

Complaint.

S F. T. C.

IN THE MATTER OF
BARTH & GUTTMAN, INC., TRADING AS THE NEW
ENGLAND MANUFACTURING COMPANY.

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

Docket 1220—March 5, 1925.

SYLLABUS.

Where a corporation engaged in the sale of bed spreads, tablecloths, and other linen and cotton products to wholesale and retail dealers, and neither owning, controlling nor operating any factory,

- (a) Adopted and used a trade name which included the words "manufacturing company";
- (b) Displayed the same upon its stationery together with the picture of a mill, along with its own corporate name and the words, "Sole Owners";
- (c) Caused bills of lading and express receipts for goods purchased by it from the manufacturers for shipment directly to its vendees to be made out as coming from the pretended manufacturing company, the name of which it used as a trade name, as above set forth, and the goods to be so labeled and all mill marks to be erased therefrom; and
- (d) Simulated the stationery of a manufacturing competitor;

With the capacity and tendency to mislead and deceive customers and prospective customers, and the public into believing it to be the manufacturer of the goods sold by it, and with the effect of inducing the purchase thereof:

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

Mr. T. John Butler for the Commission.

Leight & Neckritz of New York City 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 Barth & Guttman, Inc., a corporation, trading as the New England Manufacturing Company, 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, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Barth & Guttman, Inc., trading as The New England Manufacturing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal or executive offices and ware-

houses located in the City of New York in said State. In the course and conduct of its said business respondent purchases its merchandise, consisting of tablecloths, bed spreads, toweling and similar linen and cotton products, from manufacturers, wholesalers or jobbers located in various States of the United States, and when in receipt of orders for the purchase of its products, either direct or through its solicitors, salesmen or representatives, said respondent causes said merchandise to be shipped or transported in interstate commerce from its principal offices or warehouses, located in the State of New York, to the purchasers thereof located in other States of the United States and foreign countries, or from its warehouses or the warehouses of the manufacturers, wholesalers or jobbers located in various States of the United States, from whom the said respondent purchases its merchandise, to purchasers thereof located in a State or States of the United States other than the State in which its said warehouse or the warehouses of the said manufacturers, wholesalers or jobbers are located, also from the aforesaid warehouses to purchasers located in foreign countries. In the course and conduct of its said business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations likewise selling merchandise consisting of tablecloths, bed spreads, toweling and similar linen and cotton products in interstate commerce between and among the various States of the United States and foreign countries.

PAR. 2. That respondent, Barth & Guttman, Inc., for more than one year last past, in the course and conduct of its business as described in paragraph 1 hereof, as a means of inducing retail merchants to purchase its products has adopted as a trade name "The New England Manufacturing Company" when in truth and in fact the said respondent does not now own or, during the period covered by this complaint, did it own, operate or control a mill or factory manufacturing the products sold by it; that the use by respondent of the aforesaid trade name tends to and does directly assert or clearly import or imply to a substantial part of the purchasing public that the said merchandise sold by respondent was and is manufactured in mills or factories owned or operated by it, and that the use by the said respondent of the said trade name has the further capacity and tendency to mislead and deceive customers and prospective customers into the erroneous belief that by purchasing said product from the said respondent all middlemen's profit is eliminated and the purchasers thereby save the amount of such profits, all of which tends to and does cause such customers to purchase the products of the respondent in said belief.

Complaint.

8 F. T. C.

PAR. 3. That respondent, Barth & Guttman, Inc., trading as aforesaid, for more than one year last past, in the course and conduct of its business as described in paragraph 1 hereof, as a means of inducing retail merchants to purchase its products, has caused stationery or letterheads to be prepared and used by it in the conduct of its correspondence, in soliciting and selling its merchandise in interstate commerce to purchasers thereof located in the various States of the United States, on which said stationery or letterheads, in addition to its said trade name "The New England Manufacturing Company," was a pictorial representation of a mill or factory, also the following declaration or statement: "Barth & Guttman, Incorporated Sole Owners, 341 Broadway N. Y.;" that the use by respondent on its said stationery or letterheads of the said trade name "The New England Manufacturing Company" together with the pictorial representation of a mill or factory and the words "Sole Owner" as used in connection therewith, all of which tend to and do directly assert or clearly import and imply to a substantial part of the trade or purchasing public that the said merchandise sold by respondent was and is fabricated in mills or factories owned or operated by it, when in truth and in fact the said respondent does not now own or, during the period covered by this complaint, did it own, operate or control a mill or factory manufacturing the said product sold by it.

