

Complaint.

IN THE MATTER OF
H. F. FLIEGELMAN.

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

Docket 1139—August 6, 1924.

SYLLABUS.

Where an individual engaged in the sale at retail of furniture which he purchased from manufacturers and resold at substantially prevailing retail prices for comparable furniture, made and featured the statement and slogan "Direct from Factory to You" in advertising his said furniture, with the capacity and tendency thereby to mislead and deceive many among the purchasing public into believing that in buying of him they were purchasing directly from the owner, controller or operator of a factory in which the furniture so offered for sale was made, and in so doing were saving the profits of middlemen, and to induce them to purchase such furniture in that belief:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Sundheim, Folz & Kun of Philadelphia, Pa., for respondent.

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 H. F. Fliegelman, 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 with his place of business in the city of Philadelphia, State of Pennsylvania. He is, and at all times hereinafter has been engaged in the sale of furniture at retail to purchasers located at points in various States of the United States. He causes said furniture when so sold to be transported from his said place of business in the city of Philadelphia, Pa., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his aforesaid business respondent is in competition with other individuals, partnerships and corporations similarly and otherwise engaged in the sale of furniture in interstate commerce and with the trade generally.

PAR. 2. For more than a year last past in the course of his aforesaid business, respondent has caused advertisements offering his

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said furniture for sale, to be inserted in newspapers of general circulation in the United States, or in various sections thereof, in which advertisements respondent has caused to be prominently displayed the statement and slogan "Direct from Factory to You."

PAR. 3. The statement or slogan "Direct from Factory to You" as used by respondent in the manner set out in paragraph 2 hereof, signifies to and is understood by a substantial part of the public to mean that respondent is a manufacturer of furniture selling direct to the consuming public, whereas in truth and fact respondent is not such a manufacturer but purchases the furniture in which he deals from others who manufacture same and resells said furniture to the consuming public at a profit and at prices substantially the same as the retail prices prevalent in the trade for furniture of kind and quality similar to the furniture sold by respondent. Said statement or slogan so used by respondent is false and misleading and has the capacity and tendency to mislead and deceive many among the consuming public to believe that respondent owns, controls or operates a furniture factory in which he manufactures the furniture which he offers for sale and that persons buying from respondent are buying direct from the manufacturer of said furniture thus saving the profits of middlemen, and to induce many of the consuming public to purchase the furniture of respondent in that belief.

PAR. 4. There are a number of manufacturers of furniture in competition with respondent in the sale of furniture in interstate commerce who sell the furniture which they manufacture direct to the consuming public. There are also a number of retail dealers in competition with respondent who do not in any manner hold out that they manufacture the furniture which they sell.

PAR. 5. The above alleged acts and practices of 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, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 25th day of March, 1924, issued and thereafter served its complaint upon the respondent, H. F. Fliegelman, charging him with unfair methods of competition in violation of Section 5 of said Act. The respondent having appeared

by his attorneys, Sundheim, Folz & Kun, and without the filing of an answer, an agreed statement as to the facts having been made and filed in which it is stipulated that the facts therein recited may be taken in lieu of the testimony in this proceeding, and that upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and conclusion and enter its order disposing of the proceeding. Thereupon this proceeding came on for final hearing without oral argument, and 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. Respondent, H. F. Fliegelman, is an individual with his place of business in the city of Philadelphia, State of Pennsylvania. He is, and at all times hereinafter has been engaged in the sale of furniture at retail to purchasers located at points in various States of the United States. He causes said furniture when so sold to be transported from his said place of business in the city of Philadelphia, Pa., and from places of business of manufacturers at points in various States of the United States, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his aforesaid business respondent is in competition with other individuals, partnerships and corporations also engaged in the sale of furniture throughout the various States of the United States.

PAR. 2. For more than a year last past, in the course of his aforesaid business, respondent has caused advertisements offering his said furniture for sale, to be inserted in newspapers of general circulation in the United States, or in various sections thereof, in which advertisements respondent has caused to be prominently displayed the statement and slogan "Direct from Factory to You."

PAR. 3. The statement or slogan "Direct from Factory to You" as used by respondent in the manner set out in paragraph 2 hereof, signifies to and is understood by a substantial part of the public to mean that respondent is a manufacturer of furniture selling direct to the purchasing public, whereas in truth and fact respondent is not such a manufacturer, but purchases the furniture in which he deals from others who manufacture same and resells said furniture to the purchasing public at a profit and at prices substantially the same as the retail prices prevalent in the trade for furniture of kind and quality similar to the furniture sold by respondent. Said statement or slogan has the capacity and tendency to mislead and deceive many among the purchasing public to believe that respondent owns, con-

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trols or operates a furniture factory in which he manufactures the furniture which he offers for sale and that persons buying from respondent are buying direct from the manufacturer of said furniture thus saving the profits of middlemen, and to induce many of the purchasing public to purchase the furniture of respondent in that belief.

PAR. 4. There are a number of manufacturers of furniture in competition with respondent in the sale of furniture throughout the various States of the United States who sell the furniture which they manufacture direct to the purchasing public. There are also a number of retail dealers in competition with respondent who do not in any manner hold out that they manufacture the furniture which they sell.

CONCLUSION.

That the practice of the said respondent, under the conditions and circumstances described in the foregoing findings is an unfair method of competition in interstate commerce and constitutes a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, and the agreed statement as to the facts made and filed herein in lieu of the testimony and evidence 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,"

It is now ordered, That the respondent, H. F. Fliegelman, cease and desist from:

1. Making use of the slogan "Direct from Factory to You" or any slogan of like import, in advertising his merchandise or offering same for sale.

2. Representing by any means that he is a manufacturer, when in truth and fact respondent is not a manufacturer.

It is further ordered, That the respondent, H. F. Fliegelman, shall within sixty 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.

Complaint.

IN THE MATTER OF

FERDINAND JACOBSON, JOSEPH C. JACOBSON, HARRY S. JACOBSON, MOSES JACOBSON, AND SAMUEL JACOBSON, PARTNERS DOING BUSINESS UNDER THE NAME AND STYLE F. JACOBSON & SONS.

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

Docket 1173—August 7, 1924.

SYLLABUS.

Where a firm engaged in the manufacture of men's shirts from a domestic cotton fabric termed "broadcloth," labeled such shirts "English Broadcloth," and so sold the same in competition with concerns which so labeled their product only when made from a certain popular and favorably known imported English fabric, with the result of deceiving retailers and a substantial portion of the purchasing public in reference to the source of the fabric of said shirts:

Held, That such misbranding or mislabeling, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven 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 Ferdinand Jacobson, Joseph C. Jacobson, Harry S. Jacobson, Moses Jacobson, and Samuel Jacobson, partners, doing business under the name and style F. Jacobson & Sons, hereinafter referred to as respondents, have been and are 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. Respondents are partners doing business under the trade name and style F. Jacobson & Sons with their principal place of business in the City and State of New York. They are engaged in the manufacture of men's shirts and the sale thereof to wholesale and retail dealers located in various States of the United States. They cause said shirts when so sold to be transported from their said principal place of business in the City and State of New York into and through other States of the United States to said purchasers