

Syllabus

IN THE MATTER OF

ABRAHAM KRITZER, ARTHUR KRITZER, AUGUSTA
KRITZER, AND CLARA KRITZER

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

Docket 1192. Complaint, June 17, 1924¹—Decision, Nov. 24, 1926

Where the city of Grand Rapids, Mich., had long been known as a large and important center of the furniture manufacturing industry in the United States, furniture there manufactured was extensively advertised, sold and distributed among the trade and purchasing public as "Grand Rapids furniture," and such furniture had come to enjoy a widespread popularity, high reputation and good will, and great demand by the purchasing public, and to be preferred by many to furniture made elsewhere; and thereafter various individuals engaged jointly and in association with one another and also through a corporation organized and owned by them, in the sale at retail in and from New York City of furniture, of which only an unsubstantial and inconsequential amount was made in Grand Rapids; and neither representatives, agents or warehousemen, of any furniture manufacturers, nor at any time selling out the stock of any Grand Rapids manufacturers retiring from business, nor acting in any way in behalf of such manufacturers, nor manufacturers themselves of the furniture dealt in by them, which they purchased outright and in the usual course of commerce from manufacturers or other dealers and resold to the purchasing public as retail dealers, at prices fixed by them, which included their costs and profits and those of the manufacturers;

- (a) Carried on their business and advertised the furniture dealt in by them under such trade names and styles as "Grand Rapids Salesrooms," "Grand Rapids Furniture Co.," "Furniture Manufacturers' Warehouse," and "Furniture Manufacturers' Auction Outlet";
- (b) Represented by means of large and conspicuous display signs and numerous advertisements conspicuously published in newspapers of general circulation that the furniture advertised and sold by them was genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich., and that they offered for sale and sold large quantities of such furniture including hundreds of suites of living room furniture; and
- (c) Similarly represented that they were the manufacturers of the furniture dealt in by them or the warehousemen, representatives, branches or agents of the manufacturers thereof, that they were selling the furniture in question at manufacturers' prices for the account and on behalf of such manufacturers, and that furniture sold and distributed by them came direct from the manufacturers to their own customer purchasers without the intervention of middlemen, thereby eliminating and saving to such customer purchasers the costs and profits of middlemen;

With the effect of misleading and deceiving the purchasing public, and thereby causing many thereof to purchase their furniture, and of unfairly diverting trade from and injuring competitors dealing in furniture made in Grand

¹Amended complaint, Oct. 29, 1924.

Complaint

11 F. T. C.

Rapids and truthfully so advertised and sold, competitors neither dealing in furniture there made nor so representing themselves, and competitor dealers who did not misrepresent themselves as manufacturers, or as branches, warehouses, agents or representatives thereof, or as selling directly from the manufacturer to the consumer to the exclusion of the aforesaid costs and profits, and with the further effect of diverting trade unfairly from manufacturers who sold and distributed their product directly to the consuming public to the exclusion of such profits and costs, in competition with it, and from Grand Rapids furniture manufacturers, and prejudicing and injuring the good will and business thereof:

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

Mr. Morgan J. Doyle and Mr. Henry Miller for the Commission.
Raphael & Randel and Winston & Goddard, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, engaged and mutually interested in selling furniture at retail to purchasers in various States, with various places of business in New York City, and doing business under various corporate organizations and trade names, with using misleading corporate and trade names 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.

Respondents, as charged, being neither representatives nor agents of any furniture manufacturers of Grand Rapids, Mich., nor connected with them in any business way, nor selling furniture direct from the manufacturer to the consuming public, nor at a saving to the purchaser of middlemen's profits, but purchasing the furniture dealt in by them, for the most part made at points other than Grand Rapids, or by Grand Rapids manufacturers, and reselling the same at retail and at a profit, displayed conspicuous signs at their various places of business bearing such corporate or trade names as "Furniture Manufacturers Warehouse," "Furniture Manufacturers Auction Outlet," "Grand Rapids Sales Rooms" and "Chelsea Auction Rooms" and advertised in newspapers and other advertising media, featuring the aforesaid names together with such statements and representations as "Grand Rapids Furniture, Selling Out Entire Factory Outputs, including one of the largest Grand Rapids Manufacturer (retiring)," "We have been appointed by these large factories to sell their entire stock Regardless of Cost. They must have cash," "We are strictly manufacturers' representatives * * *,"

"Manufacturers Sacrifice Sale. 26 Carloads * * *," "Grand Rapids Furniture, In many instances lower than wholesale cost * * *," "* * * Selling Direct to Public, Surplus Stocks of leading Grand Rapids Manufacturers."

