

Complaint

IN THE MATTER OF

M. GOLDBERG, AN INDIVIDUAL DOING BUSINESS
UNDER THE TRADE NAME AND STYLE FACTORY-
TO-YOU FURNITURE STORE

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

Docket 1152—March 8, 1926

SYLLABUS.

Where an individual engaged in the purchase of furniture from the manufacturers, and in the sale thereof at retail, and neither owning nor operating any furniture factory,

- (a) Used as a trade name a name which included the words "Factory-To-You Furniture", and featured the same in his advertisements, letterheads, and other business stationery; with the capacity and tendency to mislead and deceive a substantial portion of the consuming public into believing that in dealing with him, they were dealing with the manufacturer directly and eliminating the profits of the middleman, and to divert trade from and otherwise injure furniture manufacturers who sold their products directly to the public, and dealers who purchased the furniture dealt in by them from the manufacturers and resold the same to the public;
- (b) Advertised, offered and sold furniture composed on its exposed surfaces in large part of woods other than walnut or mahogany, as the case might be, as "walnut", "genuine walnut" and "combination walnut", and as "mahogany" and "combination mahogany", respectively, with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public in reference to the composition thereof, to the injury of dealers who truthfully, aptly and accurately disclosed the woods of which the furniture dealt in by them was composed:

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

Mr. Morgan J. Doyle for the Commission.

Mr. Thomas Bluett, of Welsh & Bluett, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual doing business at Philadelphia under the trade name and style "Factory-to-You Furniture Store," and engaged in the sale of furniture purchased by him from manufacturers, to the consuming public at a profit and at substantially prevailing retail prices, with using misleading trade name, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in

interstate commerce, in that respondent for more than a year last past in his newspaper advertisements, and upon his letterheads, bill-heads, business cards and other stationery and trade literature and through his salesmen and other agents and employees prominently displayed the statement and slogan "Factory-to-You," with "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," to the prejudice of the public and respondent's competitors, some of whom manufacture and sell their furniture direct to the consuming public and others of whom who do not in any manner hold themselves out as so doing; and in that respondent in his newspaper advertisements set forth depictions of certain furniture, the woods of which respectively resembled mahogany or walnut and the upholstering of which resembled leather, in connection with the words "mahogany" or "walnut" or "genuine leather," "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 depicted in said advertisements is made of genuine mahogany or walnut wood or is covered with or upholstered with genuine leather as the case may be," to the prejudice of the public and respondent's competitors, a number of whom offer and sell furniture made of genuine mahogany and walnut woods, covered, or upholstered with genuine leather, and a number of whom offer and sell, without misrepresentation, furniture composed of woods and material respectively imitating mahogany, walnut, and leather.

Upon the foregoing complaint, the Commission made the following

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, M. Goldberg, doing business under the trade name "Factory-To-You Furniture Store," charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent, M. Goldberg, having made answer and entered his appearance, hearing was had before W. W. Sheppard, the examiner theretofore duly appointed; evidence, both oral and documentary

was introduced and this proceeding came on for decision, and the Commission having fully considered the record, and being fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent, M. Goldberg, is and since July, 1916, has been engaged in the retail furniture business, with his principal place of business in Philadelphia, Pa. He conducted and conducts said business under the trade name and style of "Factory-To-You Furniture."

PAR. 2. That in the conduct of said retail furniture business respondent made sales of furniture to persons located in various States of the United States, and caused 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 corporations 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 him, inserted advertisements in newspapers of general circulation in the States of Pennsylvania and New Jersey, in which advertisements respondent caused his trade name, "Factory-To-You Furniture," to be prominently displayed. Respondent also made use of letterheads, billheads, business cards, and other business stationery, each and all containing respondent's aforesaid trade name, "Factory-To-You Furniture."

PAR. 4. That respondent, M. Goldberg, has not owned or operated, and does not own or operate any factory in which furniture is manufactured, but the furniture offered for sale and sold by respondent, was 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 himself.

PAR. 5. That the trade name "Factory-To-You Furniture" used by respondent, as aforesaid, is false, deceptive and misleading and has the capacity and tendency to mislead and deceive a substantial portion of the consuming public into the erroneous belief that respondent owns and operates a furniture factory, in which factory he actually manufactures the furniture which he offers for sale and sells, and that persons buying furniture from respondent are buying direct from the manufacturer, thereby eliminating the profits of the middlemen (wholesaler, jobber, and retailer).

Conclusion

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PAR. 6. That the use by respondent, M. Goldberg, of the word "Factory" in his trade name, in the manner and under the circumstances hereinbefore set out, was calculated to mislead and deceive a substantial portion of the purchasing public, by inducing numerous persons to purchase furniture from respondent upon the erroneous belief that respondent was a manufacturer of furniture and was selling his product from manufacturer direct to consumer, and at prices substantially below those at which furniture of like grade and quality would sell in a retail store; that such practices had and have the capacity and tendency to divert trade from and otherwise injure manufacturers of furniture who sell their products direct to the public, as well as dealers who purchase their furniture from manufacturers and resell the same to the public.

