

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.

With the capacity and tendency to mislead and deceive the purchasing public in reference to the source of manufacture of the aforesaid furniture, and its own supposed status as a direct representative or branch of Grand Rapids furniture manufacturers, selling genuine Grand Rapids furniture in their behalf directly to the purchasing and consuming public at manufacturers' prices, thereby saving its customers the costs and profits of middlemen, and to cause purchasers to buy its furniture in such erroneous beliefs; and

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

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.

Mr. Frank Weinstein, 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 respondent individuals, partners theretofore engaged in New York City, in the sale of furniture at retail to purchasers in the various States, and respondent corporation, organized under the laws of the State of New York, and successor to said partnership, with the aforesaid individuals as president and treasurer thereof, and similarly engaged, with adopting and using misleading trade and corporate name, misrepresenting business status or advantages, 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 alleged, dealing in furniture made for the most part at points other than Grand Rapids, Mich., and by manufacturers in nowise connected with the Grand Rapids furniture industry, and not buying agents of furniture manufacturers, but purchasing the furniture dealt in by them and reselling the same at retail and at a profit, used and featured such trade and corporate names at their place of business as "Grand Rapids Sales Co." and also there made the representation "Eastern Representatives of Furniture Makers," and featured the aforesaid names in advertise-

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ments in newspapers of general circulation, together with such statements as "Original Factory Samples, World's Best Furniture, Made in Grand Rapids," "Entire \$300,000 Sample Stock Direct to Public," "We must quickly dispose of this great stock * * * to raise cash for the manufacturers," "A Great Furniture Institution, representing America's foremost manufacturers have opened doors to sell Direct to Retail Buyer," "Entire 1924 Sample Lines of America's leading furniture manufacturers for lower than wholesale cost."

Such acts and practices had the tendency, as charged, to deceive the public into believing respondents' furniture to have been manufactured in Grand Rapids, Mich., and to be of the quality and other desirable characteristics long associated in the public mind with furniture there manufactured, and to cause many to purchase the same in such belief, and thus 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 in anywise connected therewith, and had the capacity and tendency to mislead and deceive many among the consuming public into believing that purchasers from respondents were buying directly from the manufacturer and thereby saving the profits of middlemen, and to induce many to purchase respondents' furniture in such belief, thereby unfairly diverting business from competitor manufacturers selling their furniture directly to the consuming public, and from competitor retail dealers who do not falsely hold themselves out as sales agents or representatives of manufacturers offering their furniture at a saving to the consumer of the profits of the middlemen; all to the prejudice of the public and respondents' 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 and an amended complaint upon the respondent Grand Rapids Sales Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent corporation having entered its appearance and filed its answer herein to said complaint and amended complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint and 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 respondent having submitted briefs and waived oral argument, 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Grand Rapids Sales Co. is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business in the City and State of New York. Since April 1, 1924, when it succeeded to the business theretofore conducted by Jacob A. Miller and Harry Tobias as copartners under the trade name and style of Grand Rapids Sales Co., respondent corporation has engaged and is still engaged in the business of selling household furniture at retail to the consuming public, maintaining and operating for that purpose public sales rooms at Nos. 41, 43 and 45 West Thirteenth Street and No. 90 Fifth Avenue, in the City and State of New York. The managing officers and directors of respondent corporation are said Jacob A. Miller and Harry Tobias. Respondent corporation's method of conducting its business was at all times hereinabove mentioned as follows: It offered for sale and sold its furniture to the consuming public at its said sales rooms in New York City; and also through and by means of advertisements of said business and furniture which it caused to be published from time to time in daily newspapers of general circulation among the consuming public throughout the State of New York and States adjacent thereto, respondent corporation induced purchasers and prospective purchasers to come to its said sales rooms and make purchases of its furniture. For the purpose of completing the sales of its furniture to its customers respondent corporation operated on regular continuous schedule its own delivery trucks by which it transported and delivered the furniture so sold by it from its aforesaid places of business in New York City, N. Y., to points within a radius of 100 miles from New York City, and including particularly such points of delivery in the State of New Jersey. Many sales of its furniture were made by respondent corporation to purchasers residing in the State of New Jersey and in delivering the furniture so sold respondent caused same to be transported in interstate commerce from its places of business in New York City, N. Y., into the State of New Jersey and to be delivered to the respective purchasers thereof in the State of New Jersey. Said deliveries of its furniture were made on regular sched-

ule four times per week and served approximately 17 to 19 different New Jersey customers per week. Respondent corporation's total annual sales approximated \$1,000,000 and its sales of furniture delivered by it to said New Jersey purchasers amounted to a minimum of \$30,000 per year. In the course and conduct of such business respondent corporation was at all times hereinabove mentioned, and still is, in direct active competition with many individuals, partnerships and other corporations engaged in the sale and distribution of household furniture to the purchasing and consuming public in commerce between and among various States of the United States, particularly the States of New York and New Jersey.

