

IN THE MATTER OF

ALFRED KOHLBERG, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4604. Complaint, Oct. 3, 1941—Decision, Jan. 26, 1943

Where a corporation, engaged in interstate sale and distribution of laces and linen goods—

- (a) Represented, through unqualified use of such typical terms and names as "Tuscany," "Binche," "Cluny," "Flat Venise," "Venise Rounds," and "Valenciennes" in its invoices and advertising literature and on labels attached to its products that the lace products to which they were applied were made in certain countries of continental Europe noted for such production, and particularly Belgium, France, and Italy, as long understood by purchasing public when used in aforesaid connection;

The facts being that said products, while resembling the laces made in the lace-producing countries of Europe, markedly preferred by a substantial portion of the purchasing public over those made in China or other countries, were in fact made in China and imported therefrom into the United States by it; and

- (b) Failed to disclose adequately the place of origin of such products through affixing to some of them tags or stickers which bore the legend "Made in China" or "Made in Shantung, China" in much smaller and less conspicuous type than designations above set forth; and, in some cases, particularly as to products sold in bulk, through attaching said tags or stickers insecurely so that they were likely to become separated from the article before its offer for sale at retail by the dealer-purchaser;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and place of origin of said products, thereby causing substantial purchase thereof by reason of such mistaken belief:

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.

Before *Mr. John W. Addison* and *Mr. Andrew B. Duvall*, trial examiners.

Mr. Jesse D. Kash 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 the Alfred Kohlberg, Inc., 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. The respondent, Alfred Kohlberg, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 1 W. Thirty-seventh Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of Chinese textiles, including lace and handkerchiefs. Respondent causes its said products when sold by it to be transported from its aforesaid place of business in the State of New York to the purchasers thereof located in various 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 in and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing purchase of its said products, the respondent has adopted and used and now uses the names of countries, provinces, and cities of the lace-producing sections of continental Europe to identify, designate, and describe various laces sold and distributed by it. Said names and designations are used by respondent on invoices, in advertising literature and on labels attached to said products. Among and typical of such names so used are the following: "Tuscany," "Binche," "Cluny," "Flat Venice," "Venise Rounds" and "Valenciennes." Through the use of said names respondent has represented and now represents that its said laces are made respectively in the Tuscany District of Italy; at Binche in Hainault Province, Belgium; Cluny, France; Venice, Italy, and Valenciennes, France.

PAR. 4. The terms "Tuscany," "Binche," "Cluny," "Flat Venice," "Venise Rounds," and "Valenciennes" are understood by the purchasing public to denote hand-made linen laces of distinctive designs and construction originating in and limited to the particular country, province, or city of lace-producing countries of continental Europe bearing said geographical names. For many years such laces bearing such designated names have been and they are now, well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the purchasing public for such laces over laces made in other countries or machine made laces, or laces made from cotton or other materials.

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In truth and in fact the laces designated by respondent as aforesaid are not made in the Tuscany District of Italy; in Binche, Hainault Province, Belgium; in Cluny, France; in Venice, Italy; or in Valenciennes, France; but on the contrary all of said laces are made in China and they are not made from linen thread, but from cotton or other thread.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public as to the origin, composition, and quality of respondent's products, and as a result the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's products.

PAR. 6. The acts and practices of the respondent serve also to place in the hands of uninformed and unscrupulous dealers a means or instrumentality whereby such dealers are enabled to mislead and deceive the purchasing public.

PAR. 7. The aforesaid acts and practices of 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 October 3, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Alfred Kohlberg, Inc., 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 trial examiners 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 examiners 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, Alfred Kohlberg, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 1 W. Thirty-seventh Street, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the sale and distribution of laces and linen goods.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products 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 business respondent has used in its invoices and advertising literature, and on labels attached to its products, various names to designate and describe certain of the laces and lace products sold by it. Among and typical of such names so used are the following: "Tuscany," "Binche," "Cluny," "Flat Venise," "Venise Rounds," and "Valenciennes." For many years last past these names, when used in connection with laces, have been understood by the purchasing public as denoting laces made in certain countries of continental Europe noted for the production of laces, particularly Belgium, France, and Italy. The unqualified use of such terms serves as a representation to the public that the laces or lace products to which they are applied were made in such lace-producing section of Europe. There is a marked preference on the part of a substantial portion of the purchasing public for laces having their origin in such section over laces made in China or other countries.

