

IN THE MATTER OF

NATHAN E. HERZFELD AND SAUL S. HERZFELD, TRADING AND DOING BUSINESS UNDER THE NAME STEPHEN RUG MILLS¹

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

Docket 4222. Complaint, Aug. 6, 1940—Decision, Mar. 31, 1942

Where two individuals engaged in the importation and competitive interstate distribution and sale of rugs to wholesale and retail dealers—

- (a) Used the word "Bombay" to designate certain rugs which closely resembled true Orientals, and word "Manchu" to designate rugs which closely resembled true Chinese Orientals, in invoices and other references to said rugs in sale to dealers, and on labels attached thereto, together with depiction of an Oriental scene, and, on other labels set forth inadequate and contradictory qualification "Made in Belgium" or "Made in Italy";

Notwithstanding fact rugs thus designated were not, as thus suggested, made in Bombay, India, or in China, and were not true Oriental or Chinese Oriental rugs, as generally understood, made by hand in the Orient and more particularly southwestern Asia, of pleasing texture and of original and beautiful design, with pile of wool or silk and wool, and threads individually knotted in a special manner, but, while so closely resembling Orientals as to be indistinguishable therefrom by a large portion of the purchasing public, were made on power looms in Belgium and Italy of cotton or jute, or both;

- (b) Represented that certain of their rugs were in all respects reproductions of true Chinese Oriental rugs through labels attached thereto upon which appeared the words, among others, "Chinese Ovalette Replica," together with an Oriental scene, along with other labels, "Made in Italy" or "Made in Belgium";

Notwithstanding fact rugs thus described were not exact copies of true Chinese Orientals in structure, method of manufacture or material, but merely simulated them;

¹ Original findings and order to cease and desist made as of January 7, 1942 (not published), were set aside by "Order Reopening Case for Amendment of Stipulation as to the Facts" which, made on March 9, 1942, was as follows:

This matter coming on to be heard by the Commission upon respondents' "Motion for an Order Amending and Amplifying the Record of this Proceeding" by incorporating in the Stipulation as to the Facts in this proceeding respondents' exhibits "A" to "H," inclusive, attached and annexed to said motion, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That this case be, and the same hereby is, reopened for the purpose of amending and amplifying said Stipulation as to the Facts by incorporating therein and making a part thereof said exhibits "A" to "H," inclusive, attached and annexed to said motion.

It is further ordered, That the Findings as to the Facts and the Order to Cease and Desist issued herein on January 7, 1942, be, and the same hereby are, set aside.

It is further ordered, That respondents' said exhibits "A" to "H," inclusive, be incorporated in and made a part of said Stipulation as to the Facts.

- (c) Made use of name "New Bedford," widely known Massachusetts textile manufacturing center, to designate certain hooked rugs, in invoices to dealers and upon labels attached thereto, together with other labels reading "Made in Italy" or "Made in Belgium";

Notwithstanding fact the cheap rugs in question were of European and not of domestic manufacture; and

- (d) Made use of words "Rug Mills" in their trade name, and on invoices, letterheads and other business stationery and literature accompanied said name by words "Importers and Wholesalers of Floor Covering";

The facts being that, while they had arrangements with certain European mills under which they designated design to be used exclusively in rugs made for them and also designated size, quantity, quality, and structure; had other arrangements under which they purchased all the raw material used by a certain mill operated wholly for them, and had a mortgage on all its looms, machines, etc., and a lease of its premises; had similar arrangements with 22 rug mills in China, and owned a substantial minority of the capital stock of a Pennsylvania rug manufacturer—thereby exercising a measure of control over certain mills which supplied them—said facts did not constitute them manufacturers or warrant use by them of words "Mills," and use of legend "Importers and Wholesalers," etc., was insufficient to correct erroneous impression thus caused;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that aforesaid rugs were genuine Oriental or Chinese Oriental rugs or copies or reproductions thereof, or that they were of domestic rather than foreign manufacture, and to mislead and deceive a substantial number of dealers and members of the public in aforesaid respects and as to their business status as manufacturers—from whom a substantial number purchase in preference to wholesalers—and thereby cause such dealers and public to buy their products, and with effect of placing in the hands of dealers a means of misleading a substantial portion of the purchasing public, and of thereby diverting substantial trade unfairly to them from their competitors, many of whom do not misrepresent the nature or origin of their products or their business status:

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 and deceptive acts and practices therein.

Mr. Randolph W. Branch for the Commission.

