the structure or all the characteristics of true Oriental rugs, nor are they made from the same

materials. Respondents' "Numda" rugs are not the true Indian "Numdah" rugs, do not have the structure or all the characteristics of the true "Numdah" rug, and are made of different materials. A large portion of the purchasing public is unable, so close is the resemblance in appearance, to distinguish respondents' "Hong Kong" and "Canton" rugs from true Chinese Orientals, respondents' "Mahah," "Kirma," "Bagdad," and "Orienta" rugs from true Orientals, or respondents' "Numda" from the true Indian "Numdah," and in consequence respondents' said rugs are readily accepted as being genuine Chinese Oriental, Oriental and "Numdah" rugs.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Masterkraft Guild Weavers, Inc., and Asia Mohi Co., Ltd., have engaged in the practice of furnishing to dealers and prospective dealers in their rugs, catalogs and price lists containing many misleading statements which represent and imply that certain of the said rugs are reproductions and copies, except as to material, of true Oriental, Chinese Oriental, and Indian "Numdah" rugs. Among and typical of such statements, are the following:

Suez—the all rayon Oriental reproduction.

Orienta—cotton Oriental reproduction.

Bagdad—extra heavy cotton Oriental reproduction.

Kirma—cotton Oriental reproduction.

Canton—extra heavy cotton Chinese reproduction.

Numda—high pile cotton Numdah reproduction.

Mahah—heavy cotton Oriental reproduction.

In truth and in fact, said rugs are not in structure or method of manufacture exact copies or reproductions of Orientals, Chinese Oriental, or "Numdah" rugs, but merely simulate them in appearance.

Said catalogs and price lists also contain misleading statements which represent and imply that certain of said rugs are true Oriental "Mahal" and "Kirman" rugs in all respects except for material. Among and typical of such statements, are the following:

Mahah—heavy cotton Oriental.

Kirma—high quality cotton Oriental.

In truth and in fact, said rugs are not made in the Orient. True "Mahal" and "Kirman" Oriental rugs are not made of cotton and respondents' said rugs do not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material are disregarded.

In like manner, respondents have engaged in the practice of furnishing to dealers buying certain of their cotton rugs made in Europe, as aforesaid, advertising copy which is intended to be, and is, in-

sented by such dealers in newspapers and other publications of general circulation among the purchasing public. Such advertisements contain misleading statements which represent and imply that said rugs are in all respect reproductions and copies of true Oriental rugs. Among and typical of such statements, is the following:

9 x 12 Oriental reproductions.

In truth and in fact, said rugs are not exact copies or reproductions of true Orientals in material, structure, characteristics, or method of manufacture, but merely simulate them in appearance.

PAR. 8. The manufacture of hooked rugs has been carried on in this country since early in its Colonial history, and was one of the earliest forms of artistic expression of the early settlers. Hooked rugs always have been, and still are, generally regarded as being a distinctively American product.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of certain of their rugs, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain of their hooked rugs by the names "Chatham," "Dixie," "New Cape Colony," and "Old Cabin." Such names carry so definite an American connotation as to have the tendency and capacity to, and do, induce the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondents used said names to designate said rugs in invoices, in catalogs supplied to dealers and prospective dealers, and in advertisements in magazines and other publications of general circulation among the purchasing public. Respondents also caused labels, each bearing one of the said names, to be securely attached to each of the said rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

In truth and in fact, the rugs designated as "Chatham," "Dixie," and "New Cape Colony" were made in Japan and those designated "Old Cabin" were made in Belgium.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi Co. Inc., and Masterkraft Guild Weavers, Inc., have engaged in the practice of representing, directly and by implication, that certain of the rugs sold by them were manufactured by respondent Masterkraft Guild Weavers, Inc. Such representations have been made by means of statements in advertisements inserted in magazines and

other periodicals of general circulation, in catalogs and price lists furnished to dealers and prospective dealers in such rugs, in invoices and on labels securely attached to such rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers. Among and typical of such statements are the following:

See these creations of the Masterkraft Guild Weavers today!

