

Syllabus

IN THE MATTER OF

MARSHALL FIELD & COMPANY, DOING BUSINESS AS
KARASTAN RUG MILLS

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

Docket 4493. Complaint, Apr. 26, 1941—Decision, Mar. 27, 1943

Where a corporation, engaged under the name "Karastan Rug Mills" in the manufacture and competitive interstate sale and distribution of rugs which so closely simulated the true Oriental, hand-made product with its knotted threads and other distinctive features, as to be practically indistinguishable therefrom, including as its leading line its "Karastan" rug for which it used the advertising slogan "Karastan * * * The Wonder Rug of America," more recently also included the term "Machine Woven U. S. A." and in connection with which it described the similarity to Oriental rugs accomplished by power loom weaving, and which it further featured in the labeling and advertising of its other rugs through use of the statement "By the Makers of Karastan"—

- (a) Represented that certain of its said rugs were genuine Orientals and made in the Orient by hand, through designation of its said machine made products by such coined names as "Karashah," "Karavere," "Kharol" and "Kara Kirman" in simulation of the names of such true Orientals as "Karadagh," "Karabagh," and "Karajah" of northern Persia and the southern Caucasus, or the well-known Turkish "Kirman";
- (b) Represented that certain of its rugs were "Oriental Reproductions" or "Authentic Oriental Reproductions" through labels firmly attached thereto and plainly discernible in connection with retailers' display of the rugs for sale;

When in fact they were not exact copies or reproduction of true Orientals in structure or method of manufacture, but merely simulated the appearance thereof, and, while in some instances it had endeavored to copy designs of typical Oriental rugs, in others it used designs which it had created and which were adaptations or combinations of Oriental motifs;

With tendency and capacity to mislead purchasers into the mistaken belief that such representations and designations were true and that rugs so designated were genuine Oriental rugs, thereby inducing purchase thereof; and with effect of placing in the hands of retail dealers means of misleading and deceiving the purchasing public; with result that trade was diverted unfairly to it from competitors who truthfully represent their 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. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Wilson & McIlvaine, of Chicago, Ill., for respondent.

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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 Marshall Field & Co., 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, Marshall Field & Co., is a corporation, organized and existing under the laws of the State of Illinois and having an office and principal place of business at 222 North Bank Drive in the city of Chicago, State of Illinois. Respondent also maintains an office at 295 Fifth Avenue, New York City, N. Y., and a manufacturing plant at Leakesville, N. C.

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 under the name of Karastan Rug Mills. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers, and causes such rugs, when sold, to be transported from its aforesaid place of business in the States of Illinois, New York, and North Carolina 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 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 also 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 either the place or method of manufacture or nature 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 of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand 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 certain of its rugs, respondent has engaged in the practice of describing and designating said rugs, which closely resemble true Oriental rugs in appearance, by the names of "Karastan," "Karashah," "Karavere," "Kara Kirman" and "Kharol."

There are true Oriental rugs known as "Karabagh," "Karadagh," "Karageuze," "Karaman," "Karahissar," "Karajah" and "Kirman," and the use by respondent of the designations "Karastan," "Karashah," "Karavere" and "Kara Kirman" has the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact genuine Oriental rugs. The name "Kharol" suggests and connotes the Orient and has the tendency and capacity to induce the mistaken and erroneous belief that the rugs so designated are in fact genuine Oriental rugs.

Respondent uses said names to designate the said rugs in invoices to dealers and in otherwise referring to the same in the sale thereof to dealers, and in advertisements in magazines of general circulation in the rug trade.

To the various rugs designated by respondent as above set forth, it firmly attaches labels upon which the particular name conspicuously appears; in addition to the names, the "Kharol" and "Kara Kirman" labels also bear depictions of Oriental scenes. 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 rugs hereinabove referred to are woven on power looms in its factory in the United States. They are not made by hand, and the individual threads are not knotted in the distinctive manner of the true Oriental rug. They do not possess all the characteristics of true Oriental rugs, 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, in consequence, are readily accepted as being true Oriental rugs.

PAR. 6. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of representing that they are "Oriental reproductions"

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or authentic Oriental reproductions. Such representations are made by means of labels firmly attached by respondent to said rugs, which are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers. Among and typical of the statements which appear upon such labels are the following:

Kara Sultana
Authentic Oriental Reproduction
Woven of fine Oriental yarn.

