

Complaint

IN THE MATTER OF

GULF & WEST INDIES CO., INC., AND MILTON COHN

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

Docket 5093. Complaint, May 11, 1945¹—Decision, July 11, 1949

There are basic and fundamental differences between the French and American methods of processing or preparing chamois skins, and there is a preference for the more costly French products, or the product processed by the French method—made use of by no American tanners—on account of its superior softness, absorbent qualities and durability.

Where a corporation and its president, its principal stockholder, engaged in the interstate sale and distribution of chamois skin, in matter stamped or printed on their said product and containers thereof, and on price lists and printed matter supplied to dealers for distribution among prospective purchasers—

Represented that their chamois skins were tanned or processed by the French process and imported from France, or that they had been processed in the United States in accordance with French methods;

When in fact all of the skins in question were imported from Iceland, South America, New Zealand, or Australia and had been tanned by a Philadelphia company, by the domestic process;

With tendency and capacity to deceive a substantial portion of the purchasing public with respect to the origin, method of preparation, character, and qualities of their said product and thereby cause it to purchase substantial quantities thereof; and with result of placing in the hands of dealers means whereby they might mislead and deceive prospective purchasers of such products:

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. W. W. Sheppard* and *Mr. Andrew B. Duvall*, trial examiners.

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

Mr. Louis H. Solomon, of New York City, for respondents.

AMENDED 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 Gulf & West Indies Co., Inc., a corporation, and Milton Cohn, individually and as president of Gulf & West Indies, Inc., a corporation, hereinafter referred to

¹ Amended.

as respondents, have violated the provisions of the Federal Trade Commission Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gulf & West Indies Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Milton Cohn, is president and principal stockholder of the corporate respondent. Said individual respondent, Milton Cohn, formulates, directs, and controls the policies, acts, and practices of the corporate respondent. The office and principal place of business of both the corporate and the individual respondent is at 141 Water Street in the city of New York, N. Y.

PAR. 2. Respondent, Gulf & West Indies Co., Inc., acting under the direction and control of respondent, Milton Cohn, as aforesaid, is now and for several years last past has been engaged in the business of selling and distributing chamois skins designated "Brownie Brand" and "Napoleon Brand" chamois skins. Respondents cause said products when sold by them to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their various points of location in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products 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 their aforesaid business and for the purpose of inducing the purchase of their said products in commerce, respondents have made and are now making various false, deceptive, and misleading statements and representations regarding the origin, method of preparation, character, and quality of said products. Said false and misleading statements and representations have been and are being stamped or branded on their said products, printed on boxes and containers in which they are packaged, and on price lists and invoices, circulated and distributed among the purchasing public. Respondents further are supplying and have supplied printed matter containing such statements to dealers for distribution by them to members of the purchasing public throughout the United States and in the District of Columbia.

Among and typical of the respondents' said false, deceptive, and misleading statements and representations, but not all inclusive, are the following:

Brownie Brand
Reg. U. S. Pat. Office
CHAMOIS
FRENCH PROCESS
Tanned in U. S. A.
Imported Skins.

Napoleon Brand French
Chamois (Made in France).

NAPOLEON BRAND
Improved French Process
CHAMOIS
Imported Skins
Tanned and Packed in U. S. A.

PAR. 4. Through the use of said statements and representations and others of similar import not set-out herein, respondents represent directly or by implication that their said chamois skins designated "Brownie Brand" and "Napoleon Brand," respectively, have been and are tanned or produced by the French process and are imported from France, or have been processed in the United States in accordance with French methods.

PAR. 5. There are basic and fundamental differences between the French and American methods of processing or preparing chamois skins, the genuine French product being superior in many aspects and bringing higher prices on the market. No American tanners produce chamois processed by the French method and there is a preference on the part of the users of chamois for the French product or a product represented as processed by the French method, by reason of its superior softness, absorbent qualities, and durability.

PAR. 6. The foregoing statements and representations used and disseminated by respondents in the manner hereinabove described are false, deceptive, and misleading. Respondents' said products are not now and for many years have not been tanned and processed by the French methods, but by the domestic process. The true facts are that all of the chamois skins sold and distributed by respondents are made of skins imported from Iceland, South America, New Zealand, or Australia and are tanned or processed as finished chamois skins by Drueding Bros. Co. of Philadelphia, Pa., which tans or processes all

Findings

46 F. T. C.

of its chamois skins by the domestic process. Respondents purchase said chamois skins after they have been tanned as above indicated and stamp or brand and advertise and represent said skins with the words or expressions stated in paragraph 3 as above.

PAR. 7. The use by the respondents of the words and expressions "Chamois French Process" and "Napoleon Branch French Chamois (Made in France)," as aforesaid, deceives and misleads members of the public into the erroneous and mistaken belief that respondents' said "Brownie Brand" and "Napoleon Brand" chamois skins are tanned and processed in France or are tanned or processed by French process and are, therefore, of superior quality when such are not the facts. While respondents formerly imported genuine French chamois into the United States, such product has not been obtainable for several years and has not been handled and sold by respondents for several years.

PAR. 8. The use by the respondents of the aforesaid statements and representations has had and now has the capacity and tendency to and does deceive and mislead members of the purchasing public into the mistaken and erroneous belief that said statements and representations are true. Respondents further have thereby placed in the hands of dealers and others a means and instrumentality whereby purchasers of said products may be misled and deceived. As a result of the erroneous and mistaken beliefs engendered by respondents' said acts and practices as herein alleged, substantial numbers of the public have purchased substantial quantities of respondents' said products.