The Masterkraft Guild Weavers.

Masterkraft Guild Weavers, 285 Fifth Avenue, New York, N. Y.

Please send me a copy of "The Romance of Hooked Rugs."

Masterkraft magazine advertising will work for you throughout 1939.

In one of the greatest advertising schedules ever sponsored by any producer of hooked rugs, Masterkraft Guild Weavers program calls for more than 60 advertisements during 1939.

Masterkraft Guild Weavers, a production unit of Asia Mohi Co., Ltd., was organized to specialize in the design and manufacture of hooked rugs. Beginning as a small group of skilled weavers working under the direction of C. James Garofalo to revive the ancient art of fine rug making, the Guild Weavers have grown to be the largest body of craftsmen engaged in this activity today.

In truth and in fact, Masterkraft Guild Weavers, Inc., neither owns, operates nor controls, nor at any time mentioned herein has owned, operated or controlled, any establishment where rugs are made, and all the rugs sold by it are and were manufactured by others in foreign countries. It is not and never was an organization of skilled weavers, and its only function in the production of rugs has been in designing them.

PAR. 11. In the course and conduct of its business and in furtherance thereof, respondent, Masterkraft Guild Weavers, Inc., has represented, and now represents, itself to be an association of weavers established for mutual aid in carrying out a common purpose. This representation is made through the use of the words "Weavers Guild," in its corporate name, on its letterheads and invoices, in its advertising, and through other means.

In truth and in fact said respondent is not such an association of weavers, but is a privately incorporated commercial enterprise of which respondent, C. James Garofalo, is the principal stockholder.

PAR. 12. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi, Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of representing that certain of their rugs have been approved and accepted by a disinterested, independent

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agency or organization qualified to pass judgment on such matters. Such representations have been made by means of statements on labels attached to such rugs as aforesaid, of which the following is typical:

Approved
and
Accepted

American Bureau of Home Standards

In truth and in fact, the American Bureau of Home Standards, was not a disinterested, independent agency. It was originally created and operated by respondent, C. James Garofalo, and was later operated by an individual under the control and guidance of said Garofalo. It is now, and for some time past has been, non-existent and inoperative.

PAR. 13. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain of their said rugs by the name "Wool-Tex." The use of said name has the capacity and tendency to, and does, induce the mistaken and erroneous belief that the rugs so designated are composed wholly of wool. Such representations have been made by means of statements in catalogs and price lists furnished to dealers and prospective dealers in such rugs, in invoices and in labels securely attached to such rugs, so as to be plainly discernible to members of the purchasing public, when such rugs are displayed for sale by retail dealers.

In truth and in fact, said rugs are made out of cotton rolls or tubes filled with waste wool.

PAR. 14. The use by respondents of the designations and representations, as set forth herein, in connection with the offering for sale and sale of their said rugs, has had, and now has, the tendency and capacity to, and does, 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. Respondents' 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 respondents' said acts and practices, trade has been unfairly diverted to respondents from their 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 respondents to competition in commerce among and between various States of the United States and in the District of Columbia.

PAR. 15. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' 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 August 15, 1940 issued and subsequently served its complaint in this proceeding upon the respondents, Masterkraft Guild Weavers, Inc., a corporation; Asia Mohi Co., Ltd., a corporation; and C. James Garofalo, individually, and as president of Masterkraft Guild Weavers, Inc., and Asia Mohi Co., Ltd., charging them 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 September 6, 1940, the respondents filed their answer to the complaint. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondents and Richard P. Whiteley, Assistant 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 the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer and stipulation, the stipulation having been approved and accepted by the Commission and entered of record, 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, C. James Garofalo, is an individual, who is now, and at all times mentioned herein has been, president and a principal stockholder both of respondent Masterkraft Guild Weavers, Inc., and of respondent Asia Mohi Co., Ltd., and in control of the management, policies, and operation of said corporations, particularly in respect to the acts and practices herein described.

Respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., are corporations organized and existing under the laws of the State of New York. Prior to about July 1, 1939, respondent, Masterkraft Guild Weavers, Inc., merely designed rugs and actually did no business, but on or about that date it acquired all the tangible assets of respondent, Asia Mohi Co., Ltd., which at that time ceased doing business, although its corporate existence has not been terminated.

The said respondents, Garofalo, and Masterkraft Guild Weavers, Inc., maintain offices and principal places of business at 295 Fifth Avenue, city and State of New York, at which address the business of respondent Asia Mohi Co., Ltd., was formerly conducted.

PAR. 2. Respondent, Masterkraft Guild Weavers, Inc., is now, and has been since about July 1, 1939, engaged in the business of designing, selling and distributing rugs. From 1935 to on or about July 1, 1939, respondent, Asia Mohi Co., Ltd., was engaged in the business of selling and distributing rugs, some of which were manufactured by Masterkraft Guild Weavers Association, of Japan, as set forth in paragraph 10 hereof.

In the course and conduct of their businesses, respondents sold said rugs to various wholesale and retail dealers and caused them, when sold, to be transported from their 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, Masterkraft Guild Weavers, Inc., maintains, and since July 1, 1939, has maintained, and respondent, Asia Mohi Co., Ltd., from 1935 to on or about July 1, 1939, maintained a course of trade in their 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 their said businesses, respondent, Masterkraft Guild Weavers, Inc., is now, and has been at all

times since about July 1, 1939, and respondent, Asia Mohi Co., Ltd., was, during the period mentioned above, in substantial competition with other corporations and with firms, partnerships, and individuals also 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 their business status, or the facts as to their "acceptance" or "approval" by a disinterested, independent agency or organization qualified to pass judgment on such matters, and 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 rugs made in China, by hand, in a similar manner and possessing similar characteristics to the Oriental rug. Both Oriental and Chinese 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 substantial demand on the part of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, respondent, Asia Mohi Co., Ltd. has engaged in the practice of describing and designating certain of its rugs, which closely resembled Chinese Oriental rugs in appearance, by the names of "Hong Kong" and "Canton," which are cities in China.

The use of said names has had the tendency and capacity to, and did in fact, induce the mistaken and erroneous belief that the rugs so designated were made in China, by hand, and were in all respects true Chinese Oriental rugs.

In like manner, said respondent has engaged in the practice of describing and designating certain of its rugs, which closely resembled Oriental rugs in appearance, by the names of "Mahah," "Numda," "Kirma," "Orienta," and "Bagdad." There are true Oriental rugs known as "Mahal" and "Kirman" and felted woolen rugs made in

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India known as "Numdah." Bagdad is a city in the Orient, and "Orienta," "Mahah," and "Kirma" simulate, respectively, the words "Oriental," "Mahal," and "Kirman."

The use by respondent of the said designations has had the tendency and capacity to, and did in fact, induce the mistaken and erroneous belief that respondent's "Kirma" and "Mahah" rugs were true Oriental "Kirman" and "Mahal" rugs; that respondent's "Numda" rugs were the true Indian "Numdah," and that respondent's "Orienta" and "Bagdad" rugs were made in the Orient, by hand, and were in all respects true Oriental rugs.

Respondent has used said names to designate said rugs in invoices, catalogs and price lists addressed to dealers. To the rugs designated as "Kirma" were firmly attached labels approximately $2\frac{1}{2}$ inches by 2 inches upon which the words "Kirma" in capital letters approximately $\frac{3}{16}$ inch in height, and "Made in Belgium" in capital letters approximately $\frac{2}{16}$ inch in height, appeared.

To the rugs designated as "Hong Kong" were attached in close proximity to one another, two labels, approximately $2\frac{3}{4}$ inches by $\frac{9}{16}$ inch and $1\frac{3}{4}$ inches by $\frac{5}{8}$ inch. Upon the former appeared the words "Hong Kong" in capital letters approximately $\frac{5}{32}$ inch in height, and upon the latter the words "Made in Italy" in capital and small letters, approximately $\frac{5}{32}$ inch and $\frac{4}{32}$ inch respectively, in height. To each of the other rugs was firmly attached a label showing the country of its origin as required by the customs laws of the United States.

