

Complaint.

IN THE MATTER OF

• FURNITURE MANUFACTURERS SHOW ROOMS, INC.

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

Docket 1191—October 2, 1925.

SYLLABUS.

Where a corporation engaged in the sale at retail in and from Philadelphia of furniture which it purchased from the manufacturers and resold at a profit, and neither owning, nor operating any furniture factory nor representing any furniture manufacturer, used and featured such statements and slogans in advertising its aforesaid furniture as "Direct from the Factory," "Buy Furniture at Factory Prices," and "Six Big Factory Floors Crowded," together with depictions of a factory building, and featured the statement and slogan "Direct Factory Representatives" upon its letterheads, bill heads, business cards and other business stationery; with the effect of misleading and deceiving a substantial part of the purchasing public into believing that persons buying from it were dealing directly with the manufacturer and thereby saving the middleman's profit, and with the capacity and tendency to divert trade from and otherwise injure competitors who as manufacturers sold their products direct to the consumer and competitors who neither manufactured the furniture dealt in by them nor represented themselves as so doing:

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Morgan J. Doyle for the Commission.

Mr. Jacob Rosen 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 the Furniture Manufacturers' Show Rooms, Inc., 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:

Charge I.

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania with its principal office and place

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of business in the city of Philadelphia, in said State. It is, and at all times hereinafter mentioned has been engaged in the sale of furniture at retail to purchasers located at points in various States of the United States. It causes said furniture when so sold to be transported from its 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 its 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 its aforesaid business respondent has caused advertisements offering its 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 statements and slogans "Direct From the Factory," "Buy Furniture at Factory Prices," and "Six Big Factory Floors Crowded," together with depictions of a factory building. Respondent likewise causes the statement and slogan "Direct Factory Representatives" to be prominently displayed upon its letterheads, billheads, business cards, and other stationery and trade literature used by respondent and by its salesmen and other agents and employees in and about soliciting customers for and making sales of respondent's said furniture.

PAR. 3. The statements or slogans as used by respondent in the manner set out in paragraph 2 hereof, signify to and are 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 it 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 statements or slogans so used by respondent are false and misleading and have 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 it manufactures the furniture which it 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 respondents 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.

Charge II.

PARAGRAPH 1. Further in the course of its said business set out in Charge I hereof, respondent has caused advertisements 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 set forth depictions and descriptions of certain furniture offered for sale by it in connection with the word "mahogany", all in a manner calculated to mislead and deceive, and which has the capacity and tendency of misleading and deceiving the public into the belief that the furniture so depicted and described is made of genuine mahogany wood, whereas in fact said furniture is made of woods other than mahogany and in imitation of mahogany wood.

PAR. 2. There are a number of dealers in furniture in competition with respondent in the sale of furniture in interstate commerce who offer for sale and sell furniture made of genuine mahogany. There are also a number of dealers in furniture in competition with respondent in the sale of furniture in interstate commerce who offer for sale and sell furniture made of woods other than mahogany in imitation of mahogany wood, who do not represent such furniture to be made of mahogany.

PAR. 3. 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, the Federal Trade Commission issued and served a

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complaint upon the respondent, Furniture Manufacturers Show Rooms, Inc., charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondent, Furniture Manufacturers Show Rooms, Inc., having made answer and entered its appearance, hearings were had before W. W. Sheppard, the examiner theretofore duly appointed, and this proceeding came on for final hearing; and the Commission having fully considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO FACTS.

PARAGRAPH 1. That the respondent, Furniture Manufacturers Show Rooms, Inc., is a corporation organized under the laws of the State of Pennsylvania and having its principal office and place of business in the city of Philadelphia, State of Pennsylvania.

PAR. 2. That the respondent, Furniture Manufacturers Show Rooms, Inc., is and for many years has been engaged in the sale of furniture at retail to purchasers located in various States of the United States, and respondent causes such furniture, so sold, to be transported from Philadelphia, Pa., through and into other States of the United States, and then and there to be delivered to the purchasers thereof, at their respective points of location. Respondent carried on such business in direct and active competition with other persons, firms and corporation likewise engaged in the sale of furniture in interstate commerce.

PAR. 3. That in the conduct of said business, respondent, for the purpose of inducing persons to deal with it, has caused advertisements offering its furniture for sale, to be inserted in newspapers of general circulation in the United States, and in which advertisements respondent caused to be prominently displayed the statements and slogans "Direct from the Factory," "Buy Furniture at Factory Prices," and "Six Big Factory Floors Crowded," together with the depictions and picturizations of a factory building. Respondent also caused the statement and slogan "Direct Factory Representatives" to be prominently displayed upon its letterheads, billheads, business cards, and other business stationery.