Kara Sultana
Authentic Oriental Reproduction
All wool face.

Kara Imperial
Authentic Oriental Reproduction
by
The Karastan Rug Mills.

Kara Imperial
Authentic Oriental Reproduction
by
Karastan Rug Mills.
Woven of fine imported wool
All wool face.

Kara-Furn
Oriental Reproduction
Woven of fine Oriental yarn.

Kara-Furn
Oriental Reproduction
All wool face.

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 them in appearance. While in some instances respondent has endeavored to copy the designs of particular Oriental rugs, in others it has used designs which it has created and which are adaptations or combinations of Oriental motifs.

PAR. 7. The use by respondent of the designations, depictions 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 for 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 the 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 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 April 26, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Marshall Field & Co., a corporation, trading and doing business under the name Karastan Rug Mills, charging it 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before James A. Purcell, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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. Respondent, Marshall Field & Co., is a corporation, organized and existing under the laws of the State of Illinois and having an office and principal place of business at 222 North Bank

Drive in the City of Chicago, State of Illinois. Respondent also maintains an office at 295 Fifth Avenue, New York, N. Y., and a manufacturing plant at Leaksville, N. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, distributing, and selling rugs under the name of Karastan Rug Mills. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers and causes such rugs, when sold, to be transported from its aforesaid places of business in the States of Illinois, New York, and North Carolina 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 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 is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships, and individuals also 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.

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 southwest 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 of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand 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 certain of its rugs, respondent has engaged in the practice of describing and designating said rugs, which closely resemble true Oriental rugs in appearance, by the names of "Karastan," "Karashah," "Karavere," "Kara Kirman," and "Kharol." The Karastan rug is respondent's leading or more expensive line of domestic rugs and is further featured in the labeling and advertising of its various other domestic rugs through the use of the statement "By the makers of Karastan." The rugs so designated by the respond-

ent are woven on power looms in its factory in the United States. They are not made by hand, and the individual threads are not knotted in the distinctive manner of the true Oriental rug. The wool used in the manufacture of said rugs is in part imported from various foreign countries, and a substantial part of the wool so imported and used is of South American and European origin. The dyes used in the manufacture of such rugs are commercial coal-tar dyes of American manufacture. In the weaving of respondent's Karastan and Karashah rugs, the design is woven through to the back, which is a characteristic of Oriental rugs. The designs, motifs, and figures used in the weaving of respondent's rugs are obtained by tracings from original Orientals, and the color is simulated as closely as possible. The rugs, after manufacture, are chemically washed, thereby chlorinating the wool, which is the same general process used on genuine Oriental rugs for the purpose of enhancing the beauty, luster, and sheen and to soften the color. Respondent's rugs so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public. There are no true Oriental rugs known as "Karastan," "Karashah," "Karavere," "Kara Kirman," and "Kharol," and said words are not names of true Oriental rugs or of any district, place, or tribe in the Orient but are coined names originated by the respondent. The respondent has discontinued the use of the terms "Kara Kirman," "Karavere," and "Kharol" in designating its rugs.

PAR. 6. In earlier labeling of respondent's rugs the respondent attached thereto labels containing such designated names without further designating or describing the place of origin or manufacture of such rugs. In its later and more recent labeling the respondent has placed on its labels the terms "Machine Woven in U. S. A." In addition thereto, in connection with the advertising of its Karastan rugs, the respondent has used the slogan "Karastan * * * The Wonder Rug of America," which advertisements also usually carry the term "Machine Woven U. S. A." and the context of such advertisements usually describes the similarity to Oriental rugs, which has been accomplished by power-loom weaving. Such advertising is issued by the respondent and supplied to dealers for use by them in advertising said rugs.

PAR. 7. The use by the respondent of the word "Karashah" to designate or describe certain of its rugs is a simulation of the names of true Oriental rugs known as "Karadagh," "Karabagh," and "Karajah," which are produced in northern Persia and the southern Caucasus, and further constitutes a representation that the rugs so designated

are true Oriental rugs in all respects, made in the Orient by hand. The use of the words "Kara Kirman" to designate or describe certain other of its rugs is a simulation of the name of a true Oriental rug known as "Kirman," which is produced in Turkey and is well known in the United States, and further constitutes a representation that the rugs so designated are true Oriental rugs in all respects, made in the Orient by hand. In like manner the use of the words "Karavere" and "Kharol," together with the manner in which said rugs were labeled by the respondent, has a capacity and tendency to cause the purchasing public to believe that such rugs are in fact true Oriental rugs in all respects, made in the Orient by hand.

