

Complaint.

FEDERAL TRADE COMMISSION

v.

PHILADELPHIA BLANKET COMPANY, INC.

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

Docket 1049—May 13, 1924.

SYLLABUS.

Where a corporation engaged in the sale of blankets, steamer rugs, and carriage and automobile robes to wholesale and retail dealers, displayed on its signs, stationery, order blanks, etc., and listed its business under the name of a concern, which had theretofore become well and favorably known, and the merchandise of which had been acquired by the president of said corporation's predecessor, but not its good will or the right to use its name; with the tendency to cause the trade and public to purchase commodities dealt in by it as and for those of said concern, and with intent so to do, and with a tendency to injuriously affect the business of competitors:

Held, That such wrongful appropriation and use of trade name, under the circumstances set forth, constituted an unfair method of competition.

Mr. Edward E. Reardon for the Commission.

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 the Philadelphia Blanket Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in 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 a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the City of Philadelphia, in said State, and with branch places of business in the Cities of New York, New York; Chicago, Illinois; and San Francisco, California. It is engaged in the business of selling blankets, horse blankets, carriage and steamer rugs and robes, and allied commodities to wholesale and retail dealers located at points in the various States of the United States. It causes said commodities when so sold to be transported from its said principal place of business, or one of said branch places of business, into and through States other than the State of origin

Complaint.

7 F. T. C.

of said shipments, to said purchasers at their respective points of location in competition with other individuals, partnerships and corporations engaged in the manufacture and/or sale of aforesaid commodities in interstate commerce.

PAR. 2. For about twenty years prior to the year 1920, one William B. Riley and one Edgar E. Young, as partners, were engaged in the business of selling blankets, horse blankets, carriage and steamer rugs and robes and allied articles to wholesale and retail dealers throughout the United States. Said partnership had its principal place of business in the City of Philadelphia, in the State of Pennsylvania, and a branch office and place of business in the City and State of New York, and conducted its said business under the trade name and style of William B. Riley & Company. During aforesaid period said partnership dealt in and sold merchandise of uniformly good quality and acquired and enjoyed a reputation throughout the trade and amongst the public for honesty, fair dealing and integrity, by reason whereof said partnership acquired a large business and good will amongst the trade and public practically throughout the United States, and a great demand existed during said period among said dealers and among the general public for the merchandise offered and sold by said partnership. Because of the integrity and fair dealing of said partnership and the uniformly good quality of the products sold by it, many dealers and many of the public in the United States dealt in and purchased aforesaid commodities of said partnership in preference to the similar commodities of the competitors of said partnership.

PAR. 3. In the year 1918, said William B. Riley died, and the said Young continued to conduct the business of said partnership under its aforesaid trade name until the year 1920, in which year said Young retired from business and sold to respondent all the merchandise of said partnership on hand or under contract of purchase by said partnership, together with the right to use certain trade-marks belonging to said partnership, and used to designate certain blankets sold by it, but refused to sell or transfer and did not sell or transfer to respondent the right to use aforesaid trade name "William B. Riley & Company." Shortly after said transaction, said Young fully wound up the affairs of said partnership, and the same thereupon ceased to exist and do business. The fact that said partnership had so ceased to exist and do business was not generally known to the trade and the public.

PAR. 4. After the purchase of aforesaid merchandise and trade-marks of said partnership as set out in paragraph 3 hereof, respondent proceeded to sell and deal in said merchandise and similar

merchandise under the said trade name "William B. Riley & Company," and in connection therewith placed said trade name upon certain of its letterheads, bills, circulars and other business forms and literature and upon signs displayed upon its several aforesaid places of business, and further attached to said merchandise and similar merchandise, certain labels, other than labels bearing the trade-marks assigned to respondent by said Young, as hereinbefore set out, which had been similarly so attached by said partnership during the existence of its business and which had been and were associated with the goods of said partnership in the mind of the trade and public. Aforesaid acts and practices of respondent tended to and did mislead and deceive the trade and public generally into the belief that said partnership was still in existence and doing business, that the purchasers of said commodities so sold by respondent were securing the merchandise of, and doing business with aforesaid partnership, and tended to and did cause the trade and public to purchase said commodities in that belief.

PAR. 5. Since adopting the practices set forth in paragraph 4 hereof, respondent has continuously since engaged and still engages in the same under the circumstances and with the results in said paragraph set out.

PAR. 6. 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 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 respondent, The Philadelphia Blanket Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having filed its answer herein and having appeared by its treasurer, George F. Joly, Jr., hearings were had and evidence was thereupon introduced in support of the allegations in said complaint and on behalf of the respondent before Edward M. Averill, 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 duly considered

Findings.