Mr. Leon Herzfeld, 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 Nathan E. Herzfeld and Saul S. Herzfeld, individuals, trading and doing business under the name Stephen Rug Mills, 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

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interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Nathan E. Herzfeld and Saul S. Herzfeld, are individuals trading and doing business under the name of Stephen Rug Mills, and having an office and principal place of business at 135 Madison Avenue, city and State of New York.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of their business respondents sell said rugs to various wholesale and retail dealers and cause 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. Respondents maintain, and at all times mentioned herein have 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, respondents are now, and have been at all times mentioned herein, in substantial competition with other partnerships and with firms, corporations 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, 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 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 the purchasing public for such rugs.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents have engaged in the practice of describing and designating certain of their rugs which closely resemble true Oriental and Chinese Oriental rugs in appearance by the names of "Bombay" and "Manchu." The names used by respondents connote places in India and China and have the capacity and tendency to, and do, create the mistaken and erroneous belief that the rugs so designated are made, respectively, at Bombay, India, and in China, by hand, and are in all respects, including materials, true Oriental or Chinese Oriental rugs. Respondents use the names "Bombay" and "Chinese" to designate the said rugs in invoices to dealers and in otherwise referring to the same in the sale thereof to dealers. To said rugs are firmly attached labels upon which the word "Manchu" or "Bombay" appears in connection with a depiction of an Oriental scene.

Respondents have also engaged in the practice of describing certain of their rugs, designated as "New Avalon," as being in all respects, including materials, reproductions and copies of true Chinese Oriental rugs by the use of the phrase "Chinese Ovalette Replica," which appears upon labels firmly attached to the said rugs in connection with a depiction of an Oriental scene.

All of 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 "Bombay" and "Manchu" rugs are made on power looms in factories in Belgium and Italy. 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 of the characteristics of the true Oriental or Chinese Oriental rug, but do in fact so closely resemble such rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public, and are in consequence readily accepted as being true Oriental or Chinese Oriental rugs. The rugs described as "Chinese Ovalette Replicas" are not exact copies or reproductions of true Chinese Orientals in structure, method of manufacture or material, but merely simulate them in appearance.

PAR. 6. The manufacture of hooked rugs has been carried on in this country since early in its Colonial history and was one of the early forms of artistic expression of the early settlers. Hooked rugs always have been and still are generally regarded as being a distinctively American product.

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PAR. 7. In the course and conduct of their business and for the purpose of inducing the sale of certain of their rugs, respondents have engaged in the practice of describing and designating certain of their hooked rugs by the name "New Bedford." Said name carries so definite an American connotation as to have the tendency and capacity to create the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondents used said name to designate said rugs in invoices to dealers, and also caused labels bearing the said name to be securely attached to the said rugs so as to be plainly discernible to the purchasing public when such rugs are displayed for sale by retail dealers. In truth and in fact, the rugs were made in Europe.

PAR. 8. In the course and conduct of their business and in furtherance thereof, respondents have represented, and now represent, themselves to be the manufacturers of the rugs offered for sale and sold by them. This representation is made through the use of the words "Rug Mills" in their firm or trade name, which appears on their letterheads and invoices, and through other means.

In truth and in fact, respondents do not manufacture the rugs which they offer for sale and sell nor have they during any of the times mentioned herein made or manufactured such rugs. Respondents do not, and have not during any of such times, owned or operated or directly and absolutely controlled any mill or factory in which rugs are made or manufactured.

PAR. 9. There is a substantial portion of those who purchase rugs for resale which prefers to purchase direct from the manufacturer, believing that advantages over purchases from those who are not manufacturers in price and in other respects may be obtained.

PAR. 10. 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 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 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. 11. 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, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Nathan E. Herzfeld and Saul S. Herzfeld, individuals trading and doing business under the name Stephen Rug Mills, 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 August 24, 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 through their counsel, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might 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 might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might 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 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 fully advised in the premises, on January 7, 1942, issued and subsequently served upon the respondents its findings as to the facts and its conclusion based thereon, and its order requiring the respondents to cease and desist from the practice charged in the complaint.

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Thereafter, on February 14, 1942, the respondents, through their attorney, filed with the Commission a motion requesting that the aforesaid stipulation as to the facts be amended and amplified by adding thereto as exhibits, certain samples of business stationery used by respondents, and on March 9, 1942, the Commission, in response to such motion, entered its order setting aside its findings as to the facts and order to cease and desist issued on January 7, 1942, and reopening the proceeding for the purpose of amending and amplifying the stipulation as to the facts as requested by respondents.