PAR. 2. In the course of selling, and as a means by which to induce the public to purchase, its furniture, respondent corporation for many months immediately after April 1, 1924, carried on its aforesaid business in the names of "Grand Rapids Sales Company, Eastern representative of furniture makers" and "Grand Rapids Show Rooms," which names and statement it caused to be publicly displayed and set forth in large and conspicuous letters at its places of business and sales rooms and on its letterheads, billheads, and other business stationery which it used in the course of making sales to the public. It also publicly displayed at its sales rooms a sign bearing the statement "Factory representatives of Luce Furniture Co., Sligh Furniture Co., Widdicomb Furniture Co." And as a further means by which to induce the public to purchase its furniture respondent corporation during the same time caused to be published many large and conspicuous advertisements of its furniture in daily newspapers of general circulation among the consuming public throughout various States, particularly the States of New York and New Jersey, in which advertisements it named, represented and described its business and the furniture in which it dealt by the following names and statements of similar import:

(a) "Grand Rapids Sales Company. 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."

(b) "Grand Rapids Sales Company, World's Best Furniture, Made in Grand Rapids. Every suite offered in this great sale is priced only at manufacturers' cost of production which really means lower than wholesale cost."

(c) "Grand Rapids Showrooms Furniture. This sale offers an opportunity to purchase Advance Styles Priced One-half Regular Cost."

(d) "Grand Rapids Sales Company. Public disposal sale of Grand Rapids Manufacturers' sample furniture at less than wholesale prices. In offering those wonderful sample stocks of advance showroom suites we present to the public a buying opportunity that is rare. Among the furniture offered for sale are great quantities of prize suites that have been awarded high honors for beauty and quality."

For the advertisement of its names and business as aforesaid, respondent corporation expended from \$2,000 to \$2,500 per week.

PAR. 3. For a great many years prior to and at all times since respondent corporation and its predecessors in business have engaged in the business hereinabove 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. There are approximately 60 furniture factories located in said city of Grand Rapids, the combined annual production of which factories is estimated to be of the approximate value of \$45,000,000. The furniture manufactured in said city of Grand Rapids is extensively advertised, sold and referred to by the trade and purchasing public throughout the United States, including particularly that portion of the purchasing public served by respondent corporation, as "Grand Rapids Furniture" or furniture manufactured or made in Grand Rapids, Mich.; and said 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. 4. The use by respondent corporation of its corporate name and said trade name and advertising statements all as set forth in paragraph 2 hereof, are calculated, have and had the capacity and tendency to mislead and deceive the purchasing public into, and to cause purchasers to buy respondent corporation's furniture in, the erroneous belief—

(a) That all said furniture offered for sale and sold by respondent corporation was manufactured in the aforesaid city of Grand Rapids, Mich., and is genuine Grand Rapids furniture;

(b) That respondent corporation is a direct representative, agent, or branch of furniture manufacturers who are located in Grand

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Rapids, Mich., and who are the manufacturers of the furniture comprising respondent corporation's stock in trade, and that respondent corporation is selling and distributing said furniture as such agent or branch for and on behalf of said manufacturers and directly from such manufacturers to the purchasing and consuming public at said manufacturers' prices and without the intervention of middlemen, thereby eliminating and saving to its customers the costs and profits of middlemen.

