

Complaint.

FEDERAL TRADE COMMISSION

v.

M. NAGELBERG AND E. FEIGENBAUM, PARTNERS STYL-
ING THEMSELVES ROCHESTER TAILORING CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 824—March 6, 1922.

SYLLABUS.

Where manufacturers of men's and boys' clothing at Rochester, N. Y., and certain business organizations of the same place, had so advertised clothing made there that the word, "Rochester," as applied to such clothing had come to mean to the trade and the purchasing public goods of a high standard of quality made in said city, and a valuable good will had been acquired in the trade name or brand of "Rochester"; and thereafter competing manufacturers located elsewhere labeled their clothing "Rochester Tailoring Co., Builders of Fine Clothes"; with a tendency thereby to mislead the purchasing public into believing the clothing so labeled was made in Rochester, N. Y.:

Held, That such mislabeling, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that M. Nagelberg and E. Feigenbaum, partners styling themselves the Rochester Tailoring Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondents are engaged in Scranton, Pa., in the business of manufacturing and selling clothing for men and boys, and cause clothing sold by them to be transported to the purchasers thereof, from the State of Pennsylvania through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondents, in the course of their business as described in Paragraph 1 hereof, place on clothing manufactured by

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them in Scranton, Pa., tags or labels containing the words "Rochester Tailoring Co., builders of fine clothes," without other distinguishing marks to show the true place of origin of said clothing; that clothing for men and boys has been manufactured in large quantities in Rochester, N. Y., for a long period of time; that clothing and other products manufactured in Rochester, N. Y., have been given widely extensive advertising by the manufacturers operating in that city and by the Chamber of Commerce and other associations of business men in that city, in which advertising the words "Rochester," "made in Rochester," "tailored in Rochester," have been featured together with the claim that "Rochester-made means quality" and that clothing made in Rochester is not made by "sweat shop methods," and as a result of such advertising the word "Rochester," when used in connection with clothing for men and boys, has come to be understood by the trade and consuming public as indicating that such clothing was made in Rochester, N. Y., and is of the quality which in the mind of the consuming public, as the result of such advertising, has become associated with clothing for men and boys actually manufactured in Rochester, N. Y., and labeled and advertised as having been manufactured in that city; that the use by respondents of the word "Rochester" in labels placed on clothing manufactured in Scranton, Pa., and sold by them as aforesaid, is calculated to and does deceive the purchasing public, and such labels have been and are being used by respondents as a means of enabling them to pass off clothing not in fact made in Rochester, N. Y.

PAR. 3. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Michael Nagelberg and Emil Feigenbaum, partners, styling themselves Rochester Tailoring Co., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondents having entered their appearance and filed their answer herein, admitting certain allegations of the complaint, and having made, executed, and filed an agreed statement of facts in

which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission, being now fully advised in the premises, makes these its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Nagelberg and Feigenbaum, are co-partners, doing business under the firm name and style of Rochester Tailoring Co., and are engaged in the city of Scranton, Pa., in the business of manufacturing and selling clothing for men and boys, and cause clothing manufactured and sold by them to be transported to the purchasers thereof, from the State of Pennsylvania, through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. The respondents, in the course of their business, as described in Paragraph 1 hereof, have placed on clothing manufactured by them in Scranton, Pa., tags or labels containing the words "Rochester Tailoring Company, Builders of Fine Clothes," without other words to show the true place of manufacture of said clothing; that clothing for men and boys has been manufactured in large quantities in Rochester, N. Y., for a long period of time; that clothing manufactured in Rochester, N. Y., has been given extensive advertising by the manufacturers of that city and by the Chamber of Commerce and other associations of business men of that city, in which advertising the words "Rochester," "Made in Rochester," "Tailored in Rochester," have been featured, together with the claim that clothing made in Rochester is not "made by sweatshop methods," and that "Rochester-made Means Quality"; and as a result of such advertising the word "Rochester," when used in connection with clothing for men and boys, has come to be understood by the trade and the consuming public as indicating that such clothing was made in Rochester, N. Y., and is of the quality which, as the result of such advertising, has become associated in the minds of the consuming public and the trade, with clothing for men and boys actually manufactured in Rochester, N. Y., and labeled and advertised as having been manufactured in that city; that the use of the word "Rochester" by respondents in labels and tags on clothing made by them in Scranton, Pa., and sold by them as aforesaid, tends to mislead the

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purchasing public into believing that the clothing so labeled is made in Rochester, N. Y.

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the complaint and answer and agreed statement of facts filed herein, and the Commission having made its findings as to the facts, and its conclusion that the respondents had 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 now ordered, That the respondents, Michael Nagelberg and Emil Feigenbaum, partners styling themselves Rochester Tailoring Co., each and both of them, their agents, representatives, servants and employes, do cease and desist from—

Using the words "Rochester Tailoring Company" or the word "Rochester," alone or in other combinations, on tags or labels on clothing manufactured by them in Scranton, Pa., or in any other place than the city of Rochester, N. Y., unless following such word or words, and in type or lettering equally conspicuous with them, appear the words "made in Scranton, Pennsylvania," if the clothing in fact is made in Scranton, Pa., or by words in which the true place of manufacture, town or city, and State, is stated.

It is further ordered, That the respondents, Michael Nagelberg and Emil Feigenbaum, partners styling themselves Rochester Tailoring Co., shall, within sixty (60) days after the service upon them of a copy 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 hereinbefore set forth.

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E. E. WHITE, TRADING UNDER THE NAME AND STYLE
OF WHITE STAR MARKET.