

IN THE MATTER OF
BIGELOW-SANFORD CARPET COMPANY, INC.

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

Docket 4207. Complaint, July 31, 1940—Decision, May 26, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution to wholesale and retail dealers of rugs and carpets—

(a) Made use of names "Persiamar" and "Kashamar" to designate certain lines of its domestic, machine-made rugs which had many points of resemblance to genuine Orientals, and thereby caused the purchasing public to believe that they were hand-made Orientals, some of which are known as "Kashmir," "Cashmere," or "Kashan," or simply as "Persian," and which—long made in certain parts of the Orient by hand, with pile of wool or silk and wool, and threads individually knotted in special manner—have long been held in great public esteem by virtue of their beauty, durability, and other qualities; and

(b) Represented that its said rugs were replicas or duplicates of original Orientals through use, in advertising copy furnished to dealer-buyers for their use in newspapers and other publications of general circulation, of such words as "true copies," "perfect copies," or "reproductions," and labels displaying, along with aforesaid designations, trade-mark employed by it on all its rugs and carpets, depicting two hands tying a knot in yarn, causing purchasing public to believe that its said rugs were hand-made or made in the same way as the genuine Orientals, of which they were not true or perfect copies or reproductions, though so closely simulating them as to be indistinguishable therefrom by a portion of the purchasing public;

With tendency and capacity to mislead and deceive the purchasing public into the mistaken belief that such representations were true, thereby inducing it to purchase said rugs because of such belief; and with effect of placing in the hands of dealer-purchasers means and instrumentality of misleading and deceiving the public as aforesaid, whereby trade was unfairly diverted to it from its competitors engaged in sale of rugs, including both the Oriental and domestic products, and who truthfully represent their products as aforesaid; to the injury of competition in commerce:

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

Mr. Randolph W. Branch for the Commission.

Wright, Gordon, Zachry, Parlin & Cahill, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

Trade Commission, having reason to believe that Bigelow-Sanford Carpet Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bigelow-Sanford Carpet Co., Inc., is a corporation, organized and existing under the laws of the Commonwealth of Massachusetts, having an office and principal place of business at 140 Madison Avenue in the city and State of New York, and manufacturing plants at Thompsonville, Conn., and Amsterdam, N. Y.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling rugs and carpets. In the course and conduct of its business, respondent sells said rugs and carpets to various wholesale and retail dealers, and causes such rugs and carpets, when sold, to be transported from its aforesaid places of business in the States of New York and Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rugs and carpets in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs and carpets 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 either the place or method of manufacture of their products 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. Oriental rugs have been for many years, and still are, held in great public esteem because

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of their texture, beauty, durability, and other qualities, and by reason thereof there is a decided preference on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble true Oriental rugs in appearance, by the names of "Persiamar" and "Kashamar." Such names connote places in the Orient which are places of origin of true Oriental rugs, and have the tendency and capacity to create the mistaken and erroneous belief that the rugs so designated are made in such places, or in the Orient, by hand, and are in all respects true Oriental rugs. Respondent uses said designations in invoices and in otherwise referring to the same in the sale thereof to dealers, and also causes labels, bearing one or the other of said names, to be securely attached to said rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers. Respondent also uses said names in advertising copy furnished to dealers buying the said rugs, in the manner and for the purposes hereinafter set forth.

In truth and in fact, respondent's rugs referred to herein are woven on power looms in its factories in the United States. They are not made by hand; the individual threads are not knotted in the distinctive manner of the true Oriental rug. They do not possess all the characteristics of the true Oriental rug, but do, in fact, so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and are in consequence readily accepted as being true Oriental rugs.

PAR. 6. In the course and conduct of its business, respondent has engaged in the practice of furnishing to dealers buying certain of its rugs, made as aforesaid, advertising copy which is intended to be, and is, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public. Such advertisements contain many misleading statements which represent and imply that said rugs are in all respects reproductions and copies of true Oriental rugs. Among and typical of such statements are the following:

True copies of Sarouks, Kirmans and Persians.

Perfect copies of collectors' Orientals.

True copies of museum Orientals.

Oriental rugs reproduced by those clever Bigelow weavers.

Amazing reproductions from the original Orientals.

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

PAR. 7. The use by respondent of the designations and representations as set forth herein in connection with the offering for sale and sale of its said rugs has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 31st day of July A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Bigelow-Sanford Carpet Co., Inc., a corporation, charging it with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into between the attorney for the Commission and the attorneys for respondent, which was approved by the Commission. Thereafter, the proceeding

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regularly came on for final hearing before the Commission on the complaint, the answer, stipulation, and briefs in support of the complaint and in opposition thereto:

And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Bigelow-Sanford Carpet Co., Inc., is a corporation, organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business at 140 Madison Avenue, in the city and State of New York, and manufacturing plants located at Thompsonville, Conn., and Amsterdam, N. Y.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the business of manufacturing, selling, and distributing rugs and carpets. In the course and conduct of its business respondent sells rugs and carpets to various wholesale and retail dealers, and causes same, when sold, to be transported from its places of business in the States of New York and Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such rugs and carpets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, is now and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of rugs and carpets in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors are many who sell to wholesale and retail dealers and who do not misrepresent either the place or method of manufacture of their products.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years have understood, Oriental rugs to be rugs made in the Orient, or more particularly, in certain parts of Asia from Turkey to the Yellow Sea, by hand, and having a pile of wool, or silk and wool, the threads of which are individually knotted in a special manner.