In truth and in fact during all of the time aforesaid representations were made by respondent corporation its stock in trade, which it advertised and sold as stated above, consisted principally and almost wholly of furniture which was not 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 contained only an insubstantial and inconsequential amount of genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich. Respondent corporation is not and never has been the manufacturer of any of its furniture in which it dealt or the representative, branch, or agent of said Luce Furniture Co., Sligh Furniture Co. or Widdicomb Furniture Co., or any other manufacturer of Grand Rapids furniture or other furniture. Respondent corporation is a retail dealer or middleman and purchased its stock in trade in the usual manner from manufacturers or other dealers, and said furniture dealt in by it was never sold directly from manufacturer to the consuming public without the intervention of middlemen or to the exclusion of the costs and profits of middlemen, but same was at all times herein mentioned sold by respondent corporation as a retail dealer to the public at dealers' prices which included the costs and profits of itself and of the manufacturers.

PAR. 5. There are among the competitors of respondent corporation 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 or otherwise represent that such furniture is Grand Rapids furniture or furniture manufactured in said city of Grand Rapids or in anywise connected with the furniture industry thereof. The misleading and deceptive practices indulged in by respondent corporation 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

respondent corporation also tend to and do 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 respondent corporation's competitors are many furniture dealers who do not in carrying on their business represent themselves as manufacturers or as branches, agents or representatives of furniture manufacturers or as selling their furniture directly from the manufacturer thereof to the consumer to the exclusion of the profits and costs of middlemen; and said misleading and deceptive practices of respondent corporation tend to and do unfairly divert trade from, and injure the business of, such competitors. Said misleading and deceptive practices of respondent corporation likewise tend to and do unfairly divert trade from manufacturers of furniture who in competition with respondent corporation 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 the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent corporation's 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 complaint and amended complaint of the Commission, the answers of respondent corporation thereto, the testimony and evidence; and the Commission having made its findings as to the facts, with its conclusion that respondent corporation 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",

It is now ordered, That respondent corporation, Grand Rapids Sales Co., its officers, directors, 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.;

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(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 of furniture in interstate commerce, (1) that respondent corporation is the manufacturer of the furniture which it sells or is the factory branch, representative or agent of the manufacturer thereof; or (2) that any furniture offered for sale or sold by respondent corporation in interstate commerce comes from the manufacturer of such furniture, or such manufacturers' agent to the respondent corporation's customer-purchasers without the costs and profits of middlemen; unless and until respondent corporation actually owns and operates or directly and absolutely controls a factory or factories wherein or by which is made all such furniture so offered for sale and sold, or is the direct agent of such factory or factories and is conducting said business as such agent for the account and on behalf of said factory or factories.

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

ORDER OF DISMISSAL

This proceeding coming on for decision upon the amended complaint, the answer thereto of respondents Jacob A. Miller and Harry Tobias, the testimony and evidence adduced, and briefs of counsel for the Commission and for respondents, and the Commission having duly considered the record and being now fully advised in the premises:

It is ordered, That the amended complaint herein be and the same is hereby dismissed as to respondents Jacob A. Miller and Harry Tobias only.

Complaint

IN THE MATTER OF

F. BURKHALTER, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE ROYAL SOAP COMPANY

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

Docket 1289. Complaint, Feb. 17, 1925—Decision, Nov. 29, 1926

Where an individual engaged in the sale of a soap which was neither medicated nor contained ingredients having a curative and healing effect upon the skin; branded and labeled the same and the wrappers thereof "Royal Medicated Cuticle Doctor Soap", and represented said soap as being medicated and containing various ingredients having the aforesaid effect, in soliciting the sale thereof and advertising the same in newspapers in the communities of his retail dealer vendees; with the effect of causing many of the trade and public to purchase such soap as and for a medicated product possessing curative and healing qualities not possessed by ordinary toilet soap, and of diverting business from competitors dealing in soaps having such qualities, and from competitors dealing in ordinary toilet soaps, and selling the same under truthful representations:

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

Mr. Otto R. Stites and Mr. Alfred M. Craven for the Commission.

Lathrop, Morrow, Fox & Moore and Mr. John S. Bates, of Kansas City, Mo., 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, engaged in the sale of an unmedicated toilet soap to retail dealers in various States and with place of business in Kansas City, with misbranding or mislabeling and misrepresenting product dealt in, 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 preceding the complaint, stamped each cake of the aforesaid soap "Royal Medicated Cuticle Doctor Soap" and so labeled the wrappers thereof, and falsely represented the same to dealers solicited by him as a high-grade toilet soap of the regular value of twenty-five cents per cake, and as medicated and containing ingredients having a curative and healing effect upon the skin, and so advertised said soap in local papers in communities in which he sold the same, the facts being that said soap was of the