Thereafter the proceeding again came on for consideration by the Commission on the record as set forth above, including the amended and amplified stipulation as to the facts, and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Nathan E. Herzfeld and Saul S. Herzfeld, are individuals trading and doing business under the name of Stephen Rug Mills, with their office and principal place of business at 135 Madison Avenue, New York City, N. Y.

PAR. 2. Respondents are now, and for more than 9 years last past have been, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of their business respondents sell their rugs to various wholesale and retail dealers and cause their rugs, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their rugs in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals, partnerships, and firms, and with corporations, 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 or the place or method of manufacture thereof or their business status, 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 the same manner and possessing the same qualities and characteristics as the Oriental rug. Such 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 their business respondents have engaged in the practice of describing and designating certain of their rugs which closely resemble true Oriental and Chinese Oriental rugs in appearance, by the names "Bombay" and "Manchu." The names used by respondents connote places in India and China and have had the capacity and tendency to create the belief that the rugs so designated were made respectively at Bombay, India, and in China, by hand, and were in all respects, including materials, true Oriental or Chinese Oriental rugs. Respondents used the names "Bombay" and "Chinese" to designate these rugs in invoices to dealers and in otherwise referring to the rugs in the sale thereof to dealers. To these rugs were firmly attached labels approximately 4 by $3\frac{3}{8}$ inches upon which the word "Bombay" or "Manchu" appeared in letters approximately $\frac{3}{8}$ inch in height, in connection with a depiction of an Oriental scene. Also sewn to the rugs were other labels upon which the words "Made in Belgium" or "Made in Italy" appeared in letters not less than $\frac{1}{4}$ inch in height.

Respondents have also engaged in the practice of representing that certain of their rugs were in all respects reproductions or copies of true Chinese Oriental rugs. Such representation was made by means of labels firmly attached to such rugs, and approximately $4\frac{3}{4}$ by $2\frac{3}{4}$ inches, upon which appeared the words "New Avalon" in letters $\frac{3}{8}$ inch in height and the words "Chinese Ovalette Replica" in letters $\frac{5}{32}$ inch in height, in connection with a depiction of an Oriental scene. Also sewn to these rugs were other labels upon which the words "Made in Italy" or "Made in Belgium" appeared in letters not less than $\frac{1}{4}$ inch in height.

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Respondents' "Bombay" and "Manchu" rugs were in fact made on power looms in factories in Belgium and Italy. They were not made by hand, nor were the individual threads knotted in the distinctive manner of the true Oriental or Chinese Oriental rug. The rugs were made of cotton or of jute or of the two combined. They did not possess all of the characteristics of the true Oriental or Chinese Oriental rug, but did in fact so closely resemble such rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public, and were in consequence readily accepted as being true Oriental or Chinese Oriental rugs. The rugs described as "Chinese Ovalette Replicas" were not exact copies or reproductions of true Chinese Orientals in structure, method of manufacture or material but merely simulated them in appearance.

PAR. 6. In the course and conduct of their business in hooked rugs, respondents have engaged in the practice of describing and designating such rugs by the name "New Bedford." Respondents used this name to designate such rugs in invoices to dealers and also caused labels bearing the name to be securely attached to the rugs. Such labels were approximately 4 inches by $3\frac{3}{8}$ inches and upon them appeared the words "New Bedford" in letters $\frac{5}{16}$ inch in height. Also sewn to the rugs were other labels upon which the words "Made in Italy" or "Made in Belgium" appeared in letters not less than $\frac{1}{4}$ inch in height.

New Bedford is a city in Massachusetts widely known in the United States as a textile manufacturing center.

A questionnaire was sent by the Federal Trade Commission to various members of the public in Greater New York whose names were selected at random from telephone directories. The pertinent portion of this questionnaire read as follows:

If hooked rugs were identified or described to you by the names given below, would you or would you not, from those names, form any opinion or gain any impression as to the country where they were made? If you would not, please write "No" on the "Answer" line; otherwise please insert the name of the country. It is requested that you give your answer as to each of the names.

"New Bedford."

Answer.

Thirty-eight of these persons answered the questionnaire. As to the name "New Bedford" 16 answered that they would not form any opinion or gain any impression from this name as to the country of manufacture of the rugs, while 22 answered that they would form the opinion or gain the impression that the rugs were of domestic manufacture.

The stipulation provided that these answers to the questionnaire may be considered by the Commission to the same extent and to the

same effect as if the members of the public who gave the answers had appeared as witnesses in this proceeding and had answered the same question in the same manner.

