

FEDERAL TRADE COMMISSION

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF SHADE SHOP, HOOPER
& KLESNER.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 696—June 23, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of window shades under the style of "The Shade Shop," carried on his business under said name, thus advertising it, and displaying the same on his letterheads, billheads, windows of his business places, and delivery wagons, so that said business had come to be well known to the trade and purchasing public, and the trade name "Shade Shop" had come to mean and signify to the purchasing public the business owned and operated by him; and thereafter a competitor, for the purpose of injuring him in his said business, and securing the same,

- (a) Placed upon the windows of its establishment, theretofore jointly occupied by itself and by said individual, the sign "Shade Shop," using the same size, style and color of lettering and the same place theretofore used by said individual for his sign "The Shade Shop";
- (b) Used the words "Shade Shop" upon its letterheads and billheads;
- (c) Advertised and listed its business in the telephone directory as "Shade Shop, Hooper & Klesner";
- (d) Placed upon its delivery trucks the words "Shade Shop, Hooper & Klesner"; and
- (e) Deceived and misled customers of said individual who entered its establishment into believing that its store was that of said individual;

With the result that there was confusion in the trade and customers of said individual were confused and deceived into purchasing of said competitor in the mistaken belief that they were dealing with him:

Held, That such stimulation of trade name, 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 Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce 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 pur-

poses," 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 the respondent, Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, is a resident of the City of Washington, District of Columbia, with his office and principal place of business located at the southeast corner of 12th & H Streets, N. W., in said City, engaged in the business of selling wall paper and window shades throughout the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That W. Stokes Sammons is a resident of the City of Washington, District of Columbia, engaged since the year 1907 in the business of manufacturing and selling window shades throughout said District of Columbia under the trade name and style of The Shade Shop which he adopted in 1907 and under which he has continually carried on and conducted, and is now carrying on and conducting his said business. That during such period he has owned and operated stores for the manufacture and sale of window shades under the name of The Shade Shop at the following locations in said City of Washington, to wit:

1907-1909-----	1222 H Street NW.
1909-1910-----	813 14th Street NW.
1910-1912-----	724 11th Street NW.
1912-1914-----	819 15th Street NW.
1914-1915-----	Corner of 12th & H Streets NW.
1915-date-----	733 12th Street NW.

and during all of such period has by advertisements placed in newspapers of general circulation throughout the District of Columbia and by letterheads, billheads, and in city and telephone directories and by signs prominently displayed upon his windows and various places of business and by other means, held himself out to the trade and general public as The Shade Shop and as such has become, and is, well known and established to dealers and purchasers of window shades and the general public in and throughout said District of Columbia.

PAR. 3. That in May, 1914, the respondent, Alfred Klesner, then in partnership with one Harry Hooper, trading as Hooper & Klesner, and engaged in the business of painters, paperhangers, and decorators, leased store room located at the southeast corner of 12th and H Streets NW., in the City of Washington, District of Columbia, renting one-half of said store to the said W. Stokes Sammons, who occupied and used the same for the manufacture and sale of

Complaint.

5 F. T. C.

window shades, neither the said respondent nor the said Hooper being then or theretofore engaged in selling window shades and the said Sammons utilized one of the two show windows to said store to display window shades, having his trade name THE SHADE SHOP prominently displayed thereon; that thereafter, to wit, in November, 1915, said Sammons moved his business to a store room located two doors south on 12th Street, to wit, No. 733 12th Street NW., in said City of Washington, where he has ever since and is now carrying on and conducting his business under the trade name of The Shade Shop.

