

Syllabus

IN THE MATTER OF

RONALD GAGE DAVIS, TRADING AS THE SPARTAN
COMPANY, AND DOROTHY LEFOLDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914*Docket 5414. Complaint, Jan. 9, 1946—Decision, Aug. 22, 1947*

Where an individual who engaged in 1941 as a war enterprise, in interstate sale and distribution primarily to jobbers and chain stores, of pocket size games, such as checkers, cribbage, gin rummy, baseball, bowling, backgammon, etc., under the trade name "Checkmates"; and, upon the subsidence of demand for said products in the latter part of 1943 discontinued all advertisements relating thereto, and thereafter disposed of inventories as and when opportunity occurred; and his sales manager and sole distributor for the products herein concerned—

Represented falsely that they owned, operated, or controlled a factory in which the products sold by them were made, through use of the statement in their advertising, "the Spartan Company, 1498 Merchandise Mart, Chicago, Factory, Minneapolis, Minnesota";

With tendency and capacity to mislead and deceive purchasers, a substantial portion of whom markedly prefer to buy direct from manufacturers, and cause them to buy a substantial number of said products in the erroneous belief that they were so dealing direct:

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.

In a proceeding in which it was alleged that respondents—who were engaged, as a war enterprise, in the sale and distribution of certain pocket-size games to jobbers and chain stores primarily, making no sales direct to the general public—falsely represented that their products were bound in leather through the use of the term "leatherette" in describing the binding, the Commission found, on the basis of testimony introduced in said proceeding, that the material of which the binding in question was composed was in fact thus known to the trade, i. e., as "leatherette".

In said proceeding in which it was further alleged that said respondents represented through the use of the seal of the United States embossed upon their said pocket-size games that such products had been approved or sponsored by the United States Government, the Commission found that the use of such seal and other military insignia was a common practice in connection with articles designed and sold for use of servicemen during the war, and did not constitute such a representation.

In said proceeding in which it was still further alleged that said respondents falsely represented, through the use in advertising of the statement "tweed mailing carton", that their said pocket-size games were covered with tweed, the Commission also found that such use of said term under the circum-

Complaint

44 F. T. C.

stances did not constitute a representation that the cartons involved were composed of a wool-fabric product.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission:

Best, Flanagan, Rogers, Lewis & Simonet, of Minneapolis, Minn., for respondents.

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 Ronald Gage Davis, an individual, trading as the Spartan Co., and Dorothy LeFold, an individual, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ronald Gage Davis is an individual trading under the firm name of the Spartan Co., with his principal office and place of business located at 1428 West Twenty-eighth Street, Minneapolis, Minn. Said respondent is now and for more than 1 year last past has been engaged in the assembling, sale, and distribution of novelties among which is a game called "Checkmates."

Respondent Dorothy LeFold is the sales manager for respondent, Ronald Gage Davis, has active charge of all advertising and otherwise conducts the affairs of the said respondent Ronald Gage Davis at her office and principal place of business located at room 1498, Merchandise Mart, in the city of Chicago, Ill.

The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged.

Respondents have caused and are now causing said products when sold to be transported from their said place of business in the State of Minnesota to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products 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 their aforesaid business, the respondents in connection with the offering for sale, sale, and distribution of their products in commerce, and for the purpose of inducing the purchase thereof, have circulated and are now circulating among prospective purchasers throughout the United States by means of ad-

vertising in trade journals, circulars and other advertising media false and misleading statements and representations concerning their products. In said advertising, certain of the so-called checkmate games were depicted and represented as "bound in a saddle-tan leatherette case" embossed with the seal of the United States and packed in a "tweed" mailing carton. Said advertising also carried the words "Factory: Minneapolis, Minnesota" below the Chicago address of "The Spartan Company."