The rugs designated by respondents as "New Bedford" were in fact made in Europe.

PAR. 7. The trade name used by respondents includes the words "Rug Mills." On respondents' letterheads, invoices, and other business stationery and literature the trade name is accompanied by the words "Importers and Wholesalers of Floor Covering."

A questionnaire was sent by the Commission to a number of retail rug dealers in several of the eastern States of the United States, the names of such dealers being taken at random from the classified sections of the telephone directories. The questions contained in the questionnaire are set forth below, together with tabulations of the answers received to the questions:

Question. In buying cheap rugs (not Orientals) do you or do you not have any general preference for purchasing from manufacturers over purchasing from wholesalers?

Answer. Yes—16. No—18. Preference for wholesaler—5.

Question. A concern is known as the "XYZ Rug Mills." Would you or would you not conclude from this name that this concern actually owned a rug mill?

Answer. Yes—34. No—7.

Question. On this concern's stationery, etc., under the name "XYZ Rug Mills" appears "Importers and Wholesalers of Floor Covering." Would you or would you not conclude from this that its business was exclusively that of importers and wholesalers?

Answer. Yes—30. No—8.

The rugs sold by respondents come within the general category of "cheap," nonoriental rugs.

Of the 34 dealers to whom the words "Rug Mills" would indicate ownership of a rug mill, 26 would be induced by the addition of "Importers and Wholesalers of Floor Covering" to believe that the concern was exclusively an importer and wholesaler.

The stipulation provided that the answers to the foregoing questions may be considered by the Commission to the same extent and to the same effect as if the dealers who gave the answers had appeared as witnesses in this proceeding and had answered the same questions in the same manner as indicated above.

PAR. 8. The facts set forth by respondents as warranting the use in their trade name of the word "Mills" are as follows:

For some time prior to April 1940 respondents had arrangements with certain mills in Europe under which respondents designated the designs to be used by such mills in rugs manufactured for respondents, which designs were exclusively respondents'. Respondents also des-

ignated the size and quantity of rugs manufactured for them by such mills, as well as the quality and structure of the rugs. No one other than respondents could obtain these rugs, and respondents had the exclusive disposition of the entire output of the mills making these rugs.

Since about June 1940 respondents have had arrangements with a certain mill under which respondents purchase and pay for all of the raw materials used by the mill. The mill operates wholly for the respondents and the only rugs made by the mill are made at respondents' orders. The size, quantity, color, weight and quality of the rugs and carpets made by the mill are designated by the respondents, and the mill cannot sell rugs or carpets to anyone other than respondents. Respondents have had a mortgage on all of the looms, machinery, equipment and raw materials of this mill and on the lease of the premises on which the mill is located.

Since about November 1940 respondents have had arrangements with some 22 rug mills in China under which respondents purchase and pay for all of the raw materials used by the mills. The mills operate wholly for respondents and the only rugs made by the mills are at respondents' orders. The size, quantity, color, weight and quality of the rugs made by these mills are designated by respondents, and the mills cannot sell rugs to anyone other than respondents.

Since sometime prior to June 1940 respondents have owned a substantial minority portion of the capital stock of a Pennsylvania corporation known as the Crown Products Corporation, which manufactures rug cushions and kindred articles incidental to the use of rugs, and one of the respondents (representing both respondents) is a director in this corporation.

PAR. 9. While these facts disclose that the respondents have exercised and are now exercising a measure of control over certain mills which supply them with rugs, the Commission is of the opinion and finds that these facts do not constitute respondents manufacturers or warrant the use by respondents of the word "Mills" in their trade name. Respondents have never owned any rug mill, nor have they operated any mill within the real meaning of the term. To a substantial number of dealers the use by respondents of the word "Mills" in their trade name constitutes a representation that respondents actually own a rug mill. There is a preference on the part of a substantial number of dealers for purchasing from manufacturers rather than from wholesalers. The practice of respondents in accompanying their trade name with the legend "Importers and Wholesalers of Floor Covering" is insufficient, in a substantial number of cases, to correct

the erroneous impression conveyed by the use of the word "Mills" in the trade name.

PAR. 10. The Commission further finds that the use by respondents of the terms "Bombay," "Manchu" and "Chinese," and other terms of a similar nature, to designate certain of their rugs, particularly when such terms are accompanied by a depiction of an Oriental scene, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that the rugs so designated are genuine Oriental or Chinese Oriental rugs. Likewise, the use by respondents of the legend "Chinese Oval-ette Replica," together with a depiction of an Oriental scene, to designate certain of their rugs, has the tendency and capacity to cause a substantial portion of the purchasing public to believe that the rugs so designated are copies or reproductions of genuine Chinese Oriental rugs in all respects, including material, structure, and method of manufacture.