PAR. 6. In truth and in fact, respondent's said "Hong Kong," "Mahah," and "Bagdad" rugs were made in Italy, and its "Canton," "Kirma," "Numda," and "Orienta" rugs in Belgium, of cotton, and on power looms, and to each rug was securely attached a label indicating the country of its origin, pursuant to the customs laws of the United States. The "Hong Kong" and "Canton" rugs did not have the structure or all the characteristics of the true Chinese Oriental rug, the individual threads were not knotted in the distinctive manner of the true Chinese Oriental rug, and they were made from different materials. Respondent's "Mahah" and "Kirma" rugs were not true Oriental "Mahal" or "Kirman" rugs, and neither they nor respondent's "Bagdad" and "Orienta" rugs had the structure or all the characteristics of true Oriental rugs, nor were they made from the same materials. Respondent's "Numda" rugs were not the true Indian "Numdah" rugs, did not have the structure or all the characteristics of the true "Numdah" rug, and were made of different materials. A large portion of the purchasing public was unable, so close was the resemblance in appearance, to distinguish respondent's

ent's "Hong Kong" and "Canton" rugs from true Chinese Orientals, respondent's "Mahah," "Kirma," "Bagdad," and "Orienta" rugs from true Orientals, or respondent's "Numda" from the true Indian "Numdah," and in consequence respondent's said rugs were readily accepted as being genuine Chinese Oriental, Oriental and "Numdah" rugs.

The Commission therefore finds that the practice of said respondent in attaching to its rugs labels showing the country of origin thereof was insufficient to prevent such erroneous impression on the part of the purchasing public. These labels, being wholly inconsistent with the labels showing the names of the rugs, cannot properly qualify such labels.

PAR. 7. In the course and conduct of its business, respondent, Asia Mohi Co., Ltd., has also engaged in the practice of furnishing to dealers and prospective dealers in its rugs, catalogs and price lists containing many statements which represented and implied that certain of the said rugs were reproductions and copies, except as to material, of true Oriental, Chinese Oriental, and Indian "Numdah" rugs. Among and typical of such statements were the following:

Suez—the all rayon Oriental reproduction.

Orienta—Cotton Oriental reproduction.

Bagdad—extra heavy cotton Oriental reproduction.

Kirma—cotton Oriental reproduction.

Canton—extra heavy cotton Chinese reproduction.

Numda—high pile cotton Numdah reproduction.

Mahah—heavy cotton Oriental reproduction.

In truth and in fact, said rugs were not in structure or method of manufacture exact copies or reproductions of Oriental, Chinese Oriental, or "Numdah" rugs, but merely simulated them in appearance.

Said catalogs and price lists also contained statements which represented and implied that certain of said rugs were true Oriental "Mahal" and "Kirman" rugs in all respects except for material. Among and typical of such statements were the following:

• Mahah—heavy cotton Oriental.

Kirma—high quality cotton Oriental.

In truth and in fact, said rugs were not made in the Orient. True "Mahal" and "Kirman" Oriental rugs are not made of cotton, and respondent's said rugs did not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material be disregarded.

In like manner, respondent, Asia Mohi Co., Ltd., has engaged in the practice of furnishing to dealers buying certain of their cotton

rugs made in Europe, as aforesaid, advertising copy which was intended to be, and was, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public. Such advertisements contained statements which represented and implied that said rugs were in all respects reproductions and copies of true Oriental rugs. Among and typical of such statements was the following:

9 x 12 Oriental reproductions.

In truth and in fact, said rugs were not exact copies or reproductions of true Orientals in material, structure, characteristics, or method of manufacture, but merely simulated them in appearance.