7 F. T. C.

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.

The respondent, Philadelphia Blanket Company, Inc., is a corporation organized under the laws of the Commonwealth of Pennsylvania, in January, 1901, originally under the name of J. W. Ringrose Net Company with a capital stock of \$10,000. After two changes in its corporate name it became known on or about April 29, 1922, as the Philadelphia Blanket Company, Inc., under which name it has continued to do business to the present time. Prior to April 29, 1922, there was another and distinct corporation known as the Philadelphia Blanket Company doing business in Philadelphia, Pennsylvania. This latter corporation was organized in 1908 under the laws of the Commonwealth of Pennsylvania. George F. Joly, Jr., was the president of this corporation on or about November 1, 1920. The latter corporation was merged in the respondent corporation on or about April 29, 1922.

The Philadelphia Blanket Company, Inc., the respondent took over the business of the company known as the Philadelphia Blanket Company above referred to which had a place of business in the City of Philadelphia, Pennsylvania, and a branch place of business in the City of New York, New York, and was represented by commission selling agents in the Cities of Chicago, Illinois, and San Francisco, California, and has conducted the blanket business from April 29, 1922, to the present time. Respondent's place of business in Philadelphia is at No. 219 North Third Street, and in New York City is at No. 52 Leonard Street.

The business of respondent is the selling of blankets, horse blankets, steamer rugs, carriage and automobile robes to wholesale and retail dealers located at points in the various States of the United States, and the respondent causes said commodities when sold by it to be transported from its said places of business into and through States other than the State of origin of the shipments to purchasers at their respective points of location in such other States.

Other individuals, partnerships and corporations are engaged in the manufacture and sale of the same or similar commodities and in the course of their business cause said commodities when sold by them to be transported in interstate commerce to the purchasers located in States other than the State of origin of the shipments and including the States into which respondent causes its commodities to be transported when sold by it as aforesaid.

Prior to 1917, for a period of about twenty years Edgar E. Young and William B. Riley were copartners, trading under the firm name and style of Wm. B. Riley & Co., with a principal place of business at No. 238 Chestnut Street, in the City of Philadelphia, Commonwealth of Pennsylvania, and a branch place of business at No. 50 Leonard Street, in the City of New York, State of New York. The business of the firm was the sale of blankets, steamer rugs, carriage and automobile robes in interstate commerce throughout the entire United States. Edgar E. Young and William B. Riley were the sole partners. William B. Riley died in March, 1917, and Edgar E. Young conducted the firm's business after that date as sole surviving partner and in the following month, April, 1917, Mr. Young bought the entire interests of the estate of his deceased partner in the firm.

Particularly in the purchase agreement with the executors was the provision that the right to use the name of Wm. B. Riley in the firm's name was included in the sale to Edgar E. Young.

By an agreement entered into between Edgar E. Young, sole proprietor of Wm. B. Riley & Co., and George F. Joly, Jr., dated November 23, 1920, stated therein to be effective November 1, 1920 (Res. Ex. No. 1),¹ Mr. Young sold all the stock of merchandise of Wm. B. Riley & Company, on hand or due on contract, to George F. Joly, Jr., at cost price to the said Wm. B. Riley & Co., or at present price quoted to them whichever was lower. It was also agreed that Wm. B. Riley & Co., would turn over to the purchaser any unfilled orders on their books and the firm's rights and interests in the trade-marks "Hercules" and "Bluestone." The purchaser, George, F. Joly, Jr., agreed to employ three of the employees of Wm. B. Riley & Co., at their then rate of compensation and to take over the premises occupied by Wm. B. Riley & Co., in Philadelphia and New York City and to assume the rent of the same to the termination of the existing leases. There were other trade-marks used in the business of Wm. B. Riley & Co., which were not transferred by the agreement of sale to George F. Joly, Jr. One of these was the registered trade-mark "R" with crest (Com's Ex. No. 5),¹ and another was the unregistered trade-mark "R" (Com's Ex. No. 6).¹

The good will of the firm was not included in the sale. At the time of the sale of the merchandise by Wm. B. Riley & Co., to George F. Joly, Jr., Edgar E. Young, the sole proprietor of Wm. B. Riley & Co., knew that George F. Joly, Jr., was connected with the Philadelphia Blanket Company, the corporation later merged in the respondent corporation, and the agreement of sale between Wm.

¹ Not published.

Findings.

7 F. T. C.

B. Riley & Co. and George F. Joly, Jr. (Res. Ex. No. 1),¹ was purposely not made with the corporation but with George F. Joly, Jr., because Edgar E. Young would not sell to the corporation.