The use by the respondents of the words "New Bedford" to designate and describe certain of their rugs has the tendency and capacity to cause a substantial portion of the purchasing public to believe that the rugs so designated are of domestic rather than foreign manufacture.

The legends "Made in Belgium" and "Made in Italy," which appear on other labels attached to respondents' rugs, are insufficient to correct the misleading impression conveyed by the terms and legends referred to above. These legends, being wholly inconsistent with respondents' representations with respect to the nature and origin of their rugs, are incapable of properly qualifying such representations so as to avoid their misleading effect upon the public. A prospective purchaser could believe one but not both of the conflicting representations.

PAR. 11. The Commission therefore finds that the acts and practices of the respondents as herein described have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the nature and origin of respondents' products, and with respect to respondents' business status, and to cause such dealers and such portion of the public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered. Such acts and practices of the respondents have the effect also of placing in the hands of dealers a means and instrumentality whereby such dealers may be enabled to mislead and deceive a substantial portion of the purchasing public. In consequence thereof substantial trade has been diverted unfairly

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to the respondents from their competitors, many of whom do not misrepresent the nature or origin of their products or their business status.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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.

MODIFIED 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 Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding (such stipulation having subsequently been amplified upon motion of the respondents), and the Commission having made its modified findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Nathan E. Herzfeld and Saul S. Herzfeld, individually and trading as Stephen Rug Mills, or trading under any other name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Bombay," or any other word indicative of the Orient, or any pictorial representation of a typically Oriental scene, 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.

2. Using the words "Manchu" or "Chinese," or any other words indicative of Chinese origin, or any pictorial representation of a typically Oriental or Chinese scene, 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.

3. Using the word "Replica," 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 words "New Bedford," or any other distinctively American name, to designate or describe rugs which are not in fact made in the United States.

5. Using the word "Mills" as a part of respondents' trade name, or otherwise representing that respondents manufacture the rugs sold by them.

It is further ordered, That 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.

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STANLEY LABORATORIES, INC., EDWARD A. BACHMAN
TRADING AS STILLMAN PRODUCTS COMPANY AND AS
STANLEY LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4130. Complaint, May 7, 1940—Decision, April 1, 1942*

Where a corporation and its president, who controlled and directed its business activities, engaged in interstate sale and distribution of drug products for feminine hygiene; in advertisements of their "M. D. Medicated Douche Powder" through the mails, in newspapers, circulars, leaflets, folders, pamphlets, and other advertising literature; directly and by implication—

- (a) Represented that said powder was a recent development of scientific research which was endorsed by leading physicians and surgeons; that it was an antiseptic and germicide which would combat any form of bacteria; and that it had competent remedial qualities for use on cuts, sores, and burns, and would relieve fatigue and annoying discharge sometimes connected therewith; and
- (b) Represented that said preparation constituted a contraceptive and a prophylactic against disease through use of such descriptive words and phrases as "dependable," "insure—personal hygiene," "dependable safeguard," "reliable safeguard," and "effective, reliable antiseptic powder" in referring thereto;

When in fact said preparation was neither such a recent development, nor thus endorsed; while the ingredient oxyquinolin sulphate, commonly used in such powders, has a spermatocidal action in direct concentration, under conditions of use the proportion thereof was so small as to have little or no value; the ingredient phenol under conditions of use would have no germicidal properties, but solely an antiseptic effect; use of the two together in sufficient concentration to act as a germicide would have a tendency to irritate and damage the tissues; and while laboratory tests indicated that the product contained a bacteriostatic, or germ-inhibiting, substance and had antiseptic properties, under the dissimilar conditions of use the value thereof was limited to that of a mild antiseptic; product had little or no therapeutic value in treatment of cuts, sores, and burns; use as a douche had no value in relieving fatigue, and would not affect the cause of any discharge; it did not constitute a preventative against conception in excess of the mechanical effect of flushing the vagina, and was not a prophylactic against disease; and

Where said corporation and individual—

- (c) Represented, through use of the term "Laboratories" in their corporate and trade names, and in their advertising material, that they owned, operated, and controlled a laboratory equipped for compounding medicinal preparations and for research in connection therewith;

The facts being they were merely distributors of products compounded and manufactured by other concerns; and