

Complaint

IN THE MATTER OF

A. HERSKOWITZ, MORRIS GOLDBERG, AND SAMUEL BELL, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE, BELL CAP 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 1315. Complaint, May 21, 1925—Decision Dec. 8, 1926

Where a firm engaged in the manufacture and sale of shop caps, advertised the same in its price lists and catalogues as "union made shop caps with union labels", notwithstanding the fact that recognition of its shop or factory as a union shop had theretofore been withdrawn, it did not employ union labor, and had no right to advertise that it was conducting a union shop, or to use the union label; with the capacity and tendency to mislead many of the trade and purchasing public into believing that its caps had been made by union labor and to induce the purchase thereof in such belief, and with the result that competitors conducting recognized union shops lost business due to cancellation of orders in many instances and refusal thereof in others, on account of its aforesaid representations, with offers to sell its caps at prices below those of competitors:

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

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

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Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the manufacture of shop caps, not made by union labor, for artisans, craftsmen, and laborers, and in the sale thereof to wholesale and retail dealers in various States, and with place of business in New York City, 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 they, for more than a year preceding the complaint, featured the words "Union Made" upon catalogues, price lists and other trade literature sent to customers and prospective customers, and describing and offering said caps for sale, with the effect of misleading many of the trade and consuming public into believing said caps to have been made by union labor and to purchase the same in such belief and with the capacity and tendency so to do, and to divert business from and otherwise injure and prejudice competitors making and fabricating their caps with

union labor and rightfully representing the same as so made; all to the prejudice of the public and respondent's competitors.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provision 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 issued and served its complaint upon the respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell, copartners, doing business under the firm name and style of Bell Cap Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress. The respondents having entered their appearances and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents before William C. Reeves, an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for decision and the Commission having duly considered the record and 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, A. Herskowitz, Morris Goldberg, and Samuel Bell are now and have been since some time in 1921, copartners, doing business under the firm name and style of Bell Cap Co., and engaged in the business of manufacturing, at the City of New York, State of New York, caps intended to be worn by miners, railroad operatives, and workmen in shops, commonly known as

¹ The complaint contains the following allegations as to the term "Union Made" and the effect of the use thereof:

"The term 'Union Made' means and is understood and taken by the trade and public generally throughout the United States to mean that goods, wares and articles of merchandise in connection with which said phrase is used have been made and fabricated by artisans, craftsmen and laborers who are members of a labor union or unions. Artisans, craftsmen, and laborers in the United States who are members of one or more labor unions number many thousands, and practically all said persons and the members of their families habitually purchase goods, wares and articles of merchandise made and fabricated by members of labor unions in preference to goods, wares and articles of merchandise made and fabricated by persons who are not members of such unions. Further, there are many thousands of persons throughout the United States who are not members of labor unions but who favor and support the objects, aims and purposes of labor unions and who habitually purchase goods, wares and articles of merchandise made by members of labor unions in preference to goods, wares and articles of merchandise made by persons who are not members of such unions."

"shop caps," and in the selling of such caps to jobbers and wholesalers throughout the United States. Respondents solicit business by means of traveling salesmen and by means of printed catalogues and price lists circulated among jobbers and wholesalers, and upon the receipt of orders for such caps ship same into and through States of the United States other than the State of New York in interstate commerce.

PAR. 2. During the duration of the partnership and up to the present time, respondents have had and now have numerous competitors located in the City of New York and other places in the United States engaged in the business of manufacturing and selling shop caps and shipping them in interstate commerce upon orders received into and through States of the United States other than the States of their respective locations. Among such competitors in the City of New York were Klein & Frankfeldt, Metro Cap Co., and A. Arnoff & Sons, all corporations, which concerns consolidated about January 1, 1925, under the name of Klein, Frankfeldt, Arnoff, Inc.

PAR. 3. Shortly after respondents began business as a partnership they procured from the Cloth Hat, Cap, and Millinery Workers' International Union, the right to advertise the caps manufactured by them as union made caps and to affix to said caps the cloth label bearing the name of the Cloth Hat, Cap, and Millinery Workers' International Union, and other words signifying that the cap to which such label is attached is made in a shop recognized by the said union as a union shop. The label above described is copyrighted and is the property of such international union. The recognition by the said International Union of a shop as a union shop is made only when such shop complies with the regulations of the union in regard to hours of labor, sanitation, and other matters, including the employment exclusively of workmen who are members of local unions.