PAR. 3. Through the use of the aforesaid representations and statements disseminated as aforesaid, the respondents represent and have represented either directly or by implication that said products were made of leather; that said products have been approved or sponsored by the United States Government or some branch thereof; that said products are covered by "tweed," a wool fabric product; and that respondents own and operate a factory where they manufacture the products offered for sale and sold by them in said commerce.

PAR. 4. The aforesaid representations and statements are false, misleading, and deceptive. In truth and in fact, the case used as a binding for each of said games was made of pasteboard that had been subjected to a special process or treatment with the result that it had the superficial appearance of leather though it contained no leather at all; said games had not been approved or sponsored by the United States Government or any branch thereof as connoted by the seal of the United States embossed on the case thereof; the mailing carton in each said game was packed and shipped was not "tweed," a wool fabric, but was merely paper or cardboard upon which was stamped or printed a design or pattern having the appearance of tweed cloth; and respondents do not own, operate, or control any plant or factory for the manufacture of the products offered for sale and sold by them as aforesaid, but are engaged solely in the assembly, sale, and distribution of said games, processed and manufactured by and purchased from others.

PAR. 5. There is a marked preference on the part of dealers and a substantial portion of the purchasing public for dealing directly with and buying such products from the manufacturer.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive representations and statements has had and now has the tendency and capacity to and does mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements are true, and as a result thereof, a substantial number of the purchasing public were and are induced to buy

Findings

44 F. T. C.

respondents said products in said commerce between and among the various States of the United States and in the District of Columbia. By said acts and practices respondents also place in the hands of purchasers of its products for resale a means and instrumentality whereby they may and do deceive the purchasing public as to the true facts in regard to these said products.

PAR. 7. The aforesaid acts and practices of the respondents, 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 9, 1946, issued and subsequently served its complaint in this proceeding upon the respondents, Ronald Gage Davis, an individual trading as the Spartan Co., and Dorothy LeFold, an individual, charging them 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 the answer of the respondents thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before 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 upon said complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto (respondents not having requested oral argument); and the Commission, having issued its order disposing of exceptions to the recommended decision of the trial examiner and 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 Ronald Gage Davis is an individual trading under the firm name of the Spartan Co., with his principal place of business located at 1428 West Twenty-eighth Street, Minneapolis, Minn. Said respondent was engaged in the business of selling

and distributing certain pocket-size games, such as checkers, cribbage, gin rummy, baseball, bowling, backgammon, etc., under the trade name "Checkmates."

Said respondent sold said products primarily to jobbers and chain stores and made no sales direct to the general public. The business was commenced in the year 1941 as a war enterprise, the gross sales in 1943 aggregating \$285,000. The demand for said respondent's products subsided in the latter part of 1943, and he discontinued all advertisements relating thereto and thereafter disposed of inventories then on hand as and when opportunity occurred, some sales being made as late as 1945.

PAR. 2. Respondent Dorothy LeFold was sales manager for the business conducted by the respondent, Ronald Gage Davis, and had full charge of all salesmen selling said products. Said respondent was the sole distributor for respondent, Ronald Gage Davis, in connection with the products herein involved and received commission as compensation.

The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter described.

PAR. 3. Respondents caused said products, when sold, to be transported from their place of business in the State of Minnesota to purchasers thereof located in various other States of the United States.

PAR. 4. It was charged in the complaint that respondents had falsely represented that their products were bound in leather through the use of the term "leatherette" describing the binding; that they represented that their products has been approved or sponsored by the United States Government through the use of the seal of the United States embossed upon said products; and that said products were covered with tweed, a wool-fabric product, through the use in advertising of the statement "tweed mailing carton."

Based upon the testimony introduced in this proceeding the Commission finds that the binding used on said products was composed of a material known to the trade as "leatherette." The Commission further finds that the use of the seal of the United States embossed upon said products did not constitute a representation that said products had been approved or sponsored by the United States Government and that the use of such seal and other military insignia was a common practice in connection with articles designed and sold for use of service men during the war. The Commission also finds that the use of the term "tweed" when applied to a mailing carton under the circumstances in the present case did not constitute a repre-

Order

44 F. T. C.

sensation that said cartons were composed of a wool-fabric product.