PAR. 4. That the respondent, Alfred Klesner, at the time of such removal as aforesaid, refused to permit the said Sammons to remove his sign "The Shade Shop" from the show window and premises at 12th & H Streets NW., in said City of Washington and thereafter erased and removed the word "The" from said signs and proceeded to engage in the business of manufacturing and selling window shades and ever since has manufactured and sold and is now selling and offering to sell window shades to the general public under the trade name and style of Shade Shop, Hooper & Klesner, at and in that portion of the said store room formerly occupied by the said Sammons, trading as "The Shade Shop" and the respondent, Klesner, having dissolved his partnership with the said Hooper in the year 1919 has ever since carried on and conducted his business as aforesaid and ever since November, 1915, has left the sign "Shade Shop" upon the said premises at the corner of 12th & H Streets NW.; has carried the sign Shade Shop on the side window of an auto truck owned and operated by him; has caused and permitted the telephone directory for the City of Washington to list his business as Shade Shop, Hooper & Klesner, and by other means has advertised and held his business out to the trade and general public as Shade Shop. That the effect of such simulation and appropriation of name has been, and is, among others—

(a) to confuse the trade and general public and to cause customers and prospective customers of the said Sammons to trade and deal with the respondent in the belief that they were trading and dealing with the said Sammons.

(b) to mislead and deceive the trade and general public into the erroneous belief that The Shade Shop owned and operated by the said Sammons, at 733-12th Street, N. W., in the City of Washington is identical with and the same as that of Shade Shop, owned and operated by the respondent, at the southeast corner of said 12th & H Streets, N. W.

PAR. 5. That within the four years last past representatives and employees of apartment houses and hotels in the city of Washington, District of Columbia, who have been instructed by their employers to go to The Shade Shop, meaning thereby the store conducted by the said Sammons and purchase window shades, have been confused by the sign Shade Shop upon the respondent's store and upon inquiring of respondent's clerks if their employers purchased window shades at this store have been told and led to believe by such clerks that they did, when in truth and in fact, such employers dealt with the said Sammons; that such statements were false and misleading and were calculated and designed to and did cause such representatives of apartments and hotels to purchase window shades from the respondent, thereby diverting such sales from the said Sammons.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to 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," the Federal Trade Commission issued and served a complaint upon the respondent, Alfred Klesner, trading under the name and style of Shade Shop, Hooper & Klesner, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said Act. The respondent, Alfred Klesner, trading as Hooper & Klesner, entered his appearance by his attorney, Clarence R. Ahalt, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of his answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and 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. That the respondent, Alfred Klesner, doing business under the trade name and style of "Shade Shop—Hooper & Klesner," is a resident of the City of Washington, District of Columbia, with his office and principal place of business located at No. 929 H Street, NW., in said City of Washington, engaged in the business of selling wall paper and window shades and doing painting and decorating work throughout the District of Columbia, in direct competition with other persons, firms and corporations similarly engaged.

Findings.

5 F. T. C.

PAR. 2. That W. Stokes Sammons is a resident of the City of Washington, District of Columbia, and engaged exclusively, since 1901, in the business of manufacturing and selling window shades throughout the said District of Columbia and in near-by towns in States adjoining said District, under the trade name and style of "The Shade Shop," which trade name was adopted and used by him in the year 1901, since which time he has continuously carried on and conducted his said business under said trade name, and is now so carrying on and conducting his said business, and is now, and has been during all of this period the sole and only person, firm or corporation in the District of Columbia dealing in window shades under the trade name of The Shade Shop.

PAR. 3. That during the period above mentioned, the said Sammons operated stores for the manufacture and sale of window shades under the said trade name of "The Shade Shop," at the following locations in said City of Washington, District of Columbia, to wit:

1901-1902	910 E Street, NW
1903	1649 K Street, NW
1904	1403 New York Ave., NW
1905-1907	813-14th St., NW
1907-1909	2222 H Street, NW
1909-1910	813-14th St., NW
1910-1912	724-11th St., NW
1912-1914	819-15th St., NW
1914-1915	S. E. Cor. 12th & H Sts., NW
1915-1920	733-12th St., NW
1920-1921	820-13th St., NW

