

Complaint

§ 35 F. T. C.

IN THE MATTER OF
GIROUX 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 4731. Complaint, Mar. 16, 1942—Decision, Sept. 1, 1942

Where Lea & Perrins "Worcestershire Sauce" had long been made in England and imported into the United States in highly distinctive bottles, containers, and wrappings, and as thus made and imported, and later made in the United States in accordance with a secret formula, had come to enjoy Nationwide popularity for many years and to be preferred over the much cheaper domestic Worcestershire Sauces; and thereafter a domestic manufacturer, engaged in interstate sale and distribution of its much cheaper Worcestershire Sauce which was similar in color, odor and general appearance to the aforesaid Lea & Perrins, and which, as Worcestershire Sauce, it sold under various trade names and brands, together with its own name or the name of the distributor on label and wrapper—

- (a) Made use of labels and wrappers for its said sauce, packaged in containers of the same size and shape as those used by said Lea & Perrins, upon which the typography, border, dividing lines and color scheme were similar to, and in some instances the phrases identical with, those on the wrapper or label long theretofore used by said Lea & Perrins;

With tendency and capacity to mislead and deceive members of the purchasing public into the belief that its Worcestershire Sauce was in fact the Worcestershire Sauce made and sold by Lea & Perrins, and as a result, into purchase of substantial quantities thereof; and

- (b) Falsely represented to the purchasing public, through use of trade name or brand "English Pride" in designating its sauce and "Old English Brand" upon private brand merchandise, that its said domestic product was made in England and imported into the United States;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said product was imported from England, and as a result into purchase of substantial quantities thereof:

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

Mr. S. F. Rose for the Commission.

Mr. C. P. Goepel and *Diamond, Rabin & Mackay*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Giroux 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, Giroux Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 401 West Thirteenth Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a table sauce under the trade names or brands of "English Pride," "Apex," and "Parliament." Respondent also sells said sauce as private brand merchandise to distributors under various trade names. Among and typical of such private brand trade names are "Monarch Brand," "Sunbeam," "Buddie Brand," and "Old English Brand." Following the trade or brand name the words "Worcestershire Sauce" are always used. The aforesaid brands or labels are attached to each bottle of said sauce and also printed on the wrapper in which the bottles are enclosed. The name of the respondent or distributor is also printed on both the label and wrapper. All of the above-designated sauces are put up in 5-ounce bottles and are sold as low as 65 cents per dozen, and retail for 10 cents or more per bottle.

Respondent causes its said product, when sold, to be shipped and transported from its aforesaid place of business in the State of New York to the purchasers thereof located in States other than the State of New York, who in turn sell to retailers who sell to the consuming public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. In 1835, Lea & Perrins, a copartnership, began the manufacture of a sauce in the County Worcestershire, England, which they called "Worcestershire Sauce," and began the exportation thereof to the United States about 1849 and continued to export it in very large quantities until about the year 1898. During said period this product was sold extensively in all parts of the United States. In 1898 the partnership became incorporated under the laws of the State of New York and began the manufacture of the sauce in this country. Since then it has been, and now is, engaged in the business of selling and shipping Lea & Perrins' Worcestershire Sauce from New York City in said State of New York to wholesale grocers in every State of the United States. The business of this corporation, in the sale of Wor-

cestershire Sauce in the United States, amounts to more than one million dollars per year. Lea & Perrins' Worcestershire Sauce is prepared according to a secret formula. This product is one of recognized and uniform excellence, and has enjoyed a Nation-wide popularity for many years. The wholesale price of Lea & Perrins' Worcestershire Sauce is \$2.75 per dozen bottles; it retails at 30 cents per bottle. There is a decided preference among the consuming public for Lea & Perrins' Worcestershire Sauce, as compared to the Worcestershire Sauce sold by respondent.

The size and shape of the bottles containing Lea & Perrins' Worcestershire Sauce, and the features of Lea & Perrins' label and wrapper have for many years, been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 4. The sauce sold by respondent is strikingly similar in color, odor, and general appearance to Lea & Perrins' Worcestershire Sauce. All of these sauces are packed in 5-ounce bottles which are the same distinctive size and shape as that used by Lea & Perrins in bottling its product. Respondent also uses a wrapper of the same type of paper and same color on all of these sauces as is used by Lea & Perrins, upon which the typography, border, dividing lines, color scheme, and other distinctive features in the printed matter, including in some instances the identical wording, simulate the wrapper or label now used by Lea & Perrins and so used for many years prior to the adoption thereof by the respondent.