PAR. 5. In addition to the above representations, the respondents also represented that they owned, operated, or controlled a factory in which the products sold by them were made. In their various advertising the respondent used the statement—

THE SPARTAN COMPANY
1498 Merchandise Mart, Chicago
Factory: Minneapolis, Minn.

In fact, the respondents did not own, operate, or control a factory in Minneapolis, Minn., and did not manufacture any of the products sold by them. While the trial examiner found these facts, his conclusion that the use of the word "factory" and address was simply to indicate the point of shipment is not supported by the record in this case. Furthermore, the Commission finds that there is a marked preference on the part of dealers and a substantial portion of the purchasing public for dealing directly with and buying products, such as those sold by the respondents, from the manufacturer.

PAR. 6. The use by the respondents of the false and deceptive representation that they owned, operated, or controlled a factory at Minneapolis, Minn., had a tendency and capacity to mislead and deceive purchasers of respondents' products and to cause them to purchase a substantial number of respondents' products under the erroneous and mistaken belief that they were dealing direct with the manufacturer.

CONCLUSION

The acts and practices of the respondents 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that

111

Order

the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Ronald Gage Davis, an individual trading as the Spartan Co., and Dorothy LeFold, an individual, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of various games or other similar items of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "factory" or any other word of similar import or meaning on letterheads, stationery, or other advertising material or representing in any other manner that the respondents manufacture the merchandise sold by them unless and until the respondents own, operate, or directly and absolutely control the manufacturing plant or factory where said merchandise is manufactured.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
COLUMBIA RIVER PACKERS ASSOCIATION, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (c) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5033. Complaint, Aug. 20, 1943—Decision, Aug. 25, 1947

Where a corporation engaged in canning salmon, shad, tuna and other sea-food products, and in the interstate sale and distribution of such products (1) to and through intermediaries who acted as its sales agents and were paid brokerage fees or commissions in legitimate brokerage transactions, and (2) to distributors of food products at various points throughout the United States who obtained products concerned herein directly from said corporation, in their own names and for their own accounts, and who, while generally known in the trade as "merchandising brokers," did not in their transaction with it function as brokers, but performed any services in connection with the handling or distribution of the products involved, as services to themselves as purchasers, owners, and subsequent sellers of the products, and not as services rendered to it as the vendor—

Granted and allowed to purchasers of its said seafood products, brokerage fees or commissions which amounted usually to 5 percent of the net sales price of the sea-food products sold, and were accomplished, ordinarily, by deducting the amount thereof from the sales price of the products sold on the face of the invoice:

Held, That the paying and granting by it, under the circumstances set forth, of brokerage fees or commissions to buyers of its products on purchases for their own accounts, constituted violations by it of subsection (c) of section 2 of the Clayton Act as amended.

In a proceeding in which it was alleged that respondent corporation violated subsection (c) of section 2 of the Clayton Act as amended, through paying commissions to buyers of its sea-food products, upon purchases made for the buyers' own accounts, and in which it appeared that the corporation

- (1) Sold its products through sales agents whom it compensated for their services by payment of brokerage fees or commissions and who, in representing it, contacted the trade in their respective areas, accumulated orders and submitted the same to it for acceptance and delivery of the merchandise direct to the customer—who either paid the corporation directly or through bank draft—and who, among other things, maintained no storage facilities, carried no insurance on the merchandise, did not pay for or take title thereto but sold the same at such prices and upon such terms as the corporation might determine, and at no time had any financial interest therein except to the extent of their brokerage fees or commissions; and,
- (2) Also disposed of substantial quantities of its sea-food products directly to so-called merchandising brokers, or distributors at various points throughout the United States, usually invoicing the products as "sold to" the particular distributor and in his own name and under a procedure by which, following