

Complaint.

FEDERAL TRADE COMMISSION

v.

PHILIP MOSKOWITZ, TRADING UNDER THE NAME AND
STYLE OF ROCHESTER CLOTHING COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 826—July 11, 1923.

SYLLABUS.

Where more of the high-grade clothing for men had long been made in Rochester, N. Y., than in any of the other principal centers of such manufacture, and the clothing manufacturers and business organizations thereof and the municipality itself had so advertised clothing there made, and so featured in slogans and otherwise the idea of quality in connection with Rochester-made products, that the word "Rochester" as applied to clothing had come to mean to the trade and the purchasing public goods of a high standard of quality, there made, and a valuable good will had become attached to the name "Rochester"; and thereafter a competing manufacturer, located elsewhere, well knowing the aforesaid facts,

- (a) Labeled his clothing "Trade-Mark, Rochester Clothing Co.—For Particular Men"; and
- (b) Used such legend in the conduct of his business, and in his advertisements, stationery and billheads;

With a capacity and tendency thereby to mislead and deceive the trade and the purchasing public into believing his clothing to have been made in Rochester, N. Y., and with the effect of so doing in the case of a part of said public:

Held, That such practices, 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 Philip Moskowitz, trading under the name and style of Rochester Clothing Co., hereinafter referred to as respondent, has been and is 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 the respondent is engaged in New York, N. Y., in the business of manufacturing and selling clothing for men and boys, and causes clothing sold by him to be transported to the pur-

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chasers thereof, from the State of New York through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his business as described in paragraph 1 hereof, places on clothing manufactured by him in New York, N. Y., tags or labels containing the words "Trade Mark, Rochester Clothing Co. for particular men," with the abbreviation "Co." inconspicuous, so that the casual observer would be likely to see only the words "Rochester Clothing for particular men" and which labels contain no 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 of 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 a 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 respondent of the word "Rochester" in labels placed on clothing manufactured in New York, N. Y., and sold by him as aforesaid, is calculated to and does deceive the purchasing public, and such labels have been and are being used by respondent as a means of enabling him 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, entitled "An Act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Philip Moskowitz, trading under the name and style of Rochester Clothing Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, Philip Moskowitz, entered his appearance by his attorney, Monroe E. Miller, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of the complaint and the 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. The respondent, Philip Moskowitz, is an individual trading under the firm name and style of Rochester Clothing Company, having his main office and place of business at 853 Broadway, New York City, in the State of New York, and has been for ten years past, and is now, engaged in New York City in the business of manufacturing and selling clothing for men and boys; and causes clothing sold by him to be transported to the purchasers thereof, from the City of New York, in said State, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. The city of Rochester, N. Y., takes its name from Nathaniel Rochester, who settled in that locality about the year 1812 as a land commissioner; it is located on the Genesee River at the Falls, which supplied power for flour mills which formerly gave the city the name of the "Flour City," and have contributed to its industrial development. In 1916 Rochester had a population of approximately 250,000; in 1920 the population was 295,850; there were 1,657 factories, employing about 80,000 persons. Since the year 1850, and more particularly since the year 1865, clothing for men has been manufactured at Rochester, and the industry has had a continuous growth in the number of factories and the amount of capital invested. Besides Rochester, the principal centers of the manufacture of men's and boys' clothing in the United States are Chicago, New York City, Philadelphia, and Baltimore; three grades of clothing are generally recognized by the trade, viz, high-grade, medium and cheap, low-grade clothing. Compared with the output of men's

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clothing in the places named, that of Rochester has, and has had for many years, the largest proportion of high-grade clothes under that classification. The development of the men's clothing industry in Rochester has been marked by the adoption early and progressively of improved methods and conditions of manufacture; so-called sweat-shop conditions have been practically unknown, and the factory system, including the careful supervision of skilled employees, was generally established there, at an early period, and has been highly developed. The early labor in the industry consisted largely of German tailors resident in Rochester, in whose families the craft was continued through successive generations. As the labor became more skilled, commanding higher pay, it was applied more profitably to the higher grade of product, increasing that class proportionately.

PAR. 3. In 1892 the manufacture of men's clothing had become foremost among Rochester's industries; at that time about thirty large firms were engaged in it, and their product was manufactured under the most healthful conditions and by highly skilled labor, and enjoyed a high reputation throughout the United States. In that year the value of the annual output was estimated to be about \$13,000,000. In 1916 it was approximately \$25,000,000 and in 1920 had increased to \$55,000,000. About the year 1895 the Clothier's Exchange was organized in Rochester, the membership of which is made up of clothing manufacturers of that city, the purpose being primarily the prevention of labor troubles and the adjustment of labor disputes, and generally to promote the interests and improve the conditions of the industry; one of the activities of said Clothier's Exchange was to protect the reputation of Rochester as a clothing market against the use of the name by manufacturers elsewhere to its prejudice; the Clothier's Exchange has cooperated with the Chamber of Commerce of Rochester in advertising and fostering the reputation of Rochester for the manufacture of high-grade clothing for men and boys; the exchange has published a pamphlet entitled "Rochester—The Clothing Market," which is mailed out by the thousands to retailers and wholesalers of men's clothing throughout the country.

PAR. 4. The Chamber of Commerce of Rochester, N. Y., has some 4,200 members; its activities are directed to making the city a better place in which to live and do business, and promoting its civic, industrial, and mercantile interests. A slogan or motto, "Rochester Made Means Quality" was adopted in connection with the first industrial exposition held at Rochester in 1908; this industrial exposition was inaugurated and conducted by the Chamber of Commerce

for several years, and was then taken over by the city government of Rochester. The slogan referred to has been extensively used by the city of Rochester and the Chamber of Commerce and the many and varied interests of the city, including clothing manufacturers, in many forms of advertising, e. g., billheads, checks, stationery, pamphlets, convention and exposition publications, and in such forms widely distributed so that it has become nationally known; in 1913 the Chamber of Commerce caused to be erected at the western and eastern lines of the city of Rochester, on the right-of-way of the New York Central tracks, large electric signs showing the Genesee Falls and the city of Rochester, and bearing the sentence, "Where Quality Dominates."

