

Complaint

37 F. T. C.

IN THE MATTER OF
S. BUCHSBAUM & CO.

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

Docket 4450. Complaint, Jan. 25, 1941—Decision, Nov. 23, 1943

Where a corporation engaged in the manufacture and interstate sale and distribution of men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar merchandise made from "vinylite," a resinous derivative of vinyl with an added plasticizer—
Represented through use of trade name, "Elasti-Glass," to designate and describe its said products, and through advertisements in newspapers and other periodicals, form letters, and other advertising material, that its said products were made of glass, as understood by the general public, processed in such a manner as to give it elastic properties;
The facts being plastic material in question had none of the characteristics of glass other than that of transparency; it had a molding temperature of about 120° to 130° C. as compared to that of common glass, which is about 800° to 900° C. higher; it differed from glass also in that it did not have a high-scratch hardness, low-water absorption or high-softening and decomposition point; and differed along with other similar synthetic resinous compounds, and so greatly in composition, methods of manufacture and properties from common glass as to constitute a separate division of chemical technology;
With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the products so designated were made from common glass processed to make it pliable and elastic, and to cause them to purchase its products because of such mistaken belief:
Held, That said 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.

Before *Mr. Charles A. Vilas*, trial examiner.

Mr. Eldon P. Schrup, *Mr. D. C. Daniel*, and *Mr. James W. Cassidy* for the Commission.

Moses, Kennedy, Stein & Bachrach, 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 S. Buchsbaum & 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, S. Buchsbaum & Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 243 East Huron Street, in the city of Chicago, State of Illinois.

Said respondent operates a factory located at said address, wherein are manufactured various men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and allied merchandise, made from "Vinylite," an organic material of glass-like appearance.

Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of said merchandise in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said merchandise, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia.

Respondent now maintains and at all times mentioned herein has maintained a course of trade in said merchandise sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. "Vinylite" is the registered trade-mark of a chemically manufactured plasticized resinous material resembling glass, purchased by respondent in the form of pliable, clear or colored, transparent or translucent, semielastic sheets, which after further processing, respondent converts into various of the afore-described men's accessories. Articles of men's accessories manufactured by respondent from said material are advertised, offered for sale and sold by respondent, as being made of "Elasti-Glass," respondent's trade name for the material so used.

PAR. 3. Processes for the fabrication of inorganic glass into materials suitable for use in the manufacture of various men's accessories, as well as women's accessories and household furnishings, have been developed and are now in process of being developed at considerable expense by various members of the glass industry. Many such articles of merchandise made from inorganic glass materials have already been manufactured and amidst wide publicity have been and are being marketed and sold to the public, long accustomed to the worth and the use of glass.

PAR. 4. Respondent in aid of the sale and distribution of its merchandise made from "Vinylite" and in the conduct of its business in the course of trade in commerce as aforesaid, has inserted or caused to be

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inserted in various magazines and periodicals having interstate circulation, certain advertisements illustrative of the men's accessories made by respondent from "Vinylite." Said advertisements conspicuously state that such products are made of "Elasti-Glass," "science's latest miracle," picture the transparency of said material, state it to be elastic in action and further ascribe to it many of the properties commonly associated with glass such as among others, durability and imperviousness to water and moisture. Many of such advertisements quote the retail prices of such accessories and contain printed coupons to be filled out and mailed directly to respondent's Chicago address in purchase of such products.

Respondent, by means of its salesmen and through use of the United States mails, also disseminates like advertisements by describing to and furnishing retail merchants located throughout the United States various advertising mats, advertising copy and other materials containing illustrations and statements of similar import and effect and thereby causes the further dissemination of such advertisements in the newspaper advertising and other advertising media employed by such merchants. Respondent awards premiums to retail merchants for such forms of advertising and by means of circular letters addressed to its representatives calling on said retail merchants, explanatory and descriptive of "Vinylite" and its process of manufacture, further expressly stresses that such material is a form of glass.

