

Complaint

IN THE MATTER OF

JACQUES E. GREENBERGER, AND CARRIE GREENBERGER, INDIVIDUALLY AND AS COPARTNERS, TRADING AS BIG G