Such acts and practices had the capacity and tendency, as charged, to mislead and deceive many of the public into believing respondents to be direct and authorized sales representatives for Grand Rapids furniture manufacturers, offering an opportunity to buy direct from the manufacturers with resulting saving of profits of middlemen, and to induce many of the public to purchase their furniture in such belief, and also to mislead and deceive many of the public into believing the furniture in question to be of that quality and other desirable characteristics long associated in the public mind with furniture manufactured in Grand Rapids, Mich., and to induce the purchase thereof in such belief, and had the further capacity and tendency to unfairly divert business from competitors dealing in genuine Grand Rapids furniture, and from competitors dealing in furniture not there manufactured nor so represented, or as associated therewith, and had the effect of unfairly diverting business from competitors who, as manufacturers, sell their furniture direct to the consuming public, and from competitors who, as retail dealers, sell the furniture dealt in by them without holding themselves out falsely as manufacturers' sales agents or manufacturers' representatives selling their product direct to the consumer at a saving of the profits of middlemen; 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 an amended complaint upon the respondents, Abraham Kritzer, Arthur Kritzer, Augusta Kritzer, and Clara Kritzer, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance and filed their answers herein to said amended complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said amended complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for decision and counsel for the Commission and for the respondents having submitted briefs,

Findings

11 F. T. C.

and the Commission having duly considered the record, and now being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are individuals who, during the past five years, have been engaged as hereinbelow set forth in the business of selling and distributing household furniture at retail at and from sundry stores and places of business maintained by them for said purpose in the city and State of New York. In completing the sales of, and in delivering, their furniture to their customers, respondents caused same to be transported in interstate commerce from said places of business in the city and State of New York into and through various other States of the United States and delivered to the respective customer-purchasers in said other States. Respondents' combined sales of said furniture varied in amounts from \$100,000 to \$400,000 per annum, and at all times during which they carried on said business, each of respondents was in the conduct thereof engaged continuously in commerce between and among several States and in direct, active competition with many other individuals, partnerships, and corporations also engaged in the sale and distribution of household furniture in interstate commerce between and among various States of the United States, particularly the State of New York and States adjacent thereto. Respondents carried on their said furniture business under various and sundry names, as follows: For more than one year immediately prior to and including November, 1923, all of said respondents conducted their said business jointly and in association with, and to the mutual interest of each other, as and under the unincorporated trade names and styles of "Furniture Manufacturers' Warehouse" and "Furniture Manufacturers' Auction Outlet," and also as and under the corporate name of "Kritzer's, Inc.," a corporation under the laws of the State of New York which was organized, and the stock of which was owned, by the respondents who were its directors and constituted its officers, to wit: President, respondent Abraham Kritzer; vice president, respondent Augusta Kritzer; secretary, respondent Clara Kritzer; and treasurer, respondent Arthur Kritzer. Respondents used said trade names and said corporate name in and under which to make the misleading and deceptive representations of their business and furniture as hereinafter set forth. Said trade name "Furniture Manufacturers' Warehouse" was used by respondents under which to operate their said furniture business at premises No. 163 West Nineteenth Street, New York City, N. Y. Said trade name

"Furniture Manufacturers' Auction Outlet" was used by respondents under which to operate their said furniture business at premises No. 110 West Seventeenth Street, New York City, N. Y.; and for more than a year immediately following November, 1923, respondents continued the use of said trade name "Furniture Manufacturers' Auction Outlet" as and under which to carry on said furniture business. The place of business of said "Kritzer's, Inc.," used by respondents as aforesaid was at No. 120 West Twenty-third Street, New York City, N. Y. In carrying on their furniture business in interstate commerce, respondents from January, 1924, to March 10, 1925, also conducted same at premises Nos. 162 to 170 West Twenty-third Street, New York City, N. Y., as and under the unincorporated trade name and style of "Grand Rapids Salesrooms." On or about March 10, 1925, said trade name "Grand Rapids Salesrooms" was changed to the unincorporated trade name and style of "Grand Rapids Furniture Co." and thereafter said furniture business of respondents located at Nos. 162 to 170 West Twenty-third Street, New York City, N. Y., was and still is conducted in and under the said name "Grand Rapids Furniture Co." and under the supervision and management of respondent Abraham Kritzer and as a continuation of the business formerly conducted by respondents under the various other trade names hereinbefore set forth, which business organizations were also under the supervision and management of respondent Abraham Kritzer. Respondent Abraham Kritzer likewise manages and controls the Chelsea Auction Rooms, a corporation organized and existing under the laws of the State of New York, with an authorized capital stock of \$25,000, and respondents use said Chelsea Auction Rooms through and in the name of which to purchase furniture for their said business.