PAR. 7. That respondent, M. Goldberg, in the conduct of his aforesaid business advertised, offered for sale, and sold as "Walnut" and as "Genuine Walnut" and as "Combination Walnut" furniture which was composed on its exposed surfaces in large part of woods other than Walnut; and,

Respondent advertised, offered for sale, and sold as "Mahogany" and as "Combination Mahogany," furniture which was composed on its exposed surfaces in large part of woods other than mahogany.

PAR. 8. That the use by respondent of the words "Walnut," "Genuine Walnut," or "Combination Walnut" in the manner aforesaid has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said furniture offered for sale and sold by respondent and described as "Walnut," "Genuine Walnut," or "Combination Walnut" is composed entirely of walnut wood; and the use by respondent of the word "Mahogany" or "Combination Mahogany" in the manner aforesaid has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the said furniture so being offered for sale and sold by respondent and described as "Mahogany" or "Combination Mahogany" is composed entirely of mahogany wood; that such practices have the capacity and tendency to injure dealers in furniture who in offering their furniture for sale in interstate commerce truthfully, aptly and accurately disclose and name the various woods of which such furniture is composed.

CONCLUSION

That the acts and things done by the respondent, M. Goldberg, doing business under the trade name and style "Factory-To-You Furniture" as set out in the above findings as to the facts, constitute unfair methods of competition in interstate commerce, in violation

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Order.

of 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."

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 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,"

Now, therefore, it is ordered, That the respondent, M. Goldberg, do cease and desist—

(a) From carrying on the business of selling furniture under a trade name or corporate name which includes the word "*Factory*" in combination with the words "*To-You*" (as *Factory-to-You Furniture*), or words of like import, and from making representations through advertisements, circulars, business stationery, or in any manner whatsoever, that he is the owner of, or controls, a furniture factory or factories, or that the furniture by him sold comes direct from manufacturer to purchaser, unless and until said statements or representations are, in fact, true.

(b) From advertising, offering for sale or selling any piece of furniture as "Mahogany" or "Walnut" unless all parts of such piece of furniture which are exposed to view when the piece is placed in the generally accepted position for use are made of mahogany wood or walnut wood as the case may be.

(c) From advertising, offering for sale or selling any piece of furniture as "Combination Walnut" or "Combination Mahogany" without naming all of the principal woods used in the making of those parts of such piece of furniture which are exposed to view when the piece of furniture is placed in the position generally accepted for use.

And it is further ordered, That respondent, within sixty days after the receipt of this order, report in writing to the Commission, the manner and extent to which compliance with this order has been made by said respondent.

IN THE MATTER OF
BEACON KNITTING MILLS, INCORPORATED

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

Docket 1321—March 15, 1926

SYLLABUS.

Where a corporation engaged in the sale to jobbers and retailers of knitted garments for infants and children, approximately 70 per cent of which garments were made for it by "home knitters" and "home crocheters", and the balance by concerns owning and operating knitting mills or machines and other equipment; and neither manufacturing any of the merchandise dealt in by it, nor owning, controlling, or operating mills, machines, or factory equipment making such garments, nor with any interest or voice in the management of concerns owning, controlling, or operating such mills, machines, or equipment;

- (a) Used as a corporate name a name which included the words "knitting mills", and featured the same in its advertisements in trade publications, and on its letterheads, bill heads, etc.; and
- (b) Printed prominently a notice on its order blanks to the effect that it would not accept liability for delays and deliveries due to unforeseen conditions relative to labor, supplies, etc., and made such statements as "Manufacturers of Hand Crochet and Machine Made Fancy Knitted Outerwear * * *", and others of similar import, in its advertisements, trade literature, and labels, and in direct dealings with customers and prospective customers;

With the capacity and tendency to mislead and deceive customers and prospective customers into believing that in dealing with it they were making their purchases directly from the manufacturer of the garments and thereby eliminating the profits of middlemen, and obtaining advantages in service, delivery, and adjustment of accounts that could not be had through purchasing such merchandise from jobbers or other middlemen, and to cause retail dealers to represent its garments to the consuming and purchasing public as having been purchased by such dealers directly from the manufacturer, and as being offered to such public with advantages in price and service not possible in the case of goods not so secured, to the prejudice of competitors who in fact manufactured the garments dealt in by them and represented themselves as so doing, and of competitors who did not so do, or so represent themselves:

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

Mr. Henry Miller for the Commission.

Feiner, Maass & Skutch, of New York City, for respondent.