PAR. 5. In addition to the contribution to its reputation as a center of manufacture of men's clothing by organizations such as the Chamber of Commerce and the Clothier's Exchange, a number of the chief manufacturers in Rochester of men's clothing have for many years maintained a system of national advertising in newspapers and magazines throughout the country; some of these have made conspicuous the identity of their products with the city of Rochester, and all have served to spread the knowledge of Rochester as an important center of the clothing industry; retailers in turn throughout the country who handle the product of the various manufacturers above referred to, have displayed in their advertisements in newspapers in their respective localities the names and brands of the manufacturers whose goods they handle, and have thus aided in spreading the knowledge of their identification with the city of Rochester. The efforts heretofore described of organizations and individuals to spread the reputation of Rochester as an industrial center whose product generally was of a high quality, and particularly such reputation of the men's clothing industry, have had the result and effect of establishing a reputation for men's clothing made in Rochester, generally, throughout the country, in the minds of jobbers, wholesalers, and retailers, and the purchasing public, that it is generally of a superior quality and value in quality, style, workmanship, and reliability; and the name "Rochester," applied to their products has become of great value to the manufacturers of men's clothing in Rochester because of the secondary meaning to the trade and the public which it has acquired largely through their efforts, and has been and now is a substantial asset standing for excellence of quality and workmanship and corresponding good will.

PAR. 6. The name "Rochester," when used on labels or tags attached to, or as a brand for, clothing for men and boys, is under-

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stood generally by the trade and the purchasing public as indicating that such clothing was made in Rochester, N. Y.

PAR. 7. The respondent, in the course of his business, as set forth in paragraph 1 above, has attached to clothing manufactured by him in New York City, N. Y., and sold by him in interstate commerce, tags or labels containing the words "Trademark, Rochester Clothing Co.—For Particular Men," without distinguishing words or marks to show the place of manufacture of said clothing, and has used the legend in the conduct of his business, in advertisements, stationery, and billheads. Respondent was well informed of the wide and favorable reputation enjoyed by the men's clothing industry of Rochester, N. Y., for producing high-grade clothing for men, and that the said city of Rochester, N. Y., was known, through its wide advertising and the excellence of the men's clothing produced there, to the public and dealers in men's clothing throughout the United States, as the location of a large number of the largest and most widely and favorably known clothing manufacturers in the United States.

PAR. 8. The use by respondent, as described in paragraph 7 hereof, of the words, "Trademark—Rochester Clothing Co.—For Particular Men," in tags or labels on clothing manufactured by him in New York City, N. Y., and sold by him in interstate commerce, and the use of the same legend by respondent in his advertisements and on stationery and billheads, is calculated to and tends to mislead and deceive the trade and the purchasing public, and does mislead and deceive a part of the purchasing public, into believing that clothing manufactured by him in New York City, N. Y., is manufactured in Rochester, N. Y.

PAR. 9. The use by respondent of the word "Rochester" in tags or labels on clothing manufactured by him elsewhere than in Rochester, N. Y., and sold by him in interstate commerce, is calculated to and tends to mislead and deceive the trade and purchasing public, and does mislead and deceive a part of the purchasing public into believing that such clothing is manufactured in Rochester, N. Y.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate 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 respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has 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,"

Now, therefore, it is ordered, That the respondent, Philip Moskowitz, individually and trading under the name of Rochester Clothing Company, his partners, agents, servants, representatives, and employees, do cease and desist from:

1. Using on tags or labels on clothing manufactured in New York City, N. Y., or any place other than Rochester, N. Y., and sold and shipped, or sold for shipment, in interstate commerce, the words "Rochester Clothing Company," or the word "Rochester" alone or in combination with other word or words, unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words, "Made in New York City," if the clothing is, in fact, made in New York City, N. Y., or by words in which the true place of manufacture, town or city and State, is stated.

2. Displaying or using the words or brand "Rochester Clothing Company" on stationery and billheads used in the business of making, selling, and shipping, or selling for shipment, clothes in interstate commerce, or in advertising clothes made elsewhere than in Rochester, N. Y., in newspapers, trade journals, or elsewhere, unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words "Made in New York City, N. Y.," if the clothing in fact is made in New York City, N. Y., or by words in which the true place of manufacture, town or city and State, is stated.

3. Using any tags or labels on clothing manufactured in New York City, N. Y., or any other place than Rochester, N. Y., and sold and shipped, or sold for shipment in interstate commerce, or displaying or using on stationery and billheads used in the business of making, selling, or shipping, or selling for shipment, such clothing, or in advertising such clothing in newspapers, trade journals, or elsewhere, in interstate commerce, the words "Rochester Clothing Company," or the word "Rochester" alone or in any combina-

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tion of words, for goods other than those stated in the preceding paragraph, unless in connection therewith and with equal prominence appear the words, "Made in New York City, N. Y.," or a like statement according to the facts as to the place or places of the manufacture of respondent's product or of clothing sold by him; and from representing in any manner or form whatever, that clothing made elsewhere than in the city of Rochester, N. Y., is made in said city.

It is further ordered, That the respondent, Philip Moskowitz, trading under the name and style of Rochester Clothing Company, shall, within sixty (60) days after the service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

SAMUEL BLUM.

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