In November, 1920, when the merchandise was sold the good will of the firm of Wm. B. Riley & Co., considered as an asset alone without merchandise stock, was worth from \$50,000 to \$100,000. During the time the firm was in business it traveled salesmen in every State of the United States and spent a great deal of money in advertising. The firm was known to practically everyone in its line of business and to the consuming public through its years of advertising and merchandising. The reputation of Wm. B. Riley & Co., as to financial strength, integrity, ability and fidelity in filling orders of customers was considered and described in the trade as "A-1." It was of the highest type of house both in buying and selling and was the second or third largest concern in the blanket business in the United States. During the years, 1917, 1918, 1919, and for the ten months up to November, 1920, the amount of gross sales of Wm. B. Riley & Co., were at the annual rate of from approximately \$500,000 to over \$1,500,000, and the net profits for the same period were at the annual rate of from approximately about \$100,000 to over \$280,000. It is estimated that it would cost from \$15,000 to \$20,000 per year for advertising in order to gain the reputation and good will equal to that enjoyed by the firm of Wm. B. Riley & Co.

The sale of the merchandise at the cost price to Wm. B. Riley & Co., or at present price quoted to them whichever was lower, did not include the good will of the firm or the use in trade of the name Wm. B. Riley & Co., around which the good will was developed and on which it was based.

The unused stock of letterheads and order blanks of the firm were sold on the understanding that they could be used only after the name Wm. B. Riley & Co. was stamped across with a heavy line and the name of the Philadelphia Blanket Company was stamped above.

The respondent never had the right to trade under the name of Wm. B. Riley & Co. On December 24, 1921, Edgar E. Young, sole proprietor, as sole surviving partner and as purchaser of the interests of his former partner in the firm of Wm. B. Riley & Co., transferred and assigned to Alice S. Young all his right, title and interest in the concern of Wm. B. Riley & Co.

The Philadelphia Blanket Company (the corporation later succeeded by respondent) immediately upon the sale of the merchandise to George F. Joly, Jr., went into the occupancy of the former premises of Wm. B. Riley & Co., at No. 238 Chestnut Street, Phila-

¹ Not published.

delphia and at No. 50 Leonard Street, New York City, New York, and occupied those premises until the expiration of the leases to Wm. B. Riley & Co. The Philadelphia Blanket Company removed from the premises No. 50 Leonard Street, New York City on February 1, 1921, and a short time later from the premises at No. 238 Chestnut Street, Philadelphia, to another location in Philadelphia, and conducted the blanket business until the merger between that company and the respondent on April 29, 1922.

When the Philadelphia Blanket Company took possession of the former place of business of Wm. B. Riley & Co., at No. 50 Leonard Street, New York City, on November 1, 1920, the old sign of the firm was permitted to remain at the entrance there until, at the expiration of the lease, on or about the first of the following February, The Philadelphia Blanket Company removed its business to No. 52 Leonard Street, New York City.

After the Philadelphia Blanket Company removed from the former place of business of Wm. B. Riley & Co., to No. 52 Leonard Street, on February 1, 1921, it caused a new sign to be placed there (Com's Ex. No. 18)¹ reading:

"PHILADELPHIA BLANKET Co.

STEAMER RUGS

WM. B. RILEY & Co."

On January 27, 1921, a letter was sent to the New York Telephone Company on the letterhead of the Philadelphia Blanket Company requesting the removal of the phone from No. 50 to No. 52 Leonard Street, New York City. This letter (Com's. Ex. No. 19, transcript of testimony p. 98)¹ is signed "William B. Riley & Company." "Mc."

The name of Wm. B. Riley & Co., was signed to the said letter without authority or right and in the interest of respondent and by this unauthorized means the firm name of Wm. B. Riley & Co. was carried over to the new premises and was retained and used by the Philadelphia Blanket Co., Inc., the respondent, in the telephone directory of New York City and so used by respondent in trade.

On or about March 27, 1922, the Philadelphia Blanket Company, Inc., the respondent, by its treasurer, George F. Joly (who was also the president of the Philadelphia Blanket Company), made application to the New York Telephone Company to transfer the original contract with Wm. B. Riley & Co., to respondent. On this application the request was made to the telephone company to continue the

¹ Not published.

Findings.

7 F. T. C.

listing of Wm. B. Riley & Co., in the New York Telephone Directory under the same telephone number as respondent and at respondent's address. (Com's. Ex. 22, transcript of testimony pp. 98, 99.)¹

On or after April 29, 1922, the respondent caused its letterheads and order blanks to be printed reading as follows:

"THE PHILADELPHIA BLANKET CO. INC.,

WM. B. RILEY & Co. PHILADELPHIA BLANKET Co. J. W. RINGROSE Co."