PAR. 8. In the course and conduct of their business respondents Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain hooked rugs by the names "Chatham," "Dixie," and "New Cape Colony." Such names carry an American connotation sufficient to have the tendency and capacity to, and do, induce the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondents used said names to designate said rugs in invoices, in catalogs supplied to dealers and prospective dealers, and in advertisements in magazines and other publications of general circulation among the purchasing public. Respondents also caused labels, each bearing one of the said names, to be securely attached to each of the said rugs so as to be plainly discernible to members of the purchasing public when such rugs were displayed for sale by retail dealers.

In truth and in fact, the rugs designated as "Chatham," "Dixie," and "New Cape Colony" were made in Japan. To each rug was securely attached a label indicating its country of origin pursuant to the customs laws of the United States. The Commission finds however that such labels were insufficient to prevent the erroneous impression on the part of the purchasing public with respect to the origin of such rugs. These labels, being wholly inconsistent with the labels showing the names of the rugs, cannot properly qualify such labels.

PAR. 9. In the course and conduct of their business, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have also engaged in the practice of representing, directly and by implication, that certain of the rugs sold by them were manufactured by respondent, Masterkraft Guild Weavers, Inc. Such representations have been made by means of statements in advertisements inserted in magazines and other periodicals of general circulation, in catalogs and price lists furnished to dealers and prospective dealers in such

rugs, in invoices and on labels securely attached to such rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers. Among and typical of such statements are the following:

See these creations of the Masterkraft Guild Weavers today!

The Masterkraft Guild Weavers.

Masterkraft Guild Weavers, 285 Fifth Avenue, New York, N. Y.

Please send me a copy of "The Romance of Hooked Rugs."

Masterkraft magazine advertising will work for you throughout 1939. In one of the greatest advertising schedules ever sponsored by any producer of hooked rugs, Masterkraft Guild Weavers program calls for more than 60 advertisements during 1939.

"Masterkraft Guild Weavers, a production unit of Asia Mohi Co., Ltd., was organized to specialize in the design and manufacture of hooked rugs. Beginning as a small group of skilled weavers working under the direction of C. James Garofalo to revive the ancient art of fine rug making, the Guild Weavers have grown to be the largest body of craftsmen engaged in this activity today."

In the course and conduct of its business and in furtherance, thereof, respondent, Masterkraft Guild Weavers, Inc. has represented, and now represents, itself to be an association of weavers established for mutual aid in carrying out a common purpose. This representation is made through the use of the words "Guild Weavers" in its corporate name, on its letterheads and invoices, in its advertising, and through other means.

PAR. 10. Masterkraft Guild Weavers, Inc., is a private commercial enterprise, incorporated in 1937. Respondent, Garofalo, is its president and active controlling stockholder. From 1934 until 1939, respondent, Asia Mohi Co., Ltd., with which Garofalo was associated as stated herein, was engaged in the sale and distribution of various rugs imported from Europe and hooked rugs imported from Japan. The Japanese hooked rugs were made by a group of Japanese weavers organized under the name of Masterkraft Guild Weavers Association.

The connection of respondents, Garofalo, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., with any organization having any cooperative features is set forth below.

In 1934 Mr. Garofalo went to Japan, and there organized a number of Japanese weavers of hooked rugs under the name of Masterkraft Guild Weavers Association. This association supplied the individual weavers with the materials, designs, and other specifications for the rugs to be produced, the designs and specifications having been prepared by Mr. Garofalo and supplied to the Association by Asia Mohi Co., Ltd. The completed rugs were purchased from the Association and imported into the United States by Asia Mohi Co., Ltd.

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The prices paid the Association had been previously fixed by Mr. Garofalo, through Asia Mohi Co., Ltd. Of the proceeds received by the Association, the weavers received a sum per foot for their labor, also fixed by Mr. Garofalo, and in addition had a right of participation in the profits, if any, of the Association. The whole plan was devised by Mr. Garofalo with the purpose of creating for himself, or his concern, a well controlled source of supply of rugs for sale in the United States.

After the arrival of the rugs in the United States, they were sold by Asia Mohi Co., Ltd. at whatever prices it chose to fix, and advertised as products of Masterkraft Guild Weavers.

