

FEDERAL TRADE COMMISSION

v.

NATHAN HORN AND ELI U. HORN, PARTNERS, DOING
BUSINESS UNDER THE FIRM NAME OF N. HORN & SON,
OTHERWISE KNOWN AS HORN, THE TAILOR.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket 870—May 12, 1922.

SYLLABUS.

Where a firm engaged in conducting a tailoring business advertised that they would make suits to order for \$23.75 each, and that "We use only the finest grade of woolens," and "The finest woolens money can buy," the fact being that the cloths displayed by them pursuant to such advertisements, for their customers and prospective customers to select from, included some containing substantial proportions of cotton, a fact known to them but not made known to their customers; with a capacity and tendency thereby to deceive and mislead the public into believing that the suits so offered would be made from fabrics composed only of wool, and to secure patronage on that assumption:

Held, That such false and misleading advertising and such misleading course of conduct, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Nathan Horn and Eli U. Horn, partners, doing business under the firm name of N. Horn & Son, otherwise known as Horn, The Tailor, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce in violation of the provisions 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," and it appearing to the Commission 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 partners doing business under the firm name of N. Horn & Son, otherwise known as Horn, The Tailor. They are engaged in a men's tailoring business in the City of Washington and District of Columbia, with their place of business at the premises known as 611 Seventh Street northwest, in said City and District. They also maintain establishments and are engaged in said business at Lancaster, Lebanon and Norristown, in the

State of Pennsylvania, and at Fredericksburg, in the State of Virginia. Respondents' method of doing business is to display cloth and fabrics in their said places of business from which customers may make selections and from which respondents then make, to the order and measurements of the customers, suits of clothing and other garments. Respondents also send samples of cloth and fabrics and instructions for self-measurement to customers residing in other states than those where respondents have their said places of business, and sell and ship clothing made on orders of such customers in and through such states to such customers. In the course and conduct of their said business respondents are in competition with other persons, firms and corporations engaged in similar tailoring businesses.

PAR. 2. In the months of March and April, 1921, respondents caused certain advertisements to be published in newspapers of general circulation in the District of Columbia, in which advertisements respondents offered to make to order suits of clothing at the price of twenty-three dollars and seventy-five cents. In the course of said advertisements appear statements that "we use only the finest grade of woolens" and "the finest woolens money can buy." Among the various cloths and fabrics displayed by the respondents to customers and prospective customers, from which the latter might make a choice of the suits referred to in said advertisements, were many fabrics which were not composed wholly of wool, or of the finest grade of woolens, or of the finest woolens money could buy, but which, on the contrary, consisted partly of wool and partly of cotton. In three instances such fabrics contained 22 per cent, 30 per cent, and 45 per cent of cotton, respectively. These facts, although well known to the respondents, were not disclosed by respondents to their patrons.

PAR. 3. The aforesaid false and misleading statements appearing in respondents' said advertisements tend to mislead and deceive the public into the belief that the suits offered by respondents in said advertisements would be made from fabrics composed only of wool and containing no cotton, and induce the public to give its patronage to the respondents in the mistaken belief that for the sum of twenty-three dollars and seventy-five cents, respondents would make and sell to their customers a suit of clothing composed wholly of wool and containing no cotton; all to the prejudice of the respondents' said competitors and the purchasing public.

PAR. 4. Ever since the publication of the aforesaid advertisements, respondents have followed the practice of inserting similar advertisements in the public press from time to time and of thereafter similarly offering to customers a number of fabrics from which to choose suits, among which are a number of fabrics containing sub-

Findings.

4 F. T. C.

stantially like percentages of cotton. The tendency of this practice has continuously been and is now to mislead and deceive the public as hereinbefore set out.

PAR. 5. The above-alleged acts and things done by respondents constitute 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, Nathan Horn and Eli U. Horn, partners, doing business under the firm name of N. Horn & Son, otherwise known as Horn The Tailor, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearance by their attorney, L. A. Spiess, and filed their answer herein, and having stipulated and agreed that a statement of facts signed and executed by said counsel for the respondents and by W. H. Fuller, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts of this proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed further upon said statement, to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding,

Thereupon this proceeding came on for final hearing, and counsel for both parties having waived the filing of briefs and oral argument, the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Nathan Horn and Elihu Horn, inadvertently named in the complaint, Eli U. Horn, are partners engaged in a men's tailoring business under the firm name of N. Horn & Son, otherwise known as Horn The Tailor, in the City of Washington, District of Columbia, with their principal place of business at 611 Seventh Street, Northwest, in said City and District. They

also maintain establishments and are engaged in said business at Lancaster, Lebanon and Norristown in the State of Pennsylvania and in Fredericksburg, in the State of Virginia. The respondents' method of doing business is to display cloth and fabrics in their said place of business from which customers may make selections and from which respondents then make, to the order and measurements of the customers, suits of clothing and other garments. The respondents also send samples of cloth and fabrics and instructions for self-measurement to customers residing in other places and in other States than those where the respondents have their said places of business, and sell and ship clothing made on orders of such customers in and through such States to such customers. The respondents carry on such business in direct, active competition with other persons, firms and corporations similarly engaged.

PAR. 2. In the months of March and April, 1921, the respondents caused certain advertisements to be published under the name of Horn The Tailor in The Washington Post, a newspaper of general circulation in the District of Columbia, in which advertisements respondents offered to make to order suits of clothing at the price of twenty-three dollars and seventy-five cents. In the course of said advertisements, appear statements that "We use only the finest grade of woolens," and "The finest woolens money can buy"; whereas, it appears from an analysis made by the United States Bureau of Standards that among the various cloths and fabrics displayed by the respondents to customers and prospective customers, from which they might make a choice of the suits referred to in said advertisements, were many fabrics which were not composed wholly of wool, or of the finest grade of woolens, or of the finest woolens money could buy, but which, on the contrary, consisted partly of wool and partly of cotton. In three instances it was found by said analysis that such fabrics contained 22 per cent, 30 per cent and 45 per cent of cotton, respectively. That these facts, although well known to the respondents, were not disclosed by the respondents to their patrons.

PAR. 3. That the aforesaid statements appearing in respondents' advertisements were false and misleading and were calculated to and tended to mislead and deceive the public into the belief that the suits offered by the respondents in said advertisements would be made from fabrics composed only of wool and containing no cotton, and to induce the public to give its patronage to the respondents in the mistaken belief that for the sum of twenty-three dollars and seventy-five cents the respondents would make and sell to their customers a suit of clothing composed wholly of wool and containing no cotton.

Order.

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CONCLUSION.

The practices of the said respondents, under the conditions and circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of the 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 of the Commission, the answer of the respondents and an agreed statement of facts, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of the 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, Nathan Horn and Elihu Horn, partners doing business under the firm name of N. Horn & Son, otherwise known as Horn, the Tailor, their representatives, agents, servants and employees, cease and desist from:

Representing in any manner to the purchasing public that cloth or clothing offered for sale or sold by them is the finest grade of woolens or the finest woolens money can buy or otherwise suggesting that such cloth or clothing is wholly composed of wool when in fact the cloth or clothing is partly composed of cotton.

It is further ordered, That the respondents, within sixty (60) days after the date of the 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 hereinbefore set forth.

ARMOUR & CO.

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