

Syllabus

IN THE MATTER OF
NEW YORK HANDKERCHIEF MANUFACTURING
COMPANY,

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

Docket 4727. Complaint, Mar. 11, 1942—Decision, Nov. 30, 1942

Where a corporation, engaged at its place of business in Chicago, Ill., in the manufacture and interstate sale and distribution of handkerchiefs to, principally, jobbers and retailers—

(a) Represented that certain of its said products were made in and imported from Ireland, or were made in the United States from materials imported from Ireland, through use of word "Erin" on paper wrappers enclosing the boxes in which it packed said brand in 5 dozen quantities, together with depictions of a harp and shamrocks superimposed upon a background of traditional Irish green with "Made in U. S. A." at the bottom of the wrapper and in much smaller type; and through use of similar legends and depictions upon a green paper band which usually enclosed each dozen or half-dozen handkerchiefs within the box; and, occasionally, through use of said brand name upon a green sticker with depiction of a harp attached to top handkerchief of a lot in lieu of a band; and

(b) Represented further that its said products were linen, through use on such wrappers, bands, and stickers of legend "Soft Linen Finish";

Notwithstanding the fact that the handkerchiefs thus branded were not made from linen of any kind, but were composed entirely of cotton; and were not imported from Ireland or made of materials imported from Ireland, long famous throughout the United States for its linen products, which are preferred by a substantial portion of the purchasing public to those produced elsewhere;

With tendency and capacity to mislead and deceive a substantial number of dealer and consumer purchasers, and thereby to cause them to purchase substantial quantities of said handkerchiefs; and with effect of placing in the hands of uninformed or unscrupulous dealers a means by which they might mislead and deceive the public:

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

As respects the alleged false representation by a handkerchief manufacturer that its products were made in Ireland or of material from Ireland through use of word "Erin" as brand name on labels and wrappers thereof, together with depiction of shamrocks: Use by said manufacturer of legend "Made in U. S. A." was not sufficient, as contended, to prevent deception of the public with respect to the origin of such handkerchiefs, entirely aside from the fact that such legend was branded in much smaller and less conspicuous type than the other words and would usually escape the attention of the purchaser.

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As respects alleged false representation by a handkerchief manufacturer that its handkerchiefs were linen through use of word "linen" on attached brands and labels: The use of the word "finish" in such legends as "Soft Linen Finish" and "Linen Finish" was not sufficient, as contended by the manufacturer, to apprise the public that the reference was to the finish rather than to the actual composition of the handkerchiefs, in view of the evidence; there being, moreover, serious doubt whether terms "Soft Linen Finish" and "Linen Finish" are recognized at all in the trade.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., 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 New York Handkerchief Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, New York Handkerchief Manufacturing Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1021 West Adams Street, Chicago, Ill.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the manufacture of handkerchiefs and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes its said products, when sold, to be shipped from its said place of business in the State of Illinois to jobbers, retailers, and other 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 its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business in said commerce, as aforesaid, respondent offers for sale and sells its said product to jobbers and retailers for resale to the general public under the trade name "ERIN." Said product, when sold by the respondent,

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is packed in a wrapper which bears, among others imprinted thereon, the following statement:

ERIN

(Picturization of a harp)

Men's Handkerchiefs

Softest Linen Finish

Linen Finish

ERIN

ERIN

Men's Handkerchiefs

Said statement and said picturization of a harp appear in gold on a background of traditional Irish green.

On certain of the handkerchiefs packaged in said wrappers respondent places a wrapper upon which appears the following statement, accompanied by a picturization of a harp, in gold on a background of traditional Irish green:

ERIN

Handkerchiefs

Soft

Linen Finish

Through the use of the word "ERIN" as a trade name for and on said handkerchiefs and the wrapper in which they are packaged, the picturization of a harp and the background of traditional Irish green, the respondent represents and implies that said handkerchiefs are manufactured in and imported from Ireland. Through the statements "Soft Linen Finish," "Linen Finish," used in connection with the word "ERIN," the picturization of a harp and a background of green as aforesaid, respondent represents and implies that said handkerchiefs are manufactured from linen produced in and imported from Ireland. Through the use of the statements "Soft Linen Finish," "Linen Finish" alone respondent represents that said handkerchiefs are composed in whole or substantially in part of linen.

PAR. 4. In truth and in fact respondent's said handkerchiefs are not manufactured in and imported from Ireland. Said handkerchiefs are not manufactured from linen produced in Ireland or from linen at all, but are composed wholly of cotton and contain no linen whatsoever. Said handkerchiefs are manufactured in the United States at respondent's place of business in Chicago, Ill.

PAR. 5. The word "ERIN" has long been associated by a substantial portion of the purchasing public with the country Ireland, and through long usage has become synonymous therewith, and when used as hereinabove alleged indicates to a substantial portion of the purchasing public a product of Irish origin or a product made from materials of Irish origin. Ireland has long been famous throughout

the United States for the excellent quality of its linen products and a substantial portion of the purchasing public prefers linens produced in Ireland to those produced elsewhere. Handkerchiefs manufactured from linen are preferred by a substantial portion of the purchasing public to those manufactured from cotton.

PAR. 6. The aforesaid acts, practices, and methods of respondent have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are manufactured from Irish linen in and imported from Ireland, or manufactured in the United States from linen imported from Ireland, and that said products are composed in whole or substantial part of linen, and cause jobbers, retailers, and other members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products to the injury of the public.

PAR. 7. The aforesaid acts, practices, and methods of respondent place in the hands of jobbers and retailers purchasing for resale a means and instrumentality by and through which such jobbers and retailers may mislead and deceive the purchasing public.