In the summer of 1939 various difficulties arose with the Japanese connection. As a result of them and the increasing prejudice against Japanese goods, all connection with the Japanese concern was terminated.

In July 1940, a corporation known as Treasure Chest Mutual, Inc., was organized under the laws of North Carolina. It had \$10,000 of 6 percent preferred stock, which is held by Mr. Garofalo and two associates. The proceeds of this stock, in cash or kind, furnished the working capital of the organization. The common stock is held by rug weavers of the locality, and the few salaried employees of the corporation, one share each and no more. Garofalo has one share. Its method of operation is as set forth below.

All the hooked rugs produced by the various weaver members, who number approximately 150, are designed by Mr. Garofalo, and are made under his supervision in the qualities and quantities designated by him. Mr. Garofalo fixes the price which Masterkraft Guild Weavers, Inc., will pay the Chest for each rug. This price, based upon the cost of materials, the overhead of the Chest, and a price per foot for weaving, is adjusted by Mr. Garofalo from time to time, based upon business conditions in the industry.

The member who wants to make a rug obtains the materials, design, and other essentials from the Chest, and delivers the completed rug, or in some instances, parts of rugs which are assembled thereafter with other parts, to the Chest. Masterkraft Guild Weavers, Inc. pays the Chest for all rugs produced. The Chest pays to the weaver the agreed price per foot for his labor and retains the balance, included in which is the cost of materials advanced and overhead, and the balance, if any, is profit which goes to the Chest. In these profits the individual members have a right of participation per capita, subject to the prior claim of the 6% preferred stock. Rugs which are woven through the Chest are sold only to Masterkraft Guild Weavers, Inc.

Masterkraft Guild Weavers, Inc. is not itself an association of skilled weavers, established for mutual aid in carrying out a common purpose. It has acted, and acts, as a distributor, through which the products of Treasure Chest Mutual, Inc. are sold. In its capacity of distributor it is wholly independent of Treasure Chest Mutual, Inc.

Between the time when the Japanese connection was terminated in 1939, and the organization of Treasure Chest Mutual, Inc., respondent Garofalo had a similar arrangement with an organization, generally cooperative in character, known as Treasure Chest, located at Asheville, N. C. Through this organization he obtained hooked rugs. Treasure Chest marketed a variety of articles, including hooked rugs and its source of supply of hooked rugs was taken over by Masterkraft Guild Weavers, Inc. under the same sort of arrangement as now exists with Treasure Chest Mutual, Inc. These sources were, in July 1940, reorganized as Treasure Chest Mutual, Inc., described above.

The foregoing sets forth the extent of the participation of Masterkraft Guild Weavers, Inc. in the manufacture of the rugs referred to herein.

Mr. Garofalo enjoys the confidence of the Chest and its members, is the principal manager, and in consequence is allowed to fix the price that he or Masterkraft Guild Weavers, Inc. will pay the Chest for the rugs, and to fix the price per foot that the weavers are to receive. He also fixes the prices at which Masterkraft Guild Weavers, Inc. resells these rugs. Some of the actual weaving is done in the weavers' homes and some is done at an assembly plant operated by the Chest.

The Commission finds that the foregoing facts do not constitute respondent, Masterkraft Guild Weavers, Inc., manufacturers or weavers of rugs; that said respondent is not a guild, and that the use by said respondent of the words "Guild" and "Weavers", either separately or in conjunction with each other in said respondent's corporate name is misleading to the purchasing public.

PAR. 11. In the course and conduct of its business as aforesaid, respondent, Asia Mohi Co., Ltd., has engaged in the practice of representing that certain of its rugs have been approved and accepted by a disinterested, independent agency, or organization qualified to pass judgment on such matters. Such representations have been made by means of statements on labels attached to such rugs as aforesaid, of which the following is typical:

Approved
and
Accepted

American Bureau of Home Standards

In truth and in fact, the American Bureau of Home Standards was not a disinterested, independent agency. It was originally created and operated by respondent, C. James Garofalo, and was later operated by an individual under the control and guidance of said Garofalo. It is now, and for some time past has been, nonexistent and inoperative.

