

Complaint

60 F.T.C.

It is further ordered, That the respondent herein shall within sixty (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.

IN THE MATTER OF

KORBER HATS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8190. Complaint, Nov. 28, 1960—Decision, Mar. 28, 1962

Order requiring Fall River, Mass., hat manufacturers to cease representing falsely that their straw hats—actually made of a braid manufactured in Japan of Philippine hemp—were made in and imported from Italy by imprinting on attached tags and labels and on the sweatbands such statements as "Genuine MILAN", "Genuine MILAN Imported Braid", etc.

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 Korber Hats, Inc., a corporation, and Sidney Korber, individually and as an officer of said corporation, 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 Korber Hats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 420 Quequechon Street, in the city of Fall River, State of Massachusetts.

Respondent Sidney Korber is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of hats to distributors and jobbers.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said hats, respondents have imprinted certain representations on the tags, labels and sweatbands of men's straw hats respecting the origin, method of construction and material from which the said hats are made. Typical and illustrative of such representations are the following from separate hats:

1. On the label, "Genuine MILAN imported handblocked"; on the sweatband, "Genuine Milan".
2. On the sweatband, "Genuine Imported Milan".
3. On the label, "Genuine MILAN imported braid"; on the sweatband, "Genuine MILAN".

PAR. 5. Through the use of the aforesaid statements respondents have represented, directly and indirectly:

That said hats are manufactured in Italy and are of the same material, construction, design and workmanship as men's straw hats manufactured in Italy and designated by the term "Milan".

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact:

Said hats are not manufactured in Italy. Said hats are manufactured by respondents in the United States. Said hats are not of the same material, construction, design and workmanship as men's straw hats manufactured in Italy and designated by the term "Milan". Men's straw hats designated as "Milan" are made in Italy of wheat straw braid which is of a narrow width with a distinctive style of weave. Respondents' hats are made of a braid manufactured in Japan of Philippine hemp. The said braid is not of the same style and characteristic as the braid used in the manufacture of the "Milan" hats.

PAR. 7. Through the foregoing acts and practices respondents have thereby placed in the hands of retailers and dealers the means and instrumentalities through and by which the buying public may be misled and deceived concerning the origin, material, construction, design and workmanship of said hats.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of men's hats of the same general kind and nature of those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral A. Jordan for the Commission.

Mr. Isador S. Levin, of *Levin and Levin*, of Fall River, Mass., for the respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint the respondents are charged with mislabeling of hats manufactured and sold by them in violation of the Federal Trade Commission Act. After answer, three days of hearings were held in New York, N.Y., at which time the Commission put in its case and the respondents submitted their defense. Proposed findings were submitted in support of the complaint but not on behalf of the respondents. The proposed findings are sustained by the evidence and are approved.

Respondent Korber Hats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 420 Quequehon Street, in the city of Fall River, State of Massachusetts.

Respondent Sidney Korber is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including the acts

and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are now, and for sometime last past have been, engaged in the manufacturing, offering for sale, sale and distribution of hats to distributors and jobbers.

In the course and conduct of their business, respondents now cause, and for sometime last past have caused, their said products, when sold, to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein, have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business, and for the purpose of inducing the sale of their said hats, respondents have imprinted certain representations on the tags, labels, and sweatbands of men's straw hats respecting the origin, method of construction and material from which the said hats are made. Typical and illustrative of such representations are the following from separate hats:

- (1) On the label, "Genuine MILAN Imported Hand Blocked"; on the sweatband "Genuine Milan".
- (2) On the sweatband, "Genuine Imported Milan".
- (3) On the label, "Genuine MILAN Imported Braid"; on the sweatband, "Genuine MILAN".

Through the use of the aforesaid statements, respondents have represented, directly or indirectly:

That said hats are imported from Italy and that said hats are of the same material, construction, design and workmanship as men's straw hats made in whole or in substantial part in Italy and designated by the term "Milan".

Said statements and representations were false, misleading and deceptive. In truth and in fact:

Said hats are not manufactured in Italy. Said hats are manufactured by respondents in the United States. Said hats are not of the same material, construction, design and workmanship as men's straw hats manufactured in Italy and designated by the term "Milan". Men's straw hats designated as "Milan" are made in Italy of wheat straw braid which is of a narrow width with a distinctive style of weave. Respondents' hats are made of a braid manufactured in Japan of Philippine hemp. The said braid is not of the same style and characteristics as the braid used in the manufacture of the "Milan" hats.

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Through the aforesaid acts and practices respondents have thereby placed in the hands of retailers and dealers the means and instrumentalities through and by which the buying public may be misled and deceived concerning the origin, material, construction, design and workmanship of said hats.

In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of men's hats of the same general kind and nature as those sold by respondents.

The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being done to competition in commerce.

The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Korber Hats, Inc., a corporation, and its officers and Sidney Korber, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hats or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the terms "Milan", "Genuine Milan" "Imported Milan", "Genuine Imported Milan" or any other substantially similar representation as descriptive of men's straw hats not manufactured in Italy of wheat straw.

(2) Using the terms "Milan", "Genuine Milan" "Imported Milan", "Genuine Imported Milan" or any other substantially similar representation as descriptive of men's straw hats not of the same construction, design and workmanship as that traditionally characteristic

of men's straw hats manufactured in Italy and designated as "Milan".

(3) Using any words or phrases which, directly or indirectly, represent that said products are manufactured in a given country or out of certain materials or in a particular manner or style unless such is a fact.

(4) Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

ORDER DENYING PETITION FOR REVIEW, DECISION OF THE COMMISSION AND
ORDER TO FILE REPORT OF COMPLIANCE

The initial decision of the hearing examiner having been filed in this matter on January 23, 1962, and respondents, on February 9, 1962, having filed a petition for review of said initial decision pursuant to § 4.20 of the Commission's Rules of Practice; and

The Commission having examined the petition and the entire record and being of the opinion that a determination of the questions presented for review is not necessary nor appropriate under the law to insure a just and proper disposition of the proceeding and to protect the rights of respondents; and

The Commission having also determined that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That said petition for review, filed February 9, 1962, be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Korber Hats, Inc., and Sidney Korber, shall, within sixty (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 the order to cease and desist contained in the initial decision.

IN THE MATTER OF

PRESIDENT MANUFACTURING COMPANY, INC., ET AL.