PAR. 2. In the course of carrying on their business under the various and sundry trade and corporate names all as hereinbefore set forth, and through and by means of large and conspicuous display signs and numerous advertisements conspicuously published by them in newspapers of general circulation among the purchasing public, respondents represented to their customers and prospective customers—

(a) That all said furniture advertised and sold by them was genuine Grand Rapids Furniture or furniture manufactured in the city of Grand Rapids, Mich.

(b) That respondents were and are the manufacturers of the furniture in which they dealt, or the warehouseman, factory representative, branch or agent of the manufacturers thereof, and were selling

said furniture at manufacturers' prices for the account and on behalf of said manufacturers.

(c) That said furniture as sold and distributed by respondents comes directly from the manufacturers thereof to respondents' customer-purchasers without the intervention of middlemen, thereby eliminating and saving to such customer-purchasers the costs and profits of middlemen.

(d) That respondents offered for sale and sold large quantities of Grand Rapids furniture, including hundreds of suites of living room furniture.

PAR. 3. In truth and in fact respondents did not manufacture any of the furniture in which they dealt as aforesaid. None of the respondents have ever owned, controlled or operated directly or indirectly any furniture factory or factories in which or by which any of the furniture in which they dealt in their said business was manufactured or produced, and none of respondents have at any time mentioned herein been the representative, agent or warehouseman of the manufacturer of any of their furniture. Respondents have at no time been engaged in selling out the stock of any Grand Rapids manufacturer retiring from business, nor have any of respondents acted in any way for or on behalf of manufacturers of Grand Rapids furniture or other furniture. In the conduct of their said business respondents were at all times herein mentioned retail furniture dealers who purchased their furniture outright and in the usual course of commerce from manufacturers or other dealers and resold said furniture to the purchasing public at prices fixed by them as such retail dealers, which prices included the costs and profits of themselves and the manufacturers. Respondents' stock in trade during all the times herein mentioned consisted principally and almost wholly of furniture which was not genuine Grand Rapids furniture or furniture manufactured or made in the city of Grand Rapids, Mich., but was furniture manufactured at widely scattered points elsewhere than Grand Rapids, Mich. Said stock in trade of respondents at no time contained more than an insubstantial and inconsequential amount (approximately 1 per cent to 3 per cent) of genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich.

PAR. 4. For a great many years prior thereto, and at all times during which respondents have engaged in the business hereinbefore described, the city of Grand Rapids, Mich., has been and still is a large and important center of the furniture-manufacturing industry in the United States, which fact is well known to the purchasing public throughout the United States. The furniture manu-

factured in said city of Grand Rapids is extensively advertised, sold and distributed by the trade and purchasing public throughout the United States, including particularly that portion of the purchasing public served by respondents, as "Grand Rapids furniture" or as furniture manufactured or made in Grand Rapids, Mich.; and said Grand Rapids furniture at all times herein mentioned has enjoyed and still enjoys a widespread popularity, high reputation and good will among, and is well and favorably known and in great demand by, the purchasing public. Many consumers desire to purchase furniture manufactured at Grand Rapids, Mich., or Grand Rapids furniture, in preference to furniture manufactured elsewhere.

PAR. 5. Respondents' representations of their business and furniture as set forth in paragraph 2 hereof are false and misleading, were calculated, have and had the capacity and tendency to, and did, mislead and deceive the purchasing and consuming public and thereby cause many thereof to purchase their furniture from respondents in the erroneous belief that said representations were true in fact.

PAR. 6. There are among the competitors of respondents mentioned in paragraph 1 hereof, many who truthfully advertise and sell, as such, furniture manufactured in said city of Grand Rapids, Mich. There are also many of said competitors who deal in and sell furniture not manufactured in said city of Grand Rapids, Mich., and who do not through trade names, newspaper advertisements or otherwise, represent that such furniture is Grand Rapids furniture or furniture manufactured in said city of Grand Rapids or in any wise connected with the furniture industry thereof. The misleading and deceptive practices indulged in by respondents as hereinbefore set forth, tend to and do unfairly divert trade from and otherwise injure the business of said competitors and are to the prejudice and injury of the public. Said misleading and deceptive practices of respondents also tend to and do unfairly divert trade from the furniture manufacturers of Grand Rapids, Mich., and prejudice and injure the good will and business of said Grand Rapids manufacturers. Among respondents' competitors are many furniture dealers who do not, in carrying on their business, represent themselves as manufacturers, or as branches, warehouses, agents, or representatives of furniture manufacturers, or as selling their furniture directly from the manufacturer thereof to the consuming public to the exclusion of the profits and costs of middlemen; and said misleading and deceptive practices of respondents tend to and do unfairly divert trade from and otherwise injure the business of such competitors. Said misleading and deceptive practices of respondents likewise tend to and do unfairly divert trade from manufacturers of furniture who,

Order

11 F. T. C.

in competition with respondents, sell and distribute their furniture directly to the consuming public to the exclusion of the profits and costs of middlemen.