(Com's. Exs. Nos. 2 and 3.)¹

The use of the said sign at No. 52 Leonard Street, New York City, and the said letterheads and order blanks by respondent in its business was continued until persons in the blanket trade advised Alice S. Young of the same during August, 1922, who protested against the use of the name Wm. B. Riley & Co., by respondent, and the use by it of the letterheads, order blanks and sign with the said name thereon.

After this protest the respondent tried to obtain the right to use the said name in connection with its business from Alice S. Young who would not sell the same, and thereafter on or about November 29, 1922, the respondent abandoned the use of the name Wm. B. Riley & Co., on all its stationery and removed the sign objected to at No. 52 Leonard Street but replaced it with another sign which it now maintains there, reading as follows:

"PHILADELPHIA BLANKET Co. INC.

STEAMER RUGS

FORMER LINES OF

WM B. RILEY & Co."

the words "Former Lines of" being in smaller letters.

In Philadelphia, where Edward E. Young lived and where Alice S. Young, who owned all the interest in and the right to the use of the firm name Wm. B. Riley & Co., continued to live after the death of Edward E. Young, the respondent has not displayed at its principal place of business any sign with the name Wm. B. Riley & Co., thereon. Nor has respondent caused the name of Wm. B. Riley & Co., to be listed in the telephone directory in the City of Philadelphia. The respondent's predecessor, Philadelphia Blanket Company did not display any sign with the name of Wm. B. Riley & Co.,

¹ Not published.

thereon at its principal place of business in Philadelphia after the date of the expiration of the Riley & Co.'s lease at No. 238 Chestnut Street, Philadelphia, nor cause the said firm name to be listed in the Philadelphia telephone directory.

At the time of the sale of the merchandise by Wm. B. Riley & Co. to George F. Joly, Jr. November 1, 1920, the said firm sent a form letter to their customers announcing the transfer of certain lines of their goods and bespoke a continuance of the same pleasant relations with the Philadelphia Blanket Co., that the firm's customers had extended to Wm. B. Riley & Co. in the past.

The use by respondent of the firm name, "Wm. B. Riley & Co." on its sign at its place of business preceded by the qualifying words, "former lines of" was therefore in accordance with the fact and with the letter of Wm. B. Riley & Co. to their customers.

The use by respondent of the said firm name on a sign erected by respondent at respondent's place of business, and also carrying respondent's name equally conspicuous thereon, without any qualifying words, as aforesaid, was without right and falsely represented to the public that the said firm, Wm. B. Riley & Co., was conducting business in the premises referred to, or that it was owned or controlled by or connected in actual and active business in some manner with the respondent, and was prejudicial to the public and competitors of respondent.

The use of the firm name Wm. B. Riley & Co. on its letterheads or other stationery, as in Commission's Exhibits Nos. 2 and 3, and the listing of the said firm name in the New York City telephone directory under the same telephone number and at the same address as respondent, at 52 Leonard Street, New York City, was unauthorized and without right and constituted trading under the name of Wm. B. Riley & Co. and by means thereof respondent falsely represented that Wm. B. Riley & Co. was actually conducting business in the premises referred to, or that it was owned or controlled by or connected in actual and active business in some manner with the respondent, and was prejudicial to the public and competitors of respondent.

The right to trade in the blanket business in Philadelphia and New York City under the firm name Wm. B. Riley & Co. by using the name on letterheads or other stationery, on a sign at a place of business and by carrying a listing of the firm name and address in a telephone directory was a valuable right because of the confidence and good will created by the firm by means of large capital employed and years of costly advertising resulting in a large volume of busi-

Order.

7 F. T. C.

ness transacted annually throughout the United States and by reason of the consequent effect of the firm's name upon the public in connection with the sale of such merchandise as the firm dealt in.

The sole purpose of trading under the firm name was on account of its effect on the members of the public and the advantage it gave over competitors of respondent. The importance and extent of the effect of the use of the name Wm. B. Riley & Co. on the public and the advantage it gave over competitors, is amply shown by the evidence of the repeated unsuccessful attempts of respondent through its treasurer to obtain the right to use the firm name and the unauthorized use of the name by respondent, as above set forth, when the right to its use could not be obtained.