PAR. 9. The aforesaid acts, practices and methods 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 December 7, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint and after certain evidence had been introduced in support of the complaint before trial examiners of the Commission theretofore

duly designated by it, the Commission on May 11, 1945, issued its amended complaint in the proceeding. Thereafter, further evidence in support of the amended complaint was introduced before the trial examiners (no evidence being offered by respondents) and such evidence was duly recorded and filed in the office of the Commission. After the issuance of the amended complaint it was stipulated between counsel supporting the complaint and counsel for respondent that the evidence theretofore introduced under the original complaint should become a part of the record in connection with the amended complaint. Subsequently, the proceeding regularly came on for final consideration by the Commission upon the amended complaint, the answer thereto, evidence, recommended decision of the trial examiner, 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 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, Gulf & West Indies Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Milton Cohn, is president and principal stockholder of the respondent corporation and formulates, directs, and controls the policies, acts, and practices of the corporation. The office and principal place of business of both of the respondents is at 141 Water Street, in the city of New York, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of selling and distributing chamois skins, causing their products, when sold, to be transported from their 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. Respondents maintain and at all times mentioned herein have maintained a course of trade in their 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 their business and for the purpose of inducing the purchase of their products in commerce, respond-

Findings

46 F. T. C.

ents have made certain statements and representations regarding the origin, method of preparation, and character of such products, these statements and representations being stamped or branded on such products and also printed on the boxes and containers in which such products are packaged and on price lists circulated among prospective purchasers. Respondents have also supplied printed matter containing such statements to dealers for distribution among prospective purchasers.

Among and typical of such statements and representations are the following:

Brownie Brand
Reg. U. S. Pat. Office
CHAMOIS
FRENCH PROCESS
Tanned in U. S. A.
Imported Skins

Napoleon Brand French
Chamois (Made in France).

NAPOLEON BRAND
Improved French Process
CHAMOIS
Imported Skins
Tanned and Packed in U. S. A.

PAR. 4. Through the use of these statements and representations and others of similar import, respondents have represented, directly or by implication, (1) that their chamois skins are tanned or produced by the French process and are imported from France, or (2) have been processed in the United States in accordance with French methods.

PAR. 5. There are basic and fundamental differences between the French and American methods of processing or preparing chamois skins, the genuine French product being superior in many respects and bring higher prices in the market. No American tanners produce chamois skins processed by the French method. There is a preference on the part of the users of chamois skins for the French product or the product processed by the French method, such preference being due to the superior softness, absorbent qualities, and durability of the French product.

PAR. 6. The statements and representations used by respondents were erroneous, deceptive, and misleading. The products so desig-

39

Order

nated were not tanned and processed by the French method but by the domestic process. All of the chamois skins in question were made of skins imported from Iceland, South America, New Zealand, or Australia and were tanned or processed as finished chamois skins by a company in Philadelphia, Pa., which tans or processes all of its chamois skins by the domestic process.

PAR. 7. The use by respondents of the erroneous and misleading statements and representations referred to above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the origin, method of preparation, character and qualities of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products because of the erroneous and mistaken belief so engendered. Respondents' practices serve also to place in the hands of dealers a means and instrumentality whereby such dealers may be enabled to mislead and deceive prospective purchasers of such products.

CONCLUSION

The acts and practices of the respondents 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 amended complaint of the Commission, the answer of respondents, evidence introduced before trial examiners of the Commission theretofore duly designated by it, recommended decision of the trial examiner 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:

It is ordered, That respondent, Gulf & West Indies Co., Inc., a corporation, and its officers, and Milton Cohn, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device,

Order

46 F. T. C.

in connection with the offering for sale, sale, and distribution of chamois skins in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "French process" or any other words of similar import to designate, describe, or refer to chamois skins not actually tanned or produced by the French process.
2. Representing as having been imported from France any chamois skins which have not in fact been so imported.

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.

Order
IN THE MATTER OF
BANNER MANUFACTURING CO.

ORDER MODIFYING ORDER TO CEASE AND DESIST ISSUED JAN. 31, 1938¹

Docket 3067. Order, July 13, 1949

Order modifying prior cease and desist order in proceeding in question, 26 F. T. C. 614, so as to eliminate from paragraph 1 of said order, for the reasons below set forth, proviso permitting, subject to the conditions therein stated, the representation by respondent, otherwise prohibited, that its antifreeze preparations are safe and harmless for general use in automobile radiators.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Jacob E. Hurwitz, of New York City, for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST ISSUED JANUARY 31, 1938

This cause coming on to be heard by the Commission upon motion of Richard P. Whiteley, assistant chief counsel, to amend order to cease and desist issued in this proceeding on January 31, 1938; respondent's statement in opposition to said motion; testimony and other evidence on the question of public interest taken before Webster Ballinger, a trial examiner of the Commission; recommended decision

¹ Said cease and desist order reads as follows:

"This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto filed herein on December 28, 1937, by respondent admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes';

"*It is ordered*, That the respondent, Banner Manufacturing Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of antifreeze preparations for use in automobile radiators in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

"(1) Representing that said preparations are safe and harmless solutions for general use in automobile radiators: *Provided, however*, Respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions.

"(2) Representing, through the use of the word 'manufacturing' or any other word or term of similar import and meaning in its corporate name, or in any other manner, or through any means or device, that it is the manufacturer of said antifreeze preparations or that said preparations are made in its laboratories under its strict supervision unless and until it actually owns and operates or directly and absolutely controls a factory or manufacturing plant wherein such preparations are made by it under such supervision.

"*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."