PAR. 4. The respondents, upon receiving recognition, as mentioned in paragraph 3, and the right to use the union label and to advertise that fact, circulated among its customers and prospective customers, consisting of jobbers and wholesalers, certain catalogues and price lists in which they represented that the caps manufactured by them were "Union made shop caps with union label" and "Union made." On or about the 8th day of April, 1922, the union withdrew its recognition of the shop or factory of the respondents as a union shop, and after said date respondents did not employ union labor and had no right to represent or advertise that they were conducting a union shop or to use the union label. Respondents, notwithstand-

ing the loss of their right so to do, continued after said 8th day of April, 1922, and up to long after the issuance of the complaint herein, to advertise throughout the trade by means of price lists and catalogues "Union made shop caps with union labels."

PAR. 5. The term "Union Made" means and is understood and taken by the trade and public generally throughout the United States to mean that goods, wares and articles of merchandise in connection with which said phrase is used have been made and fabricated by artisans, craftsmen and laborers who are members of a labor union or unions.

PAR. 6. The advertisements and representations of the respondents above set forth are and have been since April 8, 1922, false and misleading and have had and have the capacity and tendency to mislead many of the trade and purchasing public into the belief that respondents' aforesaid shop caps were made and fabricated by union laborers, and to induce the purchase of said caps in that belief.

PAR. 7. The competitors of respondents named in paragraph 2 hereof and many other competitors have been, since the 8th day of April, 1922, when respondents ceased to conduct a union shop, conducting union shops with the full recognition of the said Cloth Hat, Cap and Millinery Workers' International Union and the right to use the label of said union. The said false representations and advertising by the respondents mentioned in paragraph 4 hereof have resulted in loss of business to such competitors. In many cases orders placed with such competitors by customers have been canceled and in many other cases customers have refused to purchase, by reason of the representations made by the respondents coupled with their offers to sell caps at prices lower than the prices of such competitors.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors and are unfair methods of competition in 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 of the Commission, and the several answers of the respondents and the evidence introduced and the Com-

mission having made its findings as to the facts and its conclusion that the respondents have 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",

It is now ordered, That the respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell, their agents and employees, cease and desist from advertising or in any manner representing that caps sold or offered for sale by them in interstate commerce are union made, unless they are made by union labor, and in a shop or factory having authoritative recognition as a union shop or factory.

It is further ordered, That the respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell, 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.

By the Commission, Commissioner Humphrey dissenting.

IN THE MATTER OF

**P. PERLMUTTER AND C. W. QUIGLEY, PARTNERS DOING
BUSINESS UNDER THE TRADE NAME AND STYLE OF
P & Q FACTORY DIRECT TO YOU FURNITURE**

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

Docket 1143. Complaint, Mar. 25, 1924—Decision, Dec. 18, 1926

Where a firm engaged in the sale of furniture, which it purchased from the manufacturers and resold to the consuming public as a dealer or middleman and at dealer's prices, including the costs and profits of itself and of the manufacturers, and neither manufacturing furniture dealt in by it, nor owning, controlling or operating any furniture factories, nor selling or distributing such furniture directly from the manufacturers to its customer purchasers without the intervention of middlemen and to the exclusion of the costs and profits thereof; included in its trade name the words "Factory direct to you furniture" and featured the same in its business correspondence, business cards, and newspaper advertisements, and on large and conspicuous signs displayed at its sales rooms and place of business, with the capacity and tendency to mislead and deceive the purchasing public into believing that purchasers from it were dealing directly with the manufacturer and thereby saving themselves the costs and profits of middlemen, and to cause many of them to buy said furniture in such belief, and with the effect of unfairly diverting trade from and otherwise injuring the business of competitors who as manufacturers sold their furniture directly to the consuming public under truthful representations as to their method of distribution, and competitor dealers who did not in any manner represent themselves as manufacturers of the furniture dealt in by them:

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

Mr. Morgan J. Doyle and Mr. Henry Müller for the Commission.
Mr. Samuel G. Schwartz, of Philadelphia, Pa., 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 engaged in the sale of furniture which they bought from the manufacturers and resold at a profit and at substantially prevailing retail prices to purchasers in various States, and with principal place of business in Philadelphia,