The aforesaid use of the name Wm. B. Riley & Co. by respondent on letterheads, order blanks, and other stationery, and on a sign without being preceded by the words "former lines of," and in the listing of the name and address in the telephone directory in New York City in connection with respondent's place of business was with the purpose and intent of deceiving and misleading the trade and the public into the belief that the firm of Wm. B. Riley & Co. was actually doing business at respondent's address; that the purchasers of commodities sold by respondent were securing the merchandise of and doing business with the said partnership and tended to cause the trade and public to purchase said commodities in that belief and to injuriously affect the business of competitors of respondent engaged in the sale of such commodities in interstate commerce.

CONCLUSION.

The practices of said respondent, as set forth in the foregoing findings as to the facts, are unfair methods of competition 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.

The above-entitled proceeding coming on for final determination by the Federal Trade Commission upon the complaint of the Commission, answer of respondent and testimony of the parties and the Commission having considered the same and argument having been heard and the Commission, being fully advised in the premises, 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,"

It is ordered, That the respondent, Philadelphia Blanket Co., Inc., its agents, representatives, and employees, do—

Cease and desist from trading under the name Wm. B. Riley & Co., by causing the said name to be or to remain listed in any telephone directory, either in connection with the same telephone number and address as the Philadelphia Blanket Co., Inc., or in connection with any other telephone number or address; from using the name Wm. B. Riley & Co., on letterheads or other stationery in any manner representing that it is conducting business under said firm name or in connection therewith; from using the name Wm. B. Riley & Co., in any manner on any sign used by respondent in its business except in connection with the words "former lines of" or words of equivalent meaning placed conspicuously immediately preceding the said firm name.

It is further ordered, That the respondent Philadelphia Blanket Co., Inc., shall within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Dissent by Commissioner Van Fleet.

I dissent from the order in this case.

On March 17, 1924, the complaint in this case by vote of the Commission was dismissed "for the reason that the record shows that this matter should have been determined between the parties by private action in court," and the secretary was directed to serve the order of dismissal. On March 28, 1924, the Commission by a majority vote reconsidered the former vote and voted the present order to cease and desist. I am dissenting because I adhere to the opinion as expressed in the first order of the Commission that "the record shows that this matter should have been determined between the parties by private action in court." The record disclosed that William B. Riley & Company was a partnership composed of William B. Riley and Edgar E. Young, that Riley died and Young continued the business for a time under the firm name. That Young later sold to respondent all the merchandise of said partnership on hand together with the right to use certain trade marks belonging to said partnership.

The agreement was evidenced by a written instrument executed by the parties. Edgar E. Young died and his widow and the executors of his estate complained of the use by respondent of the name

Dissent.

7 F. T. C.

William B. Riley, evidently deeming that the name was of some commercial value. Whether under the written agreement the respondent had the right to use this name is a question of law to be determined by the court. It is a purely private controversy between them. The Commission is not created to collect debts or establish purely personal and private rights between parties.

The trial examiner in this case found that—

The form of letterhead adopted by the respondent on or about April 29, 1922, and continued in use by the respondent until on or about November 29, 1922, is calculated to, and might, cause some one seeing said stationery to believe that the respondent, Philadelphia Blanket Company, Inc., was a successor to Wm. B. Riley & Company, but such was the fact and there is no evidence of any of the trade, or of the consuming public, in any way being misled or deceived. The notice sent out by Edgar E. Young to the trade, advising them that Wm. B. Riley & Company had ceased business, and of the transference of the business of Wm. B. Riley & Company to the Philadelphia Blanket Company would negative any presumption which might arise as to any general tendency or capacity of such stationery to mislead or deceive the trade, and there is absolutely no evidence that the ultimate user of blankets or robes, the consumer, ever had any opportunity to see such stationery.

The respondent ceased the use of the words, "Wm. B. Riley & Co." upon its stationery on or about November 29, 1922, as set out in Paragraph IV, and has not since that time used same. The respondent has used, since November 29, 1922, and continues to use upon the sign at the New York Office, under the words "Steamer Rugs," the words, "Former Lines of Wm. B. Riley & Co." which is a statement of a fact.

The evidence reveals no acts or things done by respondent which are to the prejudice of the public or to the competitors of respondent, and reveals only a private dispute between the widow and executors of Edgar E. Young and the respondent.

The respondent contends that among the rights conveyed was the right to the good will of Wm. B. Riley & Company; the widow and executor of Edgar E. Young contend that the contract does not carry the good will. This is strictly a question of involving the construction of a contract, which is for the courts to determine. There is no substantial public interest involved.

The law authorizes the Commission to issue orders only when it shall be to the public interest. There being no public interest and this being in my opinion a purely private controversy, I dissent from the order.

WISCONSIN WHOLESALE GROCERS' ASSO.

489

Syllabus.

FEDERAL TRADE COMMISSION