The laces and lace products so designated and described by respondent, while resembling in design and pattern the laces made in the lace-producing countries of Europe, were not in fact made in such countries or in any section of Europe, but were made in China and imported from China into the United States by respondent.

PAR. 4. Some of these products, when sold by respondent, had affixed thereto tags or stickers bearing the legend "Made In China" or "Made in Shantung, China," but such legends were in much smaller and less conspicuous type than the name used by respondent to designate the lace, and would in the usual case escape the notice or attention of prospective purchasers. Moreover, in the case of some of the products, particularly laces sold in bulk, the tags or stickers purporting

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to disclose the place of origin were insecurely attached to the article and were likely to become detached and separated therefrom before the article was offered for sale at retail by the dealer purchasing it from respondent.

PAR. 5. The Commission finds that the unqualified use by respondent of names signifying the lace-producing section of Europe to designate and describe laces and lace products not made in such section, and the failure of respondent to disclose adequately the place of origin of such products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and place of origin of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

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 trial examiners of the Commission theretofore duly designated by it, report of the trial examiners 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, Alfred Kohlberg, Inc., 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 respondent's laces and lace products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Tuscany," "Binche," "Cluny," "Venise," or "Valenciennes," or any other word descriptive or indicative of laces made in the lace-producing countries of Europe, to designate or describe laces or lace products not made in such countries: *Provided*,

however, That if the lace involved is of the same type as the lace produced in such countries, such descriptive word may be used if immediately followed by the word "Type," or some other word of similar import, in letters of at least equal size and conspicuousness, and if there also appear in connection with such description other words clearly and conspicuously disclosing the country of origin of such lace, as, for example:

"Tuscany Type
Made in China"

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.

IN THE MATTER OF

HERBERT L. ROSS, DOING BUSINESS AS NATIONAL
INHERITANCE SERVICE; AND O. F. BLAKERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4849. Complaint, Oct. 15, 1942—Decision, Jan. 26, 1943*

Where an individual, engaged in interstate sale and distribution of envelopes and form letters to be used by creditors and collection agencies in obtaining information concerning debtors, which bore his trade name, i. e., "National Inheritance Service," and San Francisco address, and contained such statements as "Examiners for Title Companies," "Searchers of Records," "Genealogists," "Estate Counsellors," "Missing Heirs Located," "Actuaries," and "We have been endeavoring to communicate with a person of the above name (name of person and address) * * *. This is a matter of distinct importance to the individual in question and that we may make certain you are the one, please answer the following questions" (relating to person's name, address, employer, and address, bank references, etc.); and some of which also contained statements designed to follow up similar unanswered communications; aided by a second individual who employed same trade name, with Baltimore address;

Making use of a plan under which said questionnaires were (1) assigned a code number identifying the customer involved; (2) had inserted the names and addresses of the debtors or others from whom customer sought information; (3) were signed by the customer usually with some fictitious name; (4) were placed in stamped envelopes bearing in upper left hand corner aforesaid trade name with either San Francisco or Baltimore address; (5) had enclosed a reply envelope addressed to such trade name and place of business in San Francisco or Baltimore; (6) were mailed or delivered by the customer to said individual who mailed them in San Francisco or delivered them to his associate for mailing in Baltimore, and who received 50 cents from his customers for each debtor's location so obtained; through said letters and envelopes, directly and by implication—

- (a) Falsely represented, and placed in the hands of his customers means of falsely representing, to customers, debtors and others from whom information was sought, that the "National Inheritance Service" had correspondents in all the principal cities of the world;
- (b) Falsely represented, etc., as above set forth, that said "National Inheritance Service" acted as examiner for title insurance companies;
- (c) Falsely represented, etc., that said "Service" engaged in genealogical research, actuarial work, and the searching of records; and
- (d) Falsely represented, etc., that the person concerning whom information was sought had or might have an interest in an estate or land which would be of financial benefit to him;

When in fact said representations were false and misleading, and said individual aforesaid had no knowledge of any such interests in estates or in lands; and

- (e) Falsely represented, through use of name "National Inheritance Service,"