FEDERAL TRADE COMMISSION

v.

J. D. SMILEY, DOING BUSINESS UNDER THE NAME AND STYLE OF DIXIE TAILORS.

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

Docket 1059—October 23, 1923.

SYLLABUS.

Where an individual conducting a tailoring business, in soliciting customers on the installment plan falsely represented that customers would be organized into groups of forty-eight members each, the name of one of whom would be selected by chance, or in consideration of services rendered in the way of securing new customers or otherwise, each week, to receive a suit without further payment or obligation; the fact being that selections were made arbitrarily and not as a reward for services rendered, were made from customers as a whole without any such grouping as represented, and were far fewer in number than called for by the plan so held out; with the result that large numbers of customers were thereby secured:

Held, That the holding out of such false inducements to purchase, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest, 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 charges that J. D. Smiley, doing business under the trade name and style of "Dixie Tailors," hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual owning and conducting a men's tailoring establishment under the name and style "Dixie Tailors," in the Westory Building, City of Washington, in the District of Columbia. Respondent is engaged in the business of selling men's clothing to residents of the said District in competition with other individuals, partnerships and corporations similarly engaged in said District.

PAR. 2. For more than a year last past, in the conduct of his said business, respondent has solicited customers among the residents of

said district, by means of certain agents employed by respondent for that purpose and by him denominated solicitors. By and through said agents respondent has offered and does offer to make and sell to each customer, for the sum of $48.00, a suit of clothing from cloth chosen by the customer, to be paid for by such customer in 48 weekly payments of $1.00 each, payable in advance, upon the following terms, conditions and representations: That upon the completion of said 48 weekly payments, or when said total sum of $48.00 has been so paid, respondent will make or cause to be made, and will deliver to such customer, the suit so chosen by him as above set out; that the customers so secured by respondent are to be grouped by him into clubs of forty-eight members each, and that as to each such club, upon the initial payment of one dollar ($1.00) by each customer, respondent will select the name of one customer to whom the suit of clothing chosen by such customer under the agreement above set out will be made and delivered without further charge or payment other than the payments made by such customer under the advance payment plan above set out prior and up to the time of his said selection, and that each week thereafter, for a period of 47 weeks, respondent will similarly select and deliver a suit to one of the remaining customers in each such club until all have secured suits; that such customer will be selected by respondent in consideration of and in return for services theretofore rendered by such customer to respondent, which said services respondent represents to be the securing by such customer of other customers for respondent, or the doing of such other things as may be requested by respondent or by him considered sufficient to justify such selection. In some instances said agents have represented that said weekly selections are made by lot or chance. By means of such offer, respondent has, in the past, secured, and still secures, a large number of customers in the District of Columbia, each of whom agrees to purchase a suit upon the terms and conditions above set out, and from time to time respondent has arbitrarily, and not as a reward for any service rendered, selected the name of a customer to whom respondent has delivered a suit of clothing free of any further charge or payment other than the payments made by such customer under the advance payment plan above set out prior and up to the time of his said selection. Respondent has not divided said customers into groups or clubs of 48 members each, or in any other denomination, and has not made a weekly selection from each such group, in fulfillment of the representations hereinbefore set out; but on the contrary, has made random selections from time to time from among all the customers, and said actual selections have been and are many less in number than the

number provided for by said representations, all with the result that said customers have not had an equal chance to be selected as above set out, and the majority of said customers have paid and still pay the entire, or substantially entire, amount of $48.00 for the suits purchased by them under the weekly payment plan hereinbefore set out.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served complaint upon the respondent herein, J. D. Smiley, doing business under the name and style of the Dixie Tailors, charging him with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer and a stipulation of facts having been agreed upon by and between W. H. Fuller, Chief Counsel for the Federal Trade Commission, and counsel for the respondent, thereupon this proceeding came on for final hearing before the Commission, and the Commission having fully 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. Respondent, J. D. Smiley, doing business under the name and style of Dixie Tailors, is an individual, owning and conducting a tailoring establishment and operating same under the name and style set out above, in the City of Washington, District of Columbia. In the course and conduct of his business respondent is in competition with other partnerships, corporations and individuals similarly engaged.

PAR. 2. For more than one year last past, in the course and conduct of his said business, respondent has solicited customers among the residents of the District of Columbia by means of certain agents employed by him for that purpose and by him denominated as solicitors. By and through said agents respondent has offered and does offer to make and sell to each customer for the sum of $48 a

suit of clothing from cloth chosen by the customer, to be paid for by such customer in forty-eight weekly payments of $1 each, payable in advance, upon the following terms, conditions and representations: That upon completion of the said forty-eight weekly payments or when said total sum of $48 has been paid, respondent will make or cause to be made, and will deliver to such customer the suit so selected by him as set out above; that the suctomers secured by respondent are to be grouped by him into groups of forty-eight members, and that as to each such club, upon the initial payment of $1 by each customer, respondent will select the name of one customer for whom the suit of clothing chosen by such customer under the agreement above set out will be made and delivered without further charge or payment other than the payments made by such customer under the advance payment plan above set out, prior and up to the time of its said selection, and that each week thereafter for a period of forty-seven weeks, respondent will similarly select and deliver a suit to one of the remaining customers in such club until all have secured suits. The customer will be selected by respondent in consideration of and return for services theretofore rendered by such customer to respondent, which said services [it] represents to be the securing by such customer of other customers for respondent, or the doing of such things as may be requested by respondent, or by him considered sufficient to justify such selection. In some instances the agents or respondent have represented to prospective customers that said selections were made by lot or chance. By means of such offer respondent has in the past secured a large number of customers in the District of Columbia, each of whom agreed to purchase a suit upon the terms and conditions above set out, and from time to time respondent has arbitrarily, and not as a reward for any services rendered, selected the name of a customer to whom it has delivered a suit of clothing free of any other charge or payment other than terms made by such customers under the advance payment plan as set out above. Prior and up to the time of the said selection respondent has not divided said customers into groups of clubs of forty-eight members each, or in any other denomination, and has not made weekly selections from each group in fulfillment of such representations hereinbefore set out; but, on the contrary, has made weekly selections from among all the customers and said actual selections have been and are many less in number than the number provided for by the said representation, with the result that said customers have not the chance represented to be selected as above set out, and the majority of such customers have paid the entire, or substantially the entire amount of $48 for the suits purchased by them under the weekly payment plan heretofore set out.

CONCLUSION.

The practices of said respondent, as set forth in the findings as to the facts are unfair methods of competition in 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 of the Commission, the answer herein and the stipulation of facts heretofore filed, 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;"

It is now ordered, That respondent, J. D. Smiley, doing business under the name and style of Dixie Tailors, his agents, solicitors, representatives, servants, and employees do cease and desist from directly or indirectly:

(1) Falsely representing through his agents or by or through any other means whatsoever, to his customers or prospective customers, his method of marketing his merchandise in commerce, and especially from—

(2) Falsely representing through his agents or by or through any other means whatsoever to his prospective customers that in the sale of suits of clothing customers would be divided into clubs or groups of forty-eight persons each, and that from such clubs or groups each week the name of a person would be drawn or otherwise selected by choice to receive a suit of clothing without further charge or payment—

(3) From representing to customers or prospective customers that under respondent's plan of marketing his merchandise each and every customer would have an equal chance or opportunity with other customers in a selection and designation for those who were to receive a suit of clothing at a price under the full payment of $48, when in truth and in fact no equal chance or opportunity is given.

It is further ordered, That respondent within 60 days after the service upon it 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 heretofore set forth.

Complaint.