PAR. 12. In the course and conduct of its business, respondent, Asia Mohi Co., Ltd., has also engaged in the practice of describing and designating certain of its said rugs by the name "Wool-Tex." The use of said name has had the capacity and tendency to, and did, induce the mistaken and erroneous belief that the rugs so designated were composed wholly of wool. Such representations have been made by means of statements in catalogs and price lists furnished to dealers and prospective dealers in such rugs, in invoices and in labels securely attached to such rugs, so as to be plainly discernible to members of the purchasing public, when such rugs were displayed for sale by retail dealers. In truth and in fact, said rugs were made out of cotton rolls or tubes filled with waste wool.

PAR. 13. The Commission finds that the use by the respondents of the acts and practices herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, character, origin, and endorsement of respondents' products and with respect to respondents' business status, and to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence thereof substantial trade has been diverted to respondents from their competitors, many of whom do not engage in such acts and practices.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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, the answer of the respondents, and a stipulation as to the facts entered into between the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Com-

mission, which provides that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Asia Mohi Co., Ltd., a corporation, Masterkraft Guild Weavers, Inc., a corporation, their officers, and C. James Garofalo, individually, and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Using the names "Chatham," "Dixie," or "New Cape Colony," or any other distinctively American name, to designate or describe rugs which are not in fact made in the United States.

2. Using the word "Weavers" as a part of the corporate or trade name of respondent, Masterkraft Guild Weavers, Inc., or otherwise representing that respondent, Masterkraft Guild Weavers, Inc., manufactures the rugs sold by respondents.

It is further ordered, That respondents, Asia Mohi Co., Ltd., its officers, and C. James Garofalo, individually, and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Using the words "Hong Kong" or "Canton," or any other word indicative of Chinese origin, to designate or describe rugs which are not in fact made in China and which do not possess all of the essential characteristics of Chinese Oriental rugs.

2. Using the word "Mahah," "Numda," "Kirma," "Oriental," "Orienta," or "Bagdad," or any other word indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all of the essential characteristics of Oriental rugs.

3. Using the word "reproduction," or any other word of similar import, to designate or describe rugs which are not in fact reproductions in all respects of the type named, including material.

4. Using the term "Wool-Tex," or any other term of similar import, to designate or describe rugs which are not composed wholly of wool.

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5. Representing that respondents' rugs have been "approved" or "accepted" by the "American Bureau of Home Standards"; or representing that respondents' rugs have been approved or accepted by any agency or organization unless such is the fact, and unless the purported agency or organization is a disinterested, independent body qualified to pass judgment on such matters.

It is further ordered, That respondents, Masterkraft Guild Weavers, Inc., its officers, and C. James Garofalo, individually, and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Guild," or any other word of similar import, as a part of the corporate or trade name of respondent, Masterkraft Guild Weavers, Inc., or otherwise representing that said respondent is a guild.

It is further ordered, That all of the respondents shall, within 60 days after 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.

Complaint

IN THE MATTER OF

HUGH C. MITCHUM AND CARL B. TUCKER, TRADING AS
SOUTHERN CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4266. Complaint, Aug. 26, 1940—Decision, Feb. 24, 1942*

Where two individuals, engaged in the manufacture and interstate sale and distribution of candy so packed as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment including 40 uniform candy bars for which purchasers paid from 1 cent to 5 cents, depending upon particular number secured by chance from the accompanying push card—

Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving sale of a chance to procure candy bars at much less than their normal retail price; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their products, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use methods involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said plan and were thereby induced to buy and sell their candy in preference to that of aforesaid competitors, from whom trade was thereby unfairly diverted to them, to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice and injury of the public and their competitors, and constitute unfair methods of competition in commerce, and unfair acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. Fred Henderson Hasty, of Charlotte, N. C., 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 Hugh C. Mitchum and Carl B. Tucker, individually, and trading as Southern Candy Co., 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Hugh C. Mitchum and Carl B. Tucker, are individuals trading as Southern Candy Co., with their principal