PAR. 4. That respondent, Barth & Guttman, Inc., trading as aforesaid, for more than one year last past, in the course and conduct of its business as described in paragraph 1 hereof, as a means of inducing retail merchants to purchase its products has caused stationery or letterheads to be prepared and used by it in the course of its correspondence in soliciting and selling its merchandise in interstate commerce to purchasers thereof located in various States of the United States, on which stationery or letterheads the said respondent simulated the pictorial representation of the mill or factory as the same appears on the stationery of the Monument Mills, a competitor of said respondent in the sale of tablecloths, bed spreads, towel-
eling, and similar linen and cotton products, and the said respondent on its said stationery or letterheads did also simulate the type and general arrangement of the subject matter as appearing on the stationery or letterheads of its said competitor, the Monument Mills, all of which has the capacity and tendency to mislead and deceive its customers and prospective customers into the erroneous belief that the said respondent owns, operates or controls the mill or factory of its said competitor, or that the respondent and its competitor, Monument Mills, are one and the same, and that said simulation further has the capacity and tendency to create confusion in the

mind of customers or prospective customers, tending to divert trade to the respondent that would otherwise go to the Monument Mills, the said Monument Mills being in truth and in fact a manufacturer and vendor of products similar to those sold by respondent.

PAR. 5. That the above acts and practices of respondent are all to the prejudice of the public and of 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Barth & Guttman, Inc., doing business under the name and style of "The New England Manufacturing Company," charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having made its appearance by its attorneys, Leight & Neckritz, of New York, N. Y., and having filed its answer wherein it denied and denies certain of the allegations in the complaint and admits others, and the respondent having been duly notified thereupon, testimony of witnesses was submitted on behalf of the Commission and by the respondent before William W. Shepard, an examiner for the Commission, and stipulations as to certain of the facts involved were made and entered upon the record at the trial, and counsel for the Commission having filed their brief herein and counsel for the respondent having failed to file any brief on behalf of respondent herein, but by their letter dated January 10, 1923, having informed the Commission that respondent consented and consents that an order to cease and desist may be made and entered herein, and the Federal Trade Commission being now fully advised in the premises and upon consideration thereof makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation incorporated under the laws of the State of New York, July 20, 1910, having its executive offices and warehouses in New York City, N. Y., at 341 Broadway and at Broadway and Grant Street; that respondent began business in 1910 with a capital stock of \$25,000, which was later increased to \$250,000 and subsequently was further increased to the present

Findings.

S F. T. C.

amount of \$1,000,000, consisting of 5,000 shares of common stock of the par value of \$100 per share, and 5,000 shares of preferred stock of the par value of \$100 per share.

Under its original articles of incorporation respondent was not authorized to engage in manufacturing but was authorized and empowered only "to carry on the trade or business of importing, jobbing, buying, selling and otherwise dealing in linens and materials and commodities of a similar nature." On December 26, 1922, said articles of incorporation were amended so as to authorize and empower respondent to engage in manufacturing and in other business not included within the scope of its articles of incorporation prior to that time.

The entire capital stock of respondent corporation is owned and held by G. Barth and Maurice Guttman. G. Barth is president and Maurice Guttman is secretary of said respondent corporation.

During the year 1923 respondent made sales of the various kinds of goods in which it deals in the gross sum of more than \$5,000,000. Respondent employs approximately 50 persons as shipping clerks, receiving clerks and other office help and maintains about 10 traveling salesmen who travel throughout the United States in the sale of respondent's merchandise. Respondent has several thousand customers consisting of wholesalers and retailers throughout the United States.