In general, Oriental rugs for many years have been, and still are, held in great public esteem, because of their beauty, durability, and

other qualities, and by reason of this there is a demand on the part of many of the purchasing public for such rugs.

Oriental rugs are not woven, but are built, tied, or knotted, by hand, the knots being tied around the warp threads and the rows of knots held by weft threads. Oriental hand-made rugs are designated by names which are generally—but not always—geographical or tribal, and in noun and adjective form are indicative of actual geographic or tribal origin in the Orient.

PAR. 5. Respondent, between 1935 and 1938, used the name "Persiamar," and between 1935 and the present have used the name "Kashamar," to designate certain lines of rugs in various sizes, patterns, and colors. Said rugs are woven on power looms in respondent's factories in the United States. They are not made by hand and the individual threads are not knotted in the distinctive manner of the Oriental rugs; in pattern and design some are copies, so far as is possible when power looms are used, of genuine Oriental rugs, and others have patterns and designs adapted from genuine Oriental rugs which embody Oriental designs, motifs, color, and treatment.

Respondent's "Kashamar" rugs are so woven that the colors and patterns show through the back of the rug, a feature which, until about 1927, was found only in carpets and in genuine Oriental rugs. The name "Kashamar" is a coined word or name. The name "Persiamar" is made by the addition of the suffix "mar" to the word "Persia," the name of a country which for centuries has been identified with Oriental rugs, and is one of the places of origin thereof. Many Oriental rugs are described and known simply as "Persian." The respondent's rugs have many points of resemblance in design, color, and general appearance to genuine Oriental rugs.

PAR. 6. There are true Oriental rugs known as "Kashmir" or "Cashmere"; there are also true Oriental rugs known as "Kashan." Respondent, by the use of the words "Persiamar" and "Kashamar," in describing its rugs, has caused the purchasing public to believe that its rugs are hand-made Oriental rugs, when in fact they are machine-made and produced in the United States.

PAR. 7. Respondent causes a label to be firmly sewn on the rugs sold by it as "Persiamar" or "Kashamar." The label used on the "Persiamar" rugs up to 1938—the date when this name was last used—bore the following legend:

PERSIAMAR
BY
BIGELOW-SANFORD
Guaranteed Pure Wool Face

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The label used in connection with respondent's "Kashamar" rugs, prior to March 1941, contained the legend: -

KASHAMAR
by
Bigelow-Sanford
Guaranteed Pure Wool Face

and depicted two hands tying a knot in a piece of yarn; the label used on this rug since March 1941, bears the legend:

KASHAMAR
Woven on Power Looms
in U. S. A. by
Bigelow-Sanford
Guaranteed Pure Wool Face

Respondent also attached to its rugs a label depicting two hands tying a knot and bearing the words:

Woven by the
BIGELOW
WEAVERS
Reg. U. S. Pat. Off,
Patents No. 1885031, 1885032,
1885033, 1885034, Re. 18783
Other Patents Pending
Made in U. S. A.

The depiction of two hands tying a knot in yarn is respondent's trade-mark, which has been used by it for the past 10 years on all its rugs and carpets.

PAR. 8. Respondent has used the names "Persiamar" and "Kashamar" in its invoices and in otherwise referring to said rugs in the sale thereof to dealers and in advertising copy furnished to dealers buying said rugs, and which was intended to be, and was, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public.

PAR. 9. Respondent, by the application of the names "Persiamar" and "Kashamar" to its rugs, has caused the purchasing public to believe that such rugs are, in fact, Oriental rugs; and respondent, by the use of the labels hereinbefore referred to which depict two hands tying a knot on a piece of yarn, has caused the purchasing public to believe that the respondent's rugs were hand-made, or were made in the same way that genuine Oriental rugs are made.

PAR. 10. Respondent, prior to about May 1940, furnished to dealers buying its rugs, 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. Contained in certain

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of such advertising copy were one or more of the following statements, which referred to respondent's "Persiamar" and "Kashamar" rugs:

True copies of Sarouks, Kirmans and Persians. Perfect Copies of Collectors' Orientals.

Oriental rugs reproduced by those clever Bigelow weavers.

True copies of museum Orientals.

Amazing reproductions from the original Orientals.

