

IN THE MATTER OF

**MILES F. GOODMAN, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE KEYSTONE FURNITURE
COMPANY**

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

Docket 1357—November 1, 1926

SYLLABUS.

Where an individual engaged in the sale of furniture at retail, in advertising the same in newspapers of general circulation and in his catalogues, circulars and other trade literature, designated and described said furniture as "Mahogany" and "Walnut", notwithstanding the fact that the articles in question did not contain the aforesaid woods; with the effect of deceiving a substantial portion of the purchasing public in reference to the composition of the furniture so advertised, offered and sold, and of inducing the purchase thereof in such erroneous belief, and of diverting business from and otherwise injuring and prejudicing competitors dealing in furniture in fact composed of mahogany or walnut and properly and rightfully represented as such, and competitors dealing in furniture resembling in color and general appearance the aforesaid woods, but neither composed thereof nor in anywise so represented:

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

Mr. M. Markham Flannery for the Commission.

Mr. F. Lyman Windolph, of Lancaster, 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 engaged in the sale of furniture at retail to members of the consuming public in various States, and with place of business in Lancaster, Pa., with 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 for about three years preceding the complaint, respondent falsely represented certain articles of furniture so dealt in by him as made of mahogany and walnut wood, respectively, with the effect of causing many members of the consuming public to purchase said articles as and for mahogany and walnut, respectively, and of diverting business from and otherwise injuring and prejudicing competitors dealing in furniture in fact composed of the aforesaid woods and prop-

erly and rightfully so represented by them and competitors dealing in furniture not composed of such woods, though resembling the same in color and general appearance, and in nowise so misrepresented by them, and with the capacity and tendency so to do; all to the prejudice of the public and respondent's competitors.

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, Miles F. Goodman, doing business under the trade name and style, Keystone Furniture Co., charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent, having entered his appearance through his attorney, F. Lyman Windolph, Esq., and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts in this case and in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusions and such order as it may deem proper to enter therein, without the introduction of testimony and presentation of argument in support of same, or in opposition thereto, and the Federal Trade Commission 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 is an individual doing business under the trade name and style Keystone Furniture Co., with his place of business in the city of Lancaster, State of Pennsylvania. He is engaged in the business of selling furniture at retail to members of the consuming public, residing, respectively, 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 Lancaster, Pa., into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of his said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of furniture in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent causes advertisements, describing and offering for sale his said furni-

Findings

10 F. T. C.

ture, to be inserted in newspapers of general circulation in the United States and in sundry sections thereof, and sends by mail to customers and prospective customers among the consuming public residing, respectively, at points in various States of the United States, catalogues, circulars and similar trade literature describing and offering his said furniture for sale. Through aforesaid means respondent secures orders for his said furniture from, and makes sales thereof to, many aforesaid members of the consuming public and makes delivery of the furniture so sold in the manner described in paragraph 1 hereof.

PAR. 3. Respondent, for more than three years last past, in the conduct of his business as aforesaid, has offered for sale and sold, certain articles of furniture as "Mahogany" and certain other articles of furniture as "Walnut", and in his aforesaid advertisements, catalogues, circulars and other trade literature, has caused to be set forth statements and representations to the effect that said articles of furniture are made of mahogany wood and of walnut wood, respectively, whereas in truth and in fact, said articles of furniture so described, offered for sale and sold, as "Mahogany" and "Walnut" contain no mahogany wood or walnut wood, but are made entirely of woods other than mahogany and walnut.

PAR. 4. Respondent for more than three years last past, in the conduct of his business as aforesaid, has issued and continues to issue, semiannually, a large number of circulars from which customers can make selections and order articles of furniture by mail. One of said circulars announced a sale starting on January 18, 1924, as "the greatest money-saving event in the history of the store"; that freight on the purchases made therefrom will be prepaid "anywhere" and request purchasers and prospective purchasers to "order from the illustrations inside", as "they are exactly what you will get". Furniture represented by illustrations in said circular is described as "Mahogany", "Walnut", and "Oak", respectively. No description of other woods or combinations of other woods used in the furniture so described appear therein.