PAR. 2. Respondent, since its incorporation, has been and still is engaged in the business of purchasing in wholesale quantities bedspreads, tablecloths, toweling and other linen and cotton products from the manufacturers thereof and from jobbers and wholesalers located in various States of the United States, and selling the same to its customers consisting of wholesalers and retail merchants handling and selling said articles; and when respondent receives orders from its customers or from its traveling salesmen for any of its merchandise, it causes said merchandise to be shipped in interstate commerce from its warehouses located in the State of New York to the purchasers thereof in the various States of the United States and in foreign countries. Respondent also causes the merchandise it purchases from manufacturers, wholesalers and jobbers located at various points outside of the State of New York and in other States of the United States and at some points within the State of New York to be shipped direct from the place of such manufacture or purchase to the customer or customers of respondent at points in the various States of the United States.

In the conduct of its business respondent is in competition with other individuals, firms, partnerships and corporations likewise en-

gaged in the business of selling bedspreads, tablecloths, toweling and other linen and cotton products in interstate commerce and in foreign commerce.

PAR. 3. On February 8, 1918, a certificate of incorporation of "The New England Manufacturing Company, Inc.," was filed in the office of the county clerk of New York County, New York, the capital stock of said corporation being fixed at \$100,000 consisting of 1,000 shares of the par value of \$100 each. The said corporation was owned and controlled by G. Barth and Maurice Guttman and was dissolved on April 23, 1923, by the voluntary act of its stockholders. Respondent, after the dissolution of said corporation, "The New England Manufacturing Company, Inc.," adopted as a trade name "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc." and used said trade name in carrying on in part its business of purchasing and selling bedspreads, tablecloths, toweling and other linen and cotton products in interstate and foreign commerce, when in truth and in fact said respondent from the time of its incorporation until the present did not own, control nor operate a mill or factory, neither has it ever owned or operated any manufacturing machinery nor has it ever employed any factory operatives in the conduct of its business. Said trade names, "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," were used by respondent for the purpose of and as a means of inducing its customers and prospective customers, and through them the purchasing public, to purchase its merchandise, and respondent by the use of its said trade names did induce its customers and prospective customers, and through them the purchasing public, to purchase its said merchandise.

It has been and still is respondent's practice to buy from manufacturers, wholesalers, jobbers or others, bedspreads, tablecloths and other linen and cotton goods in the gray and then to send the same to bleachers to be bleached, cut to desired lengths and sizes and hemmed, scalloped or sewed up into the articles desired by respondent, such as bed sheets, tablecloths, towels, bedspreads, pillow slips, napkins and other similar articles sold by respondent. Such goods when bought by respondent were entirely woven and completely manufactured and were finished goods; that respondent, by contract, procured others to bleach said manufactured cloth purchased by it in the gray, to cut the same and make bedspreads, pillow slips, tablecloths, towels and other articles therefrom; that respondent did not perform any work or process or act of manufacture upon said articles; that in one instance respondent purchased 125 bales of cotton which it caused to be shipped from the United

Findings.

S F. T. C.

States to manufacturer at Ruckersdorf, Czechoslovakia, and by said manufacturer to be woven and manufactured into a cloth known as "ticking," used for making bed ticks and pillows, which manufacturing was performed by said manufacturer for respondent at a fixed price per yard of cloth manufactured. Respondent had and has no interest in the mills or factories so used, and its business with the manufacturer was and is by contract entirely.

Since the incorporation of respondent, there has been but one place of business, one set of accounts, one office equipped and provided by bookkeepers, clerks and salesmen and all requirements used by respondent. There never has been any separate office, store, place of business, accounts or employees of "The New England Manufacturing Company" or of "The New England Manufacturing Company, Inc.," or of respondent trading as "The New England Manufacturing Company" or as "The New England Manufacturing Company, Inc."

PAR. 4. Respondent, trading as "The New England Manufacturing Company" or as "The New England Manufacturing Company, Inc.," has caused stationery or letterheads to be prepared and it has used said stationery or letterheads in the conduct of its correspondence in soliciting and selling its merchandise in interstate commerce, on which stationery or letterheads in addition to its said trade name "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc." is a pictorial representation of a mill or factory followed by the statement, "Barth & Guttmann, Inc., Sole Owners, 341 Broadway, New York."

The use by respondent on its said letterheads of the trade name "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," together with the picture of the mill or factory and the words "Sole Owners," tends to and does assert to its customers and prospective customers that the merchandise handled by respondent was and is fabricated in mills or factories owned or operated by it, when in truth and in fact said respondent never has owned or operated any mill or factory manufacturing bedspreads, tablecloths, toweling or other linen or cotton products. The said letterheads so used by respondent in its said business had the capacity and tendency to mislead and deceive its customers and prospective customers and the public into the belief that respondent was and is a manufacturer of bed spreads, tablecloths, toweling and other similar linen and cotton goods sold by respondent and by respondent caused to be transported in interstate commerce.

PAR. 5. The Monument Mills were incorporated in 1850. They are located at Housatonic, Mass., and have offices and sales room in New York City for the purpose of transacting business and selling products. Said Monument Mills have been and are now engaged in the manufacture of bedspreads and cotton yarns but do not engage or trade in other kinds of merchandise in which respondent trades. In the selling of bedspreads only do said mills compete with respondent. For a number of years respondent has done business with the said Monument Mills, purchasing from them bedspreads which subsequently were shipped from said mills to respondent's customers in all the different States of the United States. In instances where respondent caused the bedspreads, tablecloths, toweling or other similar linen or cotton goods to be shipped or transported direct from the factory, mill or warehouse of the party from whom respondent had purchased the same to respondent's customer or customers in other States to whom respondent had sold such goods under its trade names, "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," respondent caused to be stamped upon its order to the manufacturer, wholesaler or jobber from whom it purchased such goods the following shipping instructions: "Erase All Mill Marks. Mark Goods and Bill-of-Lading from The New England Manufacturing Company, Inc.," which said instructions were carried out and fulfilled by the removal of all mill marks from the goods and by marking the same as requested as having been shipped by "The New England Manufacturing Company, Inc.," and by causing the bill-of-lading or express receipt for said shipment to state that the goods were shipped from "The New England Manufacturing Company, Inc.," when in truth and in fact the said goods were shipped from the factory, mill or warehouse of the manufacturer, wholesaler or jobber from whom respondent had purchased the same.

All purchases of merchandise by respondent from the Monument Mills or other manufacturers, wholesalers or jobbers, whether ordered in the names of "Barth & Guttman, Inc.," or "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," were paid for by said Barth & Guttman, Inc. The said trade names, "The New England Manufacturing Company" and "The New England Manufacturing Company, Inc.," have been used by respondent for approximately 10 years and as used by respondent on its letterheads had the capacity and tendency to mislead and deceive the public into the belief that respondent was and is a manufacturer of bedspreads, tablecloths, toweling and other similar linen and cotton goods.

Findings.

8 F. T. C.

The use by respondent of the word "manufacturing" in its said trade names, "The New England Manufacturing Company" and "The New England Manufacturing Company, Inc.," upon letterheads used by it and upon order blanks used by it in the conduct of its business, had the capacity and tendency to mislead and deceive the public into the belief that respondent was and is a manufacturer of bed spreads, tablecloths, toweling and other linen and cotton goods.

The use by respondent of the word "manufacture" in its said trade names "The New England Manufacturing Company" and "The New England Manufacturing Company, Inc.," upon its letterheads used in the conduct of its business in effecting sales in interstate commerce in connection or association with the removal of all mill marks from goods not manufactured by respondent, and the causing by respondent of the issuance of bills-of-lading and express receipts in the names of "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," as shipper, had the capacity and tendency to mislead and deceive the public into the belief that respondent had manufactured the bed spreads, tablecloths, toweling and other linen and cotton goods so sold, marked, shipped and transported in interstate commerce.

Par. 6. Respondent, trading as "The New England Manufacturing Company" and "The New England Manufacturing Company, Inc.," in conducting its business as set forth in preceding paragraphs, has caused stationery and letterheads to be prepared and has used said stationery or letterheads in its correspondence with customers in selling its merchandise in interstate commerce, on which stationery or letterheads the respondent simulated the pictorial representation of the mill or factory as it appears on the stationery of the Monument Mills located at Housatonic, Mass., and which mill is a competitor of respondent in the sale of bed spreads. Respondent did also simulate on its stationery or letterheads the type and general arrangement of the subject matter appearing on the stationery of said Monument Mills. The simulation by respondent of the pictorial representation of said Monument Mills on its said stationery had the capacity and tendency to mislead and deceive its customers and prospective customers and the public into the belief that respondent is the owner or operates the said mill or factory of said Monument Mills. Said simulation has furthered the capacity and tendency to divert trade to respondent which otherwise would have gone to said Monument Mills, said mills being in truth and in fact the manufacturer and seller to respondent of some of the merchandise sold by respondent to its customers.

Respondent discontinued the use on its stationery or letterheads of the pictorial representation of the mill or factory of said Monument Mills after the complaint herein was served upon it. The last use by respondent of said pictorial representation upon its letterheads shown by the record was on September 10, 1924.

CONCLUSION.

That the acts, practices and activities of respondent hereinabove set forth in the foregoing findings as to the facts, constitute and are unfair methods of competition in commerce and constitute and are violations of Section 5 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 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 (38 Stat. 717), 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, Barth & Guttman, Inc., its agents, representatives, servants and employees, do cease and desist from directly or indirectly:

1. Doing business or trading in or selling bed spreads, tablecloths, toweling or any other linen or cotton goods under the name or style of "The New England Manufacturing Company," or "The New England Manufacturing Company, Inc.," or any other trade name which includes the word "Manufacturing," or any word or words of like import, unless and until said respondent actually owns or operates a factory or mill in which bed spreads, tablecloths, toweling or other linen or cotton goods sold by it are manufactured.

2. Advertising, describing, labeling, marking or representing in any manner or form that respondent is the manufacturer of the bed spreads, tablecloths, toweling or other linen or cotton products which it sells or offers for sale, unless and until it is in truth and in fact a manufacturer of said products.

3. Using the name "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," or the word "Manufacturing" or any word or words of like import or any

Order.

S F. T. C.

words, phrases or sentences upon the order blanks, letterheads or any other literature distributed by it in the course of its business which indicate or create the impression that said respondent manufactures the bed spreads, tablecloths, toweling or other linen or cotton goods sold or offered for sale by it, unless and until respondent does actually manufacture said articles.

4. Using the picture or pictorial representation of a factory or mill, either alone or in conjunction, with the name "The New England Manufacturing Company" or "The New England Manufacturing Company, Inc.," or the word "Manufacturing" or any word or words of like import upon its order blanks, letterheads or other stationery or on any literature distributed by it in the course of its business which indicate or create the impression that respondent manufactures the bed spreads, tablecloths, toweling or other linen or cotton articles which it sells or offers for sale, unless and until said respondent does actually manufacture said articles.

And it is further ordered, That respondent shall within sixty days after date of 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 this order has been conformed to and complied with.

Complaint.

IN THE MATTER OF
SANDOW TOOL COMPANY.

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

Docket 1240—March 5, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of steel rulers and other tools had long stamped the same with the initials of its corporate name "B. & S." as a trade-mark and brand, and had established a widespread and favorable reputation as a manufacturer of such products, and said mark and brand by reason of the long-continued use thereof and by means of advertising had come to identify its products to the public as having been made by it; and thereafter a competitor marked and branded its rulers with the same letters, in the identical style and manner, with the effect of misleading and deceiving the purchasing public and of inducing them to buy its aforesaid products as and for those of said corporation:

Held, That such appropriation of the trade-mark of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. L. B. Perkins for the Commission.

Mr. John Boyle, Jr., of Washington, D. C., 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 Sandow Tool Company, a corporation, more particularly hereinafter described, and 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, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sandow Tool Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal or executive offices located in the city of New York, in said State, and with its manufacturing plant located in the city of Rochelle Park, in the State of New Jersey. Respondent is now, and for more than two years last past has been engaged in the manufacture and sale in interstate commerce of brass electrical light fixtures, and various and numerous small machinist's tools, including calipers, dividers, gauges, nail sets, center punchers, tempered steel rulers, universal