PAR. 11. The rugs to which the statements appearing in paragraph 10 refer are woven on power looms. Some of them, in color and pattern, follow, as closely as is possible when respondent's method of power-loom weaving is used—but not exactly—the colors and patterns of original hand-made rugs from the Orient. Such rugs may be made in the same size as the original rug, or in sizes smaller or larger than the original. Others of such rugs are, in color and pattern, adaptations and combinations of colors, motifs and patterns found in genuine Oriental rugs. The manufacture of these rugs does not involve the copying of the color and design of any particular genuine Oriental rug, and the designs of these rugs, as a whole, are entirely new.

PAR. 12. The rugs manufactured by respondent are not true copies, perfect copies, or reproductions of Oriental rugs; but so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a portion of the purchasing public.

PAR. 13. The use by respondent of the designations and representations as set forth herein, in connection with the offering for sale and sale of its rugs, has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account of such belief.

PAR. 14. Respondent's said acts and practices have the effect of placing in the hands of dealers who purchase respondent's rugs and resell them to the purchasing public, the means and instrumentality of misleading and deceiving the public as aforesaid, and as a result of respondent's acts and practices as herein set forth, trade has been unfairly diverted to respondent from its competitors engaged in the sale of rugs, including both Oriental and domestic rugs, in commerce between and among the various States of the United States and in the District of Columbia, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by the respondent to competition in

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commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent, as set forth in the foregoing findings as to the facts, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, a stipulation as to the facts entered into between the attorney for the Commission and attorneys for the respondent which was approved by the Commission, and briefs in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bigelow-Sanford Carpet Co., Inc., a corporation, its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rugs or carpets in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

(1) Using the word "Persiamar," or "Kashamar," or any other word or name indicative of the Orient, to mark, designate, describe, or refer to rugs not made in the Orient and which do not possess all the essential characteristics and structure of the type of Oriental rug which they purport to be.

(2) Representing by the use of the words "true copies," "perfect copies," or "reproductions," or by the use of any similar words which import that the rug to which such words are applied is a replica or duplicate of an original Oriental rug.

(3) Representing in any manner that the rugs manufactured and sold by it are true copies of museum Oriental rugs, or that they are reproductions of Oriental rugs.

¹ The Commission, by order of September 4, 1942, modified as "indefinite and incomplete" paragraph (2) of order in question, so as to require respondent corporation, its officers, etc., to cease and desist from—

"(2) The use of the words 'true copies,' 'perfect copies,' 'reproductions,' or any other words of similar import, to designate or describe rugs which are not replicas or duplicates of original Oriental rugs in every respect."

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(4) Furnishing dealers buying its rugs with advertising copy intended to be inserted by such dealers in newspapers and other publications of general circulation, which contain one or more of the following statements with reference to respondent's rugs:

True copies of Sarouks, Kirmans and Persians.

Perfect copies of collector's Orientals.

Oriental rugs reproduced by those clever Bigelow weavers.

True copies of museum Orientals.

Amazing reproductions from the original Orientals.

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

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IN THE MATTER OF

GIBSON-THOMSEN CO., INC., AND S. H. KRESS CO.

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

Docket 3714. Complaint, Feb. 14, 1939—Decision, June 1, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale of tooth brushes; importing tooth brush handles from Japan—

- (a) Obliterated the word "Japan" on the bristle end thereof by boring holes therein and filling them with bristles in the process of manufacture, and, in compliance with instructions from the corporate operator of retail stores to whom it sold said products, imprinted on the handles the word "Kress" or "Kress, U. S. A.," and, until January 1938, printed on the ends of cartons enclosing such brushes the words "Made in U. S. A.";

Thereby placing in the hands of retailers a means of misleading and deceiving the purchasing public into the erroneous belief that its said brushes and all the parts thereof, lacking the original markings required by law, were wholly of domestic origin—substantially preferred thereby over those made from materials or parts imported from Japan, against the goods of which there is a substantial prejudice—with the result that said public purchased such products in the aforesaid erroneous belief and trade was thereby diverted to it from its competitors who do not so misrepresent their tooth brush products; and

Where said corporate operator, engaged in the competitive offer and sale of tooth brushes and other items direct to the purchasing public through its retail stores in the United States and the Territory of Hawaii, with full knowledge of the facts above set forth—

- (b) Sold and continued to sell such tooth brushes in its branch stores with no other marking, printing, or labeling thereon or in connection therewith to inform the purchasing public that said products were of Japanese and not of domestic origin;

With effect of deceiving the purchasing public as aforesaid, and of diverting trade unfairly thereby to it from its Hawaiian competitors who do not misrepresent the country of origin of the whole or part of their said products:

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

Before *Mr. John L. Hornor* and *Mr. James A. Purcell*, trial examiners.

Mr. Jay L. Jackson and *Mr. Carrel F. Rhodes*, for the Commission.
Mr. James W. Bevans, 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