PAR. 5. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins, and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins, have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that respondent's Worcestershire Sauce is in fact Worcestershire Sauce manufactured and sold by Lea & Perrins and into the purchase of substantial quantities of respondent's product as a result of such erroneous and mistaken belief so engendered.

PAR. 6. The use by the respondent of the trade name or brand "English Pride" in designating its sauce, and of the name "Old English Brand" upon private brand merchandise, serve as representations to the purchasing public that said sauce is made in England and imported into the United States. In truth and in fact, said product is manufactured by respondent in the State of New York and is not an imported product.

PAR. 7. There is a preference among a substantial portion of the purchasing public for Worcestershire Sauce made in England, and there is a firm and fixed belief among such persons that it is superior to domestic products of like character.

PAR. 8. The use by the respondent of the said trade names or brands "English Pride" and "Old English Brand" has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are imported from England, and into the purchase of substantial quantities of said products as a result of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute 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 16th day of March 1942, issued and thereafter served its complaint in this proceeding upon respondent, Giroux Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 4, 1942, respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the secretary-treasurer of the respondent corporation and by its counsel 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 said statement of facts to make its report, stating its findings as to the facts (including inferences which may be drawn from the said 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. Respondent expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answered, and stipulation, said stipulation having been approved, accepted, and filed; 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, Giroux Co., Inc., is a corporation, organized and existing under and by the virtue of the laws of the State of New York, with its principal place of business located at 401 West Thirteenth Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a table sauce under the trade name or brand of "Parliament." At various times during the past several years, respondent has manufactured, sold, and distributed its said sauce under the trade names and brands of "Apex," "English Pride," and "Old English Brand". Respondent's "Apex" brand was discontinued several years ago. "Old English" brand, a customer's brand, was discontinued about 1938, and its "English Pride" brand was discontinued on January 12, 1942. The president of respondent corporation was interviewed by a representative of the Federal Trade Commission with respect to the matters involved in this proceeding on June 8, 1937. Respondent also sells said sauce as private brand merchandise to distributors under various trade names. Among and typical of such private brand trade names are: "Monarch Brand," "Sunbeam," "Buddie Brand," and "Old English Brand," the last of these having been discontinued. Following the trade name or brand name the words "Worcestershire Sauce" are always used. The aforesaid brands or labels are attached to each bottle of said sauce and are also printed on the wrapper in which the bottles are enclosed. The name of the respondent or distributor is always printed on both the label and the wrapper. All of the above designated sauces are or were put up in 5-ounce bottles and are or were sold as low as approximately 65 cents per dozen, and retail or retailed for 10 cents or more per bottle.

Respondent causes its said products, when sold, to be shipped and transported from its aforesaid place of business in the State of New York to the purchasers thereof located in States other than the State of New York, who in turn sell to retailers who sell to the consuming public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In 1835, Lea & Perrins, a copartnership, began the manufacture of a sauce in the County of Worcestershire, England, which they called "Worcestershire Sauce," and began the exportation thereof to the United States about 1849 and continued to export it in very large quantities until about the year 1898. During said period this

product was sold extensively in all parts of the United States. In 1898 the partnership became incorporated under the laws of the State of New York and began the manufacture of the sauce in this country. Since then it has been, and now is, engaged in the business of manufacturing, selling, and shipping Lea & Perrins, Inc., Worcestershire Sauce from New York City in said State of New York to wholesale grocers in every State of the United States. The business of this corporation, in the manufacture and sale of Worcestershire Sauce in the United States, amounts to more than one million dollars per year. Lea & Perrins, Inc., Worcestershire Sauce is prepared according to a secret formula. This product is one of recognized and uniform excellence, and has enjoyed a Nation-wide popularity for many years. The wholesale price of Lea & Perrins, Inc., Worcestershire Sauce is \$2.75 per dozen bottles; it retails at 30 cents per bottle. There is a decided preference among the consuming public for Lea & Perrins, Inc., Worcestershire Sauce, as compared to the Worcestershire Sauce sold by respondent.