PAR. 8. The aforesaid acts, practices, and methods 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 March 11, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, New York Handkerchief Manufacturing Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon

the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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, New York Handkerchief Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1021 West Adams Street, Chicago, Ill. Respondent, is now and for a number of years last past, has been engaged in the manufacture, sale, and distribution of handkerchiefs.

PAR. 2. In the course and conduct of its business respondent causes and has caused its handkerchiefs, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof, principally jobbers and retail dealers, located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its handkerchiefs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the various brands or lines of handkerchiefs manufactured and sold by respondent is a brand designated by respondent as "Erin." These handkerchiefs are packed 5 dozen to a box, and each box is wrapped in a paper wrapper on which there appears, in large type, the following:

E R I N
White Bleached
Mens
HANDKERCHIEFS
Soft Linen Finish

In connection with this lettering there also appear picturizations of a harp and shamrocks, the national flower of Ireland, all being superimposed upon a background of traditional Irish green. At the bottom of the wrapper, and in much smaller type than the other legends, is the legend "Made in U. S. A."

Around each dozen or half-dozen handkerchiefs within the box is usually placed a paper band which, like the outside covering of the package, is green in color, and which bears substantially the same legends, together with the picturization of a harp. Occasion-

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ally, instead of using this band, respondent places on the top handkerchief in the dozen or half-dozen lot a sticker which reads:

E R I N
M
e
n
s
HANDKERCHIEFS
Soft
Linen Finish

This sticker is also green in color and bears, along with the lettering thereon, the picturization of a harp.

PAR. 4. The name "Erin" has long been associated by a substantial portion of the purchasing public with the country Ireland, and is understood by such portion of the public as being somewhat synonymous with the name "Ireland." The Commission finds, therefore, that the use of the word by respondent to designate and describe its handkerchiefs constitutes a representation that such handkerchiefs are manufactured in and imported from Ireland, or that they are manufactured in the United States from materials imported from Ireland. The effect of the use of the word "Erin" is accentuated through the picturizations of the harp and shamrocks, and through the use of the green background.

The Commission finds, further, that through the use of the word "Linen" in the legends "Soft Linen Finish" and "Linen Finish," respondent represents and implies that its handkerchiefs are made of linen.

PAR. 5. The handkerchiefs so designated and described by respondent are not in fact made from linen of any kind, but are composed entirely of cotton. Neither the handkerchiefs nor the materials of which they are made are imported from Ireland. The handkerchiefs are manufactured at respondent's place of business in Chicago, Ill., from cotton fabric obtained in the United States.

PAR. 6. Ireland has long been famous throughout the United States for its linen products, and a substantial portion of the purchasing public prefers linens produced in Ireland to those produced elsewhere. Handkerchiefs made of linen are preferred by a substantial portion of the public to those made of cotton.

PAR. 7. It is insisted by respondent that the use on its wrappers and bands of the legend "Made in U. S. A." is sufficient to prevent any deception of the public with respect to the origin of its handkerchiefs. Aside from the fact, however, that this legend is printed in much smaller and less conspicuous type than the other words appearing on the wrappers and bands, and would usually escape the attention of

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the average purchaser, it is insufficient to negative respondent's implication that the handkerchiefs are manufactured from material imported from Ireland.

Respondent further contends that the inclusion of the word "Finish" in its legends "Soft Linen Finish" and "Linen Finish" is sufficient to apprise the public that the reference made by the legends is to the finish rather than the actual composition of the handkerchiefs. The evidence discloses, however, that the word "Linen" as here used is misleading, even though it be accompanied by the word "Finish." Moreover, there is serious doubt whether the terms "Soft Linen Finish" and "Linen Finish" are recognized at all in the trade.

PAR. 8. The acts and practices of respondent have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the origin, composition, and character of respondent's product, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered. Such acts and practices serve also to place in the hands of uninformed or unscrupulous dealers a means and instrumentality by which such dealers may mislead and deceive the purchasing public.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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 respondent, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, New York Handkerchief Manufacturing Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of re-

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spondent's handkerchiefs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Erin," or any other word indicative or suggestive of the country Ireland, to designate or describe handkerchiefs which are not in fact imported from Ireland or made of materials imported from Ireland.

2. Using the word "Linen," or any simulation thereof, alone or in combination with any other word or words, to designate or describe handkerchiefs which are not in fact made of linen.

3. Misrepresenting, through the use of picturizations, or by any other means, the place of origin of respondent's products or materials of which such products are made.

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

FRED B. PEAKE AND WILLIAM H. ROOSE, DOING
BUSINESS AS MARVEL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4838. Complaint, Sept. 23, 1942—Decision, Nov. 30, 1942*

Where two individuals, engaged in manufacture and interstate sale and distribution of their "Marvel Coal-Pep" or "Economy Coal Saver" treatment for coal; by means of advertisements in newspapers and periodicals, circulars, pamphlets, cards and testimonials, and other advertising media, and by advertising matter supplied to their salesmen and distributors—

- (a) Falsely represented that their said product created oxygen and aided in burning coal gases; that its use would save up to one-third of the cost of coal and make it burn better, create a steadier, more even heat, reduce ashes, soot, smoke and dirt, and aid in purifying the air from coal gases; and
- (b) Falsely represented that it would save labor in handling coal and ashes, reduce evaporation and help preserve the heating elements in coal; and that it was the newest, greatest money making specialty ever offered sales people;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said product:

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. James M. Hammond for the Commission.

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 Fred B. Peake and William H. Roose, co-partners, trading as Marvel Laboratories, 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, Fred B. Peake and William H. Roose, are copartners, trading and doing business under the trade name of Marvel Laboratories, and maintain their office and principal place of business at 1205 Market Street, Louisville, Ky. Respondents are now and for some time last past have been engaged in the business