PAR. 8. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of representing that its rugs are "Oriental reproductions" or "authentic Oriental reproductions." Such representations are made by means of labels firmly attached by respondent to said rugs and which are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

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 them in appearance. While in some instances respondent has endeavored to copy the designs of typical, particular Oriental rugs, in others it has used designs which it has created and which are adaptations or combinations of Oriental motifs.

PAR. 9. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its rugs has had, and now has, the tendency and capacity to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct and that the rugs so designated and represented are true or genuine Oriental rugs and to induce them to purchase said rugs on account thereof. The aforesaid acts and practices of the respondent have the effect of placing in the hands of retail dealers who purchase said rugs and resell them to the purchasing public, means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

As a result of said acts and practices, trade has been unfairly diverted to the 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.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the 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 exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Marshall Field & Co., a corporation, trading and doing business under the name Karastan Rug Mills, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of rugs in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Karashah," "Kara Kirman," "Karavere," or "Kharol," or any other word or combination of words or syllables, coined or otherwise, which are indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

2. Using the word "Kirman" or any other name of any genuine Oriental rug in combination with other words or syllables, coined or otherwise, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of the particular Oriental rugs indicated by the use of such name.

3. Using the word "Karashah" or any other word or combination of words or syllables the spelling, sound, or written appearance of which closely simulates or suggests the name of a genuine Oriental rug, to designate or describe rugs which are not in fact made in the Orient

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and which do not possess all the essential characteristics and structure of the particular Oriental rugs indicated by the use of such name.

4. Using the word "reproduction" or any other word of similar import or meaning to designate or describe rugs which are not in fact reproductions of genuine Oriental rugs in all respects, including structure, method of manufacture, and material.

It is further ordered, That no provision of this order to cease and desist shall be construed as prohibiting the respondent from using the term "Karastan" to designate or describe its rugs, provided there is used in immediate connection or conjunction therewith a statement which clearly and conspicuously states in appropriate terms that the rugs so designated and described are woven on power looms in the United States.

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.

Syllabus

IN THE MATTER OF

JOHN F. ERDLEY, DOING BUSINESS AS ERDLEY HATCHERIES, AND MONTGOMERY WARD & COMPANY

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

Docket 4696. Complaint, Feb. 4, 1942—Decision, Mar. 27, 1943

Where an individual, engaged in hatching and interstate sale and distribution of baby chicks; through advertisements in circulars and other printed matter, directly or by implication—

- (a) Represented by such statements as "Members of—The Colorado U. S. Poultry Improvement Ass'n.," that he was a member of such an organization, and that baby chicks offered and sold by him were hatched in a hatchery approved by the United States Government;

The facts being there was no such association; the Colorado Poultry Improvement Association, of which he was a member, was not a State agency and had no official connection with the "National Poultry Improvement Plan" of the U. S. Department of Agriculture, administered in the State concerned by the Colorado Poultry Improvement Board; use of letters "U. S." in connection with aforesaid words induced false belief that he was a member of the Board referred to and was participating in the National Poultry Improvement Plan; and his hatchery was not approved by the Government;

- (b) Falsely represented that his said baby chicks were hatched from eggs produced by a flock approved by the Government; that his chicks were "check tested," and that chicks from each parent flock were brooder tested for health and livability; and

Where a corporation engaged in interstate sale and distribution of various lines of merchandise, including baby chicks purchased by it from various hatcheries, including those of aforesaid individual; through advertising folders, pamphlets, catalogs, and otherwise, including certificates which it distributed through the various hatcheries with which it held contracts—

- (c) Represented that its baby chicks were from flocks approved by the United States Government and were hatched in hatcheries approved by the United States Government;

The facts being that such representations, insofar as they applied to baby chicks distributed for the corporation by aforesaid individual, upon whom it relied for information, were false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said baby chicks, thereby inducing its purchase thereof, because of such mistaken belief:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.