PAR. 5. Respondent through and by means of the said illustrations, statements, and claims set forth in its magazine and periodical advertisements, advertising mats, advertising copy, circular letters, and other materials, represents and implies, and causes to be represented and implied, to the purchasing public and to retail merchants purchasing respondent's said merchandise for resale, and through and by means of such merchants' advertising media, has further caused and causes to be stated, represented and implied to the purchasing public, that articles of men's accessories made of Vinylite and designated by respondent as made of Elasti-Glass, are made and constructed of glass.

Respondent's said statements, representations, and implications made and caused to be made, as aforesaid, with reference to the manufacture, construction and materials contained in respondent's articles of men's accessories made of Vinylite are grossly exaggerated, false, misleading, and deceptive.

In truth and in fact respondent's articles of men's accessories made of Vinylite contain no glass whatsoever, for the product known as Vinylite is not a glass but rather is a product made by the heating and mixing of petroleum or coal and salt with a special catalytic agent and chemicals to induce the formation of certain gases and distillates,

which in cooling results in the synthetic resin product known as Vinylite.

PAR. 6. Respondent's said statements, representations, and implications to retail merchants and to the purchasing public, made and disseminated as aforescribed, have had and now have the capacity and tendency to and do mislead and deceive a substantial number of such merchants and the purchasing public into the erroneous and mistaken impression that the statements and representations contained in respondent's magazine and periodical advertisements and in respondent's advertising mats, advertising copy, circular letters, and other materials furnished such merchants, and in such merchants' newspaper and other advertising media, are true, and many merchants and members of the purchasing public have been and are induced to purchase respondent's aforesaid products, made of Vinylite, under the mistaken and erroneous belief that such products are made of glass.

Respondent's said acts and practices, as hereinabove detailed, place in the hands of retail merchants a means and instrumentality whereby in the sale of respondent's said products such merchants may mislead and deceive the purchasing public in the manner hereinbefore described.

PAR. 7. 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 January 25, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, S. Buchsbaum & Co., a corporation, charging it with the use of 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 trial examiners 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 Trial Examiner Charles A. Vilas 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, S. Buchsbaum & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 243 East Huron Street in the city of Chicago, State of Illinois.

Said respondent is engaged in the manufacture and in the sale and distribution of men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar merchandise, under the trade name "Elasti-Glass." Respondent causes said merchandise, when sold, to be transported from its place of business in the State of Illinois 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 merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its various products, the respondent has represented that its various products are made of glass through the use of the trade name "Elasti-Glass" to designate and describe such products, and also through statements and representations which respondent has inserted and caused to be inserted in various advertisements in magazines, newspapers, and other periodicals and in form letters and other advertising material.

PAR. 3. The various products sold and distributed by the respondent under the trade name "Elasti-Glass" are made from a resinous material, a derivative of vinyl, which is sold under the trade name of "vinylite" and to which a plasticizer has been added. Vinylite is a plastic material which can be worked and molded into definite shapes under mechanical stress and which retains its shape after being formed. Respondent processes and molds this material into various belts, suspenders, and other articles of merchandise.

PAR. 4. Glass as understood and recognized by the general public is a hard, transparent, brittle material, with a relatively high-softening point, and is substantially insoluble in water and organic solvents and is noninflammable in the usual sense. This is the common glass found in window panes, tumblers, and bottles. For centuries this glass has been made with silica combined with soda and lime and is a product of fusion.

PAR. 5. The use by the respondent of the term "Elasti-Glass" conveys to members of the purchasing public the impression that such articles consist of common glass processed in such a manner as to give it elastic properties.

PAR. 6. The plastic material used by the respondent in the manufacture of its products has none of the characteristics of glass as recognized and understood by the general public, other than that of transparency. It has a molding temperature of about 120° to 130° C., as compared to that of common glass, which is about 800° to 900° C. or higher. This material also differs from ordinary glass in that it does not have a high-scratch hardness, low-water absorption, or high-softening and decomposition point.