CONCLUSION

The acts and things done by respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondents' competitors, and are unfair methods of competition in interstate commerce and constitute a 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answers of respondents thereto, the testimony and evidence; and the Commission having made its findings as to the facts with its conclusion that respondents have 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,"

It is now ordered, That respondents Abraham Kritzer, Arthur Kritzer, Augusta Kritzer, and Clara Kritzer, and each of them, their agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(a) Using the words "Grand Rapids" in any trade name or corporate name under which is sold and distributed in interstate commerce any furniture which has not been manufactured in the city of Grand Rapids, Mich.; or representing through newspaper advertisements, signs, business correspondence, or in any other manner whatsoever, that any of said furniture has been manufactured in Grand Rapids, Mich.

(b) Making representations through trade names, corporate names, signs, business correspondence, newspaper advertisements, or in any other manner whatsoever, in connection with the sale and distribution by any of the respondents of furniture in interstate commerce, (1) that respondents, or either of them, are the manufacturers of said furniture or the factory distributors, representatives, agents or warehousemen of the manufacturers of said furniture, and are selling and distributing same directly from the manufacturers

or factory warehouse to their customer-purchasers without the intervention of middlemen; or (2) that the prices at which respondents are offering for sale and selling said furniture are factory prices or manufacturers' prices; unless and until respondents actually own and operate or directly and absolutely control a factory or factories wherein or by which is made all such furniture as offered for sale and sold, or are the direct agents or warehousemen of such factory or factories and are conducting said business as such agents for the account and on behalf of said factory or factories.

It is further ordered, That respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

JACOB A. MILLER AND HARRY TOBIAS, PARTNERS,
DOING BUSINESS UNDER NAME AND STYLE GRAND
RAPIDS SALES COMPANY, GRAND RAPIDS SALES
COMPANY (A CORPORATION)

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

Docket 1193. Complaint, June 17, 1924¹—Decision, Nov. 24, 1926

Where the city of Grand Rapids, Mich., had long been known as a large and important center of the furniture industry in the United States, furniture there manufactured was extensively advertised, sold, and referred to by the trade and purchasing public throughout the United States and particularly by a portion of such public near New York City, as "Grand Rapids furniture," and such furniture had come to enjoy a widespread popularity, high reputation and good will, and great demand by the purchasing public, and to be preferred by many to furniture made elsewhere; and thereafter a corporation, operated and controlled by former members of its predecessor partnership, engaged in the sale at retail in and from New York City of furniture, of which only an unsubstantial and inconsequential amount was made in Grand Rapids; and neither representative nor branch of any furniture manufacturer, nor manufacturer of the furniture dealt in by it, which was not sold directly from manufacturer to consumer to the exclusion of the costs and profits of middlemen, but was purchased by it in the usual manner from manufacturers or other dealers and sold by it as a retail dealer to the public at dealers' prices including the costs and profits of itself and manufacturers;

- (a) Carried on its business under the names "Grand Rapids Sales Company, eastern representative of furniture makers," and "Grand Rapids Show Rooms," and featured said names and statement at its places of business and salesrooms, and on its letterheads, billheads, and other business stationery;
- (b) Falsely represented itself on a sign displayed at its salesroom as "factory representative" of certain Grand Rapids manufacturers thereon named;
- (c) Conspicuously advertised its furniture under its aforesaid names in the daily papers with such statements as "World's best furniture, made in Grand Rapids. A number of leading manufacturers are offering their sample lines together with their regular stocks made for the 1925 season, ordinarily shown at August sales. Are now on exhibition and offered for sale at our wholesale showrooms, direct to retail buyers for cash only at one-half retail prices," "Every suite offered in this great sale is priced only at manufacturers' cost of production which really means lower than wholesale cost," "Public disposal sale of Grand Rapids manufacturers' sample furniture at less than wholesale prices. In offering these wonderful sample stocks of advance showroom suites we present to the public a buying opportunity that is rare. * * *";

¹Amended complaint, Oct. 28, 1924.