PAR. 5. On or about February 15, 1924, respondent shipped or caused to be shipped to a purchaser at Mount Vernon, N. Y., two articles of furniture selected by said purchaser from aforesaid circular, namely, a chair described on page 3 of said exhibit as a "wind-sor mahogany chair" and a bench described on page 6 thereof as made of "the best grade of mahogany". Shortly after the receipt of these articles by said purchaser, specimens of the wood were "scroll sawed" from the seat of the chair, from the leg of the chair, and from the back thereof and marked respectively, A-1, A-2, and

A-3. From said bench, specimens were also "scroll sawed", one from the brace, one from the frame, and one from a leg, and marked B-1, B-2, and B-3, respectively. These specimens were examined by the United States Department of Agriculture, Forest Products Laboratory, Madison, Wis., and there officially identified as follows: Specimen A-1 was determined to be birch; A-2 sugar maple; A-3 beech; B-1 red gum; B-2 red gum; and B-3 red gum, and no part of either piece of said furniture was made of mahogany wood as advertised.

PAR. 6. The use by respondent in his advertisements, circulars, catalogues and other trade literature, of the words "mahogany" and "walnut" in the manner aforesaid, has the capacity and tendency to mislead and deceive and does deceive a substantial portion of the purchasing public into the erroneous belief that said articles of furniture advertised, offered for sale and sold by respondent as "mahogany" are composed entirely of mahogany wood; and that said articles of furniture advertised, offered for sale and sold by respondent, as "walnut" are composed entirely of walnut wood, and to cause many members of the purchasing public to purchase respondent's said articles of furniture in that belief.

PAR. 7. There are among the competitors of respondent referred to in paragraph 1 hereof, many who offer for sale and sell furniture composed of mahogany wood and furniture composed of walnut wood, and who properly and rightfully represent said furniture to be so composed. There are others of said competitors who offer for sale and sell articles of furniture composed respectively of woods resembling mahogany wood and walnut wood in color and general appearance, and who in no wise represent that said articles of furniture are composed, respectively of mahogany and walnut woods. Respondent's acts and practices all hereinbefore set out have the capacity and tendency to and do divert business from, and otherwise injure and prejudice said competitors.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice and injury of the public and respondent's competitors and are unfair methods of competition in commerce in violation 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

10 F. T. C.

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 a stipulation of facts agreed upon by counsel for the respondent and counsel for the Commission, filed herein, and the Commission having made its findings as to the facts and 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, Miles F. Goodman, doing business under the trade name and style of Keystone Furniture Co., his agents, employees, and successors, do cease and desist from advertising, representing, offering for sale or selling any article of furniture as "Mahogany" or "Walnut" unless all parts of such article 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.

And, it is further ordered, That respondent shall within 30 days after the receipt 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.

Syllabus

IN THE MATTER OF
WISCONSIN WHOLESALE GROCERS' ASSOCIATION
ET AL.

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

Docket 1196—November 3, 1926

SYLLABUS.

Where an association of wholesale grocers, and the officers and members thereof, in pursuance of a common undertaking to cause manufacturers, producers and their respective brokers to confine distribution of products dealt in by them to the so-called regular and legitimate channels of distribution, i. e., channels running from the manufacturer or producer to the so-called legitimate wholesaler to retailer to consumer, and to prevent concerns engaged in the distribution and sale of groceries at wholesale under contract with retailers on a cost plus basis, and other so-called irregular concerns, i. e., manufacturers who sell and retailers who buy without the assistance of the so-called legitimate wholesalers, from purchasing such merchandise at jobbers' prices,

- (a) Discussed and formulated plans at various association meetings for combating irregular concerns and restricting their competition;
- (b) Classified and designated various concerns as irregular and illegitimate channels of distribution and held their competition unfair by reason of such designation;
- (c) Informed each other through their secretary and through their association bulletins circulated by him, of means and methods employed by the various members to accomplish their joint undertaking, and the success thereof;
- (d) Circulated disparaging and derogatory statements concerning the business methods and plans of organization of the aforesaid concerns, for the purpose of inducing manufacturers and brokers not to sell to them and retailers not to affiliate with them;
- (e) Sought to induce manufacturers and brokers to refuse dealings with such concerns by sending and causing to be sent to them protests and objections made in concert by their customers among the members;
- (f) Complained to manufacturers and brokers that said concerns were selling at less than the manufacturer's list price and recognized said price as the proper selling price for the jobber;
- (g) Informed manufacturers and brokers that if they sold to such concerns they could not expect the support and patronage of the so-called legitimate wholesale grocer;
- (h) Canceled orders and refused to do business with brokers and manufacturers unless they would refuse to sell to said concerns.
- (i) Placed orders with manufacturers and brokers on condition that they would not sell to said concerns and refused shipments made in violation of such condition;
- (j) Discriminated and urged discrimination in favor of manufacturers and brokers who acceded to their requests and demands that they cease or refrain from selling said concerns; and