PAR. 7. In the course of the hearings in this case a considerable amount of scientific testimony was introduced, most of which was of a controversial nature relative to the properties of special glasses and the similarity in some respects between resinous compounds and glass. The Commission has given consideration to this scientific testimony and in addition has considered the additional exhibits identified in the respondent's memorandum in support of its motion to introduce additional exhibits. Based upon the testimony and other evidence in this record, the Commission finds that respondent's products are not glass as understood by the purchasing public. Vinylite and other similar synthetic resinous compounds differ so greatly in composition, methods of manufacture, and properties from those substances commonly known as glass that they constitute a separate division of chemical technology.

PAR. 8. The use by the respondent of the term "Elasti-Glass" to designate and describe its products and the use of statements and representations in advertising material which represent that respondent's products are made of glass, have a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the products so designated and represented are made from common glass specially processed in some manner to make it pliable and elastic, and to cause them to purchase respondent's products because 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.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before trial examiners of the Commission theretofore duly designated by it, briefs 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, S. Buchsbaum & Co., a corporation, 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 men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar articles of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Elasti-Glass" or any other term containing the word "glass" to designate or describe any article of merchandise made of the material vinylite or any other similar synthetic resinous compound.

2. Representing in any manner, either directly or by implication, that any article of merchandise made of vinylite or any other similar synthetic resinous compound is made of glass.

It is further ordered, That the respondent shall, with 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

JACK SILVERMAN, TRADING UNDER THE NAMES J. SILVERMAN AND ASSOCIATES, GENERAL FORWARDING SYSTEM, AND COMMERCIAL PEN CO.

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

Docket 4846. Complaint, Oct. 6, 1942—Decision, Nov. 29, 1943

Where an individual engaged in interstate sale and distribution of postcards for use by creditors and collection agencies in obtaining information concerning debtors, some of which displayed trade name "General Forwarding System" and, captioned "Final Notice," advised the debtor—or other recipient from whom information was sought—that "we have on hand a prepaid package for party whose name appears on reverse side of this card," that "due to change or error of address and lack of identification we cannot make delivery," and under caption "Consignee Must Be Identified, Fill in All Spaces Below or Package Will Not Be Delivered," asked for such information as the person's address and that of his employer;

Making use of a plan under which he placed on the postage prepaid reply cards, a serial number to identify the particular customer, purchaser inserted on blank line following "charges" the word "none" and on blank line following "Dept." the word "unclaimed"; purchaser stamped and addressed cards to debtors or others from whom information was sought, and forwarded them to said individual, who deposited them in the mail and sent back to customers reply cards received, identified as aforesaid, and to the debtor an ordinary pen point worth a cent or so, together with a printed circular advertising a pen and pencil set—

- (a) Falsely represented, directly, through use of trade name "General Forwarding System," in connection with said cards, that he was connected with the delivery of shipments to the proper consignee; and
- (b) Falsely represented through said cards, and placed in the hands of his customers the means of representing to debtors and others, that such debtors were consignees of packages sent by business concerns which had come into his hands in the usual course of business; and that delivery of the packages could not be made because of change or error in the address or lack of identification of the consignee;

The facts being the sole purpose of the cards was to obtain, through subterfuge, information concerning debtors of his customers; and

Where said individual, engaged as aforesaid, making use of name "Commercial Pen Co." on similar cards, which, captioned "To Introduce Our Pens," advised consignee that "We will mail you one of them absolutely free of charge provided you will show it to your friends and fellow employees where you work," that "in order to avoid duplication, name of employer must be given," that "you must act promptly, as only a limited number of pens will be distributed in this manner," that "Yours will be sent you as soon as this request card is returned," and on reply cards under caption "Free Coupon," following question blanks for name and address of debtor and of his employer, displayed legends "Coupon Expires after 30 days" and "This Coupon is Not Transferable"—