The size and shape of the bottles containing Lea & Perrins, Inc., Worcestershire Sauce, together with the features of Lea & Perrins, Inc., label and wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public. Other manufacturers of Worcestershire Sauce have adopted and now use bottles of the same shape and size as the bottles used by Lea & Perrins, Inc. Such bottles are purchased as stock bottles from glass bottle manufacturers.

PAR. 4. The sauce sold by respondent is similar in color, odor, and general appearance to Lea & Perrins, Inc., Worcestershire Sauce. All of these sauces are packed in 5-ounce bottles which are the same size and shape as that used by Lea & Perrins, Inc., in bottling its product. For many years respondent has used a wrapper of the same type of paper and same color on all of these sauces as is used by Lea & Perrins, Inc., upon which the typography, border, dividing lines, color scheme, and other features in the printed matter, including in some instances the identical phrases, are similar to the wrapper or label now used by Lea & Perrins, Inc., and so used for many years prior to the adoption thereof by the respondent. The wrappers and labels theretofore used by the respondent were discontinued in December 1941.

PAR. 5. The use by the respondent of labels and wrappers similar to the labels and wrappers used by Lea & Perrins, Inc., together with the use by the respondent of bottles of the same size and shape as those used by Lea & Perrins, Inc., have had the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that respondent's Worcestershire Sauce is

in fact Worcestershire Sauce manufactured and sold by Lea & Perrins, Inc., and into the purchase of substantial quantities of respondent's product as a result of such erroneous and mistaken belief so engendered.

PAR. 6. The use by the respondent of the trade name or brand "English Pride" in designating its sauce, and of the name "Old English Brand" upon private brand merchandise, have served as representations to the purchasing public that said sauce was made in England and imported into the United States. In truth and in fact, said product has been manufactured by respondent in the State of New York and is not an imported product.

PAR. 7. There is a preference among a substantial portion of the purchasing public for Worcestershire Sauce made in England, and there is a firm and fixed belief among such persons that it is superior to domestic products of like character.

PAR. 8. The use by the respondent of the said trade names or brands "English Pride" and "Old English Brand" has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are imported from England, and into the purchase of substantial quantities of said products as a result of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute 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 respondent, and a stipulation as to the facts entered into by the respondent herein 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 respondent 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Giroux Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or

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through any corporate or other device, in connection with the offering for sale, sale, and distribution of Worcestershire Sauce, whether sold under that name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using wrappers, containers, or labels which simulate the wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing its Worcestershire Sauce, or otherwise representing that respondent's product is Worcestershire Sauce manufactured and distributed by Lea & Perrins, Inc.

2. Using the words "English Pride" and "Old English Brand," or any other words which indicate English origin, to designate, describe, or refer to Worcestershire Sauce which is not made in England.

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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35 F. T. C.

IN THE MATTER OF

BIGELOW-SANFORD CARPET COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 4207. Order, Sept. 4, 1942

Order modifying, as below set forth, cease and desist order in proceeding in question in which original findings and order issued on May 26, 1942, 34 F. T. C. 1252, 1260, so as to require respondent, its officers, etc., in connection with offer, etc., in commerce, of rugs, to cease and desist from—

- (a) Using the words "Perslamar" or "Kashamar," or any other word or name indicative of the Orient, to mark, etc., or to refer to rugs not there made and which do not possess all the essential characteristics and structure of the type of oriental rug which they purport to be;
- (b) Using the words "true copies," etc., 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, or representing in any manner that the rugs made and sold by it are true copies of museum Orientals or are reproductions of Orientals; and
- (c) Furnishing dealers buying its rugs with advertising copy for insertion by them in newspapers and other publications of general circulation which state, with reference thereto, "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"; and "Amazing reproductions from the original Orientals."

Mr. Randolph W. Branch for the Commission.

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

MODIFIED ORDER TO CEASE AND DESIST

The Federal Trade Commission having further considered the order to cease and desist heretofore issued in the above-entitled cause on the 26th day of May, A. D. 1942, and it appearing to the Commission that paragraph 2 of said order to cease and desist was indefinite and incomplete and that public interest required that said cause be reopened for the purpose of correcting said paragraph by the issuance of a modified order to cease and desist; and the Commission having heretofore entered its order upon the respondent to show cause within 10 days from date of service of said order, why a modified order to cease and desist should not be issued by the Commission amending said paragraph 2 of the order issued May 26, 1942, and 10 days having elapsed since date of service of said order to show cause and no objections having been filed by the respondent;