PAR. 4. That respondent, Furniture Manufacturers Show Rooms, Inc., has not owned or operated, and does not now own or operate any factory wherein furniture is manufactured, nor was nor is respondent the direct representative of any furniture manufacturer, but the furniture offered for sale and sold by respondent was and is purchased by respondent from others who manufactured it, and respondent resold and resells, such furniture to the public, at retail, and at

a profit to itself; that during the entire business life of respondent, it has sold its furniture at retail to purchasers and has never sold to wholesalers or jobbers.

PAR. 5. That the use by respondent, Furniture Manufacturers Show Rooms, Inc., of the slogans or statements "Direct from the Factory," "Buy Furniture at Factory Prices," and "Six Big Factory Floors Crowded," and other similar statements, in the manner and under the circumstances hereinbefore set out, had and has the tendency and capacity to, and did and does mislead and deceive a substantial part of the purchasing public into the erroneous belief that respondent is a manufacturer of the furniture in which it deals, and that persons who purchase furniture from respondent are buying direct from the manufacturer and are thereby saving unto themselves the middleman's profits.

PAR. 6. There are among respondent's competitors mentioned in paragraph 2 hereof, those who manufacture furniture and sell it direct from manufacturers to the consumer; there are others among respondent's aforesaid competitors who do not manufacture furniture, but who do not, by advertisements or otherwise, pretend to be the manufacturers of the furniture they offer for sale and sell, and the acts and practices of respondent, as mentioned hereinabove, have the capacity and tendency to divert trade from and otherwise injure said competitors.

PAR. 7. That the acts and practices of respondent hereinbefore set out interfered with and operated as a restraint upon interstate commerce in furniture.

CONCLUSION.

That the acts and things done by respondent, Furniture Manufacturers Show Rooms, Inc., as set out in the above findings as to the facts, constitute unfair methods of competition in interstate commerce, in 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 of the respondent and the evidence, and the Commission having made its findings as to the facts with 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,"

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Now, therefore, it is ordered, That the respondent, Furniture Manufacturers Show Rooms, Inc., and its officers, agents and employees, cease and desist from making any representations, through advertisements, circulars, business stationery, or in any manner whatsoever—

(1) That it manufactures the furniture it sells or offers for sale, or that it is the owner of, or controls, a factory or factories wherein furniture is manufactured, unless and until it actually owns and operates, or directly and absolutely controls such factory, or factories, and does, in fact, manufacture the furniture which it sells or offers for sale, or

(2) That the furniture offered for sale, or sold, by it comes directly from the manufacturer to the purchaser, or that it sells furniture "Factory to You," unless and until said statements be, in fact, true.

It is further ordered, That respondent file a report in writing with the Commission within sixty days from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

Syllabus.

IN THE MATTER OF
HARRIET HUBBARD AYER, INC.

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

Docket 1148—October 7, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of cosmetics, and in the sale thereof chiefly to retail dealers; in pursuance of a policy directed to the observance of the prices fixed by it for the sale of its products at retail, which prices it incorporated in price lists sent to retail dealers and to the trade and also in circulars placed in the containers of its products, and printed on the invoices rendered to dealers and customers, and which policy it made generally known to customers and the trade by letters, circular letters, and salesmen's interviews, together with its purpose to refuse further sales to those who did not respect the same;

- (a) Requested dealer customers, and required its own representatives, to report instances of price cutting to it;
- (b) Advised dealers reported to it as cutting prices, that they had been so reported, that it would not countenance such practice, and that it refused further orders from dealers who persisted therein, and sent notices to reporting customers of action taken by it as above set forth, together with requests for prompt advice as to further price cutting by offending dealers;
- (c) Investigated cases of price cutting brought directly to its attention through advertisements and price lists of customers by communicating with the price cutters and other customers;
- (d) Refused further sales to price cutting dealers, or to those supplying the same, pending the giving of assurances that such dealers would thereafter maintain the desired prices;
- (e) Filled orders from persistent price cutters without filling the same, at times advising such price cutters that it regarded them as undesirable customers, and at other times without comment;
- (f) Sought and received assurances, agreements or understandings from price cutters, in which the offending dealers undertook thereafter to respect its prices, as a condition precedent to further business dealings; and
- (g) Sought and secured such agreements in localities where price cutting had been reported, either between itself and the various dealers, or between the dealers themselves;

With the result that dealers sold its products to consumers at the uniform prices fixed by it, and were prevented from selling the same at such lower prices as they might consider warranted by their respective selling costs and trade conditions generally, and competition between them in respect of its products was thereby suppressed:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.