PAR. 4. That during all of said period, since the year 1901 to the present time, the said W. Stokes Sammons, in conducting his said business, has held himself out to the trade and to the public generally as "The Shade Shop," by advertisements placed in the leading newspapers published and circulated in the District of Columbia, in the Evening Star, the Washington Post, Knights of Columbus Bulletin, Trade Unionist, in the telephone directory of the said District, and by his letterheads, billheads, and by means of signs prominently displayed on the windows of his several places of business, and on his delivery wagons; and his business as a manufacturer and dealer in window shades under such trade name has become established and is well known to dealers in and purchasers of window shades, and to the general public in and throughout the District of Columbia, and in towns of the State of Maryland and Virginia adjacent thereto, and the trade name, "The Shade Shop," through these twenty-one years of usage has come to mean and

does mean and signify to the window shade buying public, the shade business owned and operated by the said W. Stokes Sammons.

PAR. 5. That during the month of May, 1914, the respondent, Alfred Klesner, together with his then partner, one Harry Hooper, leased a certain store room and premises at the southeast corner of 12th and H streets, NW, in the City of Washington, D. C.; and thereafter, to wit: on the 14th day of May, 1914, the said Hooper and the said Klesner entered into a written lease with said W. Stokes Sammons, by the terms and conditions of which they sublet one-half of the store room and one-half of the cellar upon said premises to W. Stokes Sammons, trading as "The Shade Shop," for a period of two years, at the monthly rental of \$41.66; that under and by the terms and provisions of this lease, the said Sammons was to have the right to carry on and conduct his said business in and upon the said premises and to place his signs upon the windows of the store room; and the said Sammons did, thereafter, establish his shade business in one-half of the store room, and placed his sign, "The Shade Shop," upon the windows of the store room facing both 12th and H Streets. And it was further agreed by and between the respondent and his then partner, Hooper, and the said Sammons, that all of the shade business which might come to this store room at the southeast corner of 12th and H Streets, was to belong to the said Sammons; that at this time, respondent, Alfred Klesner, was not and never had been engaged in the business of manufacturing or dealing in window shades, other than receiving occasional orders given to his employees engaged in wall papering and decorating work, which orders were turned over to the said W. Stokes Sammons, or some other shade dealer who filled the orders and gave the respondent his commission, or, as he termed it, his "rake-off."

PAR. 6. That under the aforesaid arrangement the respondent, Alfred Klesner, and his then partner, Harry Hooper, continued to carry on their business of decorating and paper hanging in one-half of the said store room, and W. Stokes Sammons continued to carry on his shade business under the trade name of "The Shade Shop" in the other half of the premises until November, 1915, when the business of the said Sammons had increased until his annual gross sales amounted to over \$60,000 and he deemed it necessary and advisable to have a store room of his own; whereupon he notified the respondent, Alfred Klesner, that he had leased the store room on the premises at 733 12th Street, NW., in the City of Washington, D. C., and that he would, in the near future, remove his business to said premises; thereafter, to wit, on the morning of the last Sunday in November, 1915, the said Sammons, in company with one of his employees, went to the said store room at the southeast corner of

Findings.

5 F. T. C.

12th and H Streets, NW., for the purpose of removing his goods and chattels to his new location. That Sammons had paid to the respondent his rent for the month of November, 1915, which was due and owing under the terms and provisions of the aforesaid lease, and in so entering upon the premises on the morning in question Sammons was not in any way a trespasser. The respondent, Alfred Klesner, was in the store room at the time and made no objection whatsoever to Sammons or his employee removing the goods and chattels of Sammons, until they started to remove from the windows of the store room the sign "The Shade Shop"; whereupon the respondent, Alfred Klesner, walked to the front of the store, drew a deadly weapon, to-wit, a revolver, upon Sammons and his employee and ordered them to cease removing the signs from the store windows; whereupon Sammons withdrew from the premises and called a policeman, who placed the respondent, Klesner, under arrest and took him to the police station, after which Sammons and his employee continued to remove and efface his signs from the windows of the store room, and removed all his goods and chattels to his new store room, where he continued to conduct and operate his business under the trade name "The Shade Shop." That the respondent, Alfred Klesner, did not at this time make, nor had he at any time prior thereto made, any claim or demand of any kind or character whatsoever upon the said Sammons for and on account of any alleged failure on the part of the said Sammons to continue to occupy this store room at the corner of 12th and H Streets, as a subtenant, and to pay the monthly rental as provided in the said lease for the remainder of the term thereof.

PAR. 7. That respondent, Alfred Klesner, incensed and angered at Sammons because of his arrest and the circumstances connected with the removal of Sammons' sign as aforesaid, has refused to speak to Sammons since said trouble in the store room above referred to, and has during all this period continued this attitude of hatred and malice towards Sammons, so that immediately after Sammons had removed his business, as aforesaid, respondent, Klesner, conferred with his then partner, Harry Hooper, and it was decided that they would immediately enter upon the business of dealing in window shades, and that they would go after and get the window shade business and trade which had been built up on this corner and in this store room by the said W. Stokes Sammons, trading under the name of "The Shade Shop"; and in pursuance of this plan and policy and with the further purpose of injuring the said W. Stokes Sammons, the respondent and his said partner placed upon the two windows of their store room the sign "Shade Shop," using the same

size, style and color of lettering, and in the same place as that of the sign "The Shade Shop" used theretofore by the said Sammons; and in furtherance of this plan they also placed upon their letterheads and billheads the words "Shade Shop," and caused the Chesapeake & Potomac Telephone Company, operating in the said District of Columbia, to have them listed in its telephone directory under the name and style of "Shade Shop, Hooper & Klesner," and respondent has carried and is now carrying an advertisement in said telephone directory in which he advertises and holds himself out to the trade and the general public as "Shade Shop, Hooper & Klesner," and respondent is now suffering and permitting said telephone company to list his business in its telephone directories under the trade name "Shade Shop"; and respondent also placed upon his delivery trucks the sign, "Shade Shop, Hooper & Klesner." That the said Sammons continued to operate and conduct his business at 733 12th Street until the year 1920, when he removed to his present location at 820 13th Street NW., in the City of Washington, D. C., and the respondent, Alfred Klesner, continued to operate his business at the said southeast corner of 12th and H Streets until some time in the early part of the year 1921, and there has been considerable confusion in the trade, and customers who have known or heard of "The Shade Shop," as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign "Shade Shop," used as aforesaid by the respondent, and have gone to the store room of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific inquiries as to whether this was the store room operated by the said Sammons, they were deceived by the employees of the respondent and were led to believe that it was the store room and the location and place of business of the said W. Stokes Sammons, when, in truth and in fact, the said Sammons was operating and conducting his business under the name of "The Shade Shop," at 723 12th Street NW., as aforesaid. That the use of the term "Shade Shop" by the respondent in the listing and advertising sections of the telephone directory has caused and is causing similar confusion to the window shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of "Shade Shop" out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window shade business.

Order.

5 F. T. C.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts, and each and all thereof, under the circumstances therein set forth, constitute unfair methods of competition in commerce in the District of Columbia, in violation of the provisions of Section 5 of the Federal Trade Commission Act, 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 pleadings and the testimony and evidence received by an examiner duly appointed by the Commission, and the arguments of counsel for the respondent and for the Commission, and the Commission having made its findings as to the facts and its conclusion that the 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," which said report is hereby referred to and made a part hereof; *Now, therefore*

It is ordered, That the respondent, Alfred Klesner, his servants, agents and employees cease and desist from

Using the words "Shade Shop" standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone or business directories, trade lists or otherwise.

It is further ordered, That the respondent, Alfred Klesner, within thirty days from the date of service of this order upon him file with the Commission a report, setting forth in detail the manner and form in which he has complied with the order of the Commission herein set forth.

THE HENKEL-CLAUSS CO.

33

Complaint.