

IN THE MATTER OF
BURTON BROTHERS & 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 5053. Complaint, Sept. 22, 1943—Decision, Oct. 9, 1945

Where a corporation engaged as a converter in the interstate sale and distribution among other textile products, of its "Burton's Irish Poplin"—made to its specifications by manufacturers in this country of domestic cotton and long sold under said designation both before and after its registration thereof, together with a depiction of a shamrock leaf, as its trade-mark—to garment manufacturers, along with cardboard tags and woven labels, for attachment to finished garments, which featured its said trade-mark together with one of the supplemental phrases "Made in U.S.A. of Fine Cotton" or "Woven of American Cotton in the U.S.A.," and also to retail stores in the form of yard goods in bolts which it wrapped in green paper bearing numerous depictions of a shamrock leaf, in the center of each of which appeared its trade-mark with one of the said supplemental phrases—

Falsely represented, through use of said designation "Burton's Irish Poplin" in extensive advertisements in newspapers and periodicals, and in its aforesaid tags and labels, and in letters and invoices, that said product was made in Ireland or was of Irish origin and imported into this country; and supplemented, supported and emphasized such representations through use of green color and depictions of a shamrock leaf in said trade-mark and advertisements, which representations the aforesaid supplemental phrases did not serve to qualify or explain, but merely contradicted;

With tendency and capacity to confuse, mislead, and deceive a substantial portion of the purchasing public into the erroneous belief that its poplin was of Irish origin and imported into this country; and with result, in the furnishing of tags and labels to garment manufacturers, of placing in the hands of others the means whereby purchasers might be confused, misled, and deceived as to the origin of its fabric used in such garments; whereby members of the public were misled and deceived into the purchase of substantial quantities of its said product or of garments made thereof:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Greene & Greene, 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 Burton Brothers & Company, Inc., 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 Burton Brothers & Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 267 Fifth Avenue in the city and State of New York.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of a textile product which it designates as "Burton's Irish Poplin."

Respondent causes the said product when sold to be transported from its aforesaid 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 at all times mentioned herein has maintained a course of trade in said product 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 its aforesaid business and for the purpose of promoting the sale of its said product, respondent makes and has made false and misleading statements and representations with respect to the origin thereof by means of advertisements inserted in newspapers, magazines, and other periodicals having general circulation throughout the United States, and on letterheads, circulars, cardboard advertisements, and other written or printed material distributed in commerce and disseminated through the United States mails, and by distributing in commerce to manufacturers of shirts and other garments made of said material, tags or labels which have been and are attached to said shirts and other garments. Among and typical of the false and misleading statements and representations so used and circulated are the following:

BURTON'S IRISH POPLIN. Quality unchanged in over 50 years. Look for the name BURTON on fine cotton goods. (Likeness of a Shamrock or 4-leaf clover.)

BURTON'S IRISH POPLIN MADE IN U.S.A. of fine cotton (Likeness of two Shamrocks or 4-leaf clover.)

BURTON'S IRISH POPLIN WOVEN OF AMERICAN COTTON IN THE U.S.A. QUALITY UNCHANGED FOR OVER 50 YEARS (Likeness of Shamrocks or 4-leaf clovers.)

PAR. 4. The Shamrock and the color green are and for years have been associated in the public mind with Ireland and Irish products, and the 4-leaf clover bears a distinct resemblance to the Shamrock. The depictions of both of these objects in respondent's said advertising and the language used in the manner aforesaid usually appear in the color green.

PAR. 5. Through the use of the said statements and representations and others of similar import and meaning not set out herein, including the said use in connection therewith of the Shamrock and 4-leaf clovers, and the green color scheme as set out above, the respondent represents that its said product designated as "Burton's Irish Poplin" is an Irish product and is woven, made or manufactured in Ireland of Irish materials.

PAR. 6. In truth and in fact, the said statements, representations and practices used and disseminated by respondent as aforesaid, are false, misleading and deceptive. Respondent's said product is not an Irish product and is neither woven, made, nor manufactured in Ireland of Irish materials, but is strictly an American product, composed largely of cotton and wholly of domestically produced materials.

PAR. 7. By supplying to manufacturers of shirts and other garments made of its said product, tags or labels in the form, color scheme, and language hereinabove set forth, the respondent places in the hands of such manufacturers and of wholesalers, jobbers, and other distributors of said shirts and other garments, the means and instrumentalities whereby the consumer-purchasers of said merchandise can be misled and deceived.

PAR. 8. The acts and practices of respondent as herein set forth have had the tendency and capacity to and do and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product, including the shirts and other garments composed of said product.

PAR. 9. The aforesaid acts and practices 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 September 22, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Burton Brothers & Company, 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence were introduced before an 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, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (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. Burton Brothers & Company, Inc., respondent herein, is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 267 Fifth Avenue, New York, N. Y. This respondent is now, and for many years last past has been, engaged in the sale and distribution of a cotton fabric known as "Burton's Irish Poplin."

PAR. 2. Respondent causes its aforesaid textile product, when sold, to be transported from its place of business in New York, or from finishing mills where it is processed, to the purchasers thereof at their various points of location in States other than the State of New York, or the State in which said product is last processed, and maintains, and has maintained, a course of trade in said product in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Burton Brothers & Company, Inc., is known in the trade as a converter. It contracts with mills to weave according to its specifications the textile products which it sells and distributes, and thereafter has such products processed by finishing mills. The business of the corporate respondent originated as a partnership and the respondent and its predecessor partnership have been engaged since about 1895 in selling and distributing, among other textile products, the one known as "Burton's Irish Poplin." The words "Burton's Irish Poplin," together with a depiction of a shamrock leaf, were registered on May 8, 1923, as a trade mark for respondent's said product. This designation of the product was used from about 1895 until about 1930, at which time respondent adopted a policy of using with this trade mark the words "MADE IN U.S.A. OF FINE COTTON." The use of this phrase was continued until about 1943, when the phrase "WOVEN OF AMERICAN COTTON IN THE U.S.A." was substituted for it and used in connection with respondent's trade mark. There was a period of several weeks in 1941 during which the words "Burton's Irish Poplin" and a depiction of a shamrock leaf were used in advertisements without any supplementary statement such as those mentioned above. Respondent sells its poplin to garment manufacturers and also as yard goods which are sold to members of the public by retail stores. For a number of years last past respondent has packaged its poplin for distribution by retail stores in bolts which it wrapped in green paper bearing numerous depictions of a shamrock leaf in the center of each of which appeared respondent's trade mark with one of the supplemental phrases already mentioned. In the case of poplin sold to garment manufacturers, respondent furnished to such manufacturers cardboard tags and woven labels for attachment to the completed garments, and these tags and labels featured respondent's trade mark and one of the supplemental phrases mentioned printed or woven in green.

PAR. 4. In order to induce and promote the sale of its poplin fabric, respondent has for many years advertised, and does now extensively advertise it, in newspapers, magazines, and other periodicals having general circulation throughout the United States, as well as by means of the tags and labels furnished to garment manufacturers and the wrappings of its yard goods as described in the preceding paragraph, and on its letterheads and invoices. Among and typical of the representations made by respondent concerning its poplin fabric through the aforesaid means are:

Burton's Irish Poplin Quality Unchanged in over 50 years. Look for the name "BURTON" on fine cotton goods.

* * * * *

BURTON'S IRISH POPLIN. MADE IN U.S.A. OF FINE COTTON.

* * * * *

BURTON'S IRISH POPLIN. WOVEN OF AMERICAN COTTON IN THE U.S.A. QUALITY UNCHANGED FOR OVER 50 YEARS.

Each of the above representations has been accompanied by a depiction of a shamrock leaf or leaves, or a simulation thereof, and where practicable has been reproduced in a green color.

PAR. 5. Ireland is frequently referred to as the "Emerald Isle" and the shamrock has come to be regarded as the national plant of Ireland. Both the color green and the shamrock are generally associated by members of the public with Ireland of things of Irish origin. When used in connection with respondent's trade mark and advertisements, the green color and the

depictions of a shamrock leaf, or simulations thereof, serve to supplement, support and emphasize the representations that respondent's product is of Irish origin. At about the time of the issuance of the complaint in this proceeding, respondent ceased using the green color and the depictions of a shamrock leaf, or simulations thereof, with its trade mark and in its general advertising.

PAR. 6. The word "poplin" is descriptive of a particular weave and does not relate to the type of fibers used. A poplin fabric has fine ribs extending from selvedge to selvedge and is made by using smaller threads in the warp than those used in the weft. There is a fabric generally known as Irish poplin which is made in Ireland and imported into this country. It is usually hand woven of silk and wool, the warp being of silk and the weft of wool.

PAR. 7. Respondent's poplin is manufactured in the United States and is made entirely of domestic cotton. In designating this material as "Burton's Irish Poplin" respondent falsely represents that it is made in Ireland or is of Irish origin and imported into this country. Respondent's action in supplementing this designation with phrases such as "MADE IN U.S.A. OF FINE COTTON" or "WOVEN OF AMERICAN COTTON IN THE U.S.A." does not serve to qualify or explain, but merely contradicts, the statement that the product is Irish poplin.

PAR. 8. The acts and practices of respondent, as heretofore found, have had, and have, the tendency and capacity to confuse, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's poplin is manufactured in Ireland or is of Irish origin and imported into this country; and the furnishing of tags and labels to garment manufacturers, as heretofore found, places in the hands of others the means whereby purchasers of their garments may be confused, misled, and deceived as to the origin of respondent's fabric used in such garments. Because of the erroneous beliefs engendered as aforesaid, members of the public have been misled and deceived into the purchase of substantial quantities of respondent's said product or of garments made of said product.

CONCLUSION

The aforesaid acts and practices of respondent 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 respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested), 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, Burton Brothers & Company, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and

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distribution of poplin or other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Irish" (whether or not used in connection with depictions of a shamrock leaf or any simulation thereof, or in a green color scheme) to designate, describe, or refer to any textile product not in fact made in or imported from Ireland; or directly or impliedly representing in any manner that a domestic product is of foreign origin or manufacture.

It is further ordered, That respondent shall, within 60 days after the 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
LEMUEL FIRTH, ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 5065. Order, October 22, 1945

Modified order in proceeding in question in which original order issued on May 4, 1945, 40 F. T. C. 570, making the prohibitions of said original order (in connection with the offer, etc. of fish in commerce) against entering into, etc., any planned common course of action, etc., to restrict the quantity of fish to be caught and sold to dealers; fixing the price at which fish are to be sold to dealers in any market; etc.; as in said order below set forth; subject to the provision that the order shall not be construed so as to impair any right of respondents to organize and act in the manner and to the extent provided for by the Act of Congress authorizing associations of producers of aquatic products, approved June 25, 1934 (48 Stat. 1213-1214; 15 U.S.C., Sec. 521-522).

Before *Mr. John W. Norwood*, trial examiner.

Mr. Everett F. Haycraft for the Commission.

Mr. William J. MacInnis, of Gloucester, Mass., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having heretofore been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act, the Commission on May 4, 1945, issued and subsequently served upon the respondents its order requiring the respondents to cease and desist from the acts and practices therein set forth;

And the respondents having on June 28, 1945, filed with the Commission a petition for the modification of said order to cease and desist in certain respects, and the Commission having duly considered said petition and the record herein and being now fully advised in the premises:

It is ordered, That said order to cease and desist be. and it hereby is, modified to read as follows:

It is ordered, That the respondents, Lemuel Firth, Cyril Dyett, Jack Barrett, Frank Foote, Cy Tysfer, Benedetto Randazza, Phillip Curcuro, Thomas Scola, Joseph Sinagra, Peter Scola, Joseph Parisi, Frank Mineo, Isodoro Tarantino, Peter Mercurio, Paul Scola, Gerome Frontiero, Philip Nicastro, Leo Favalaro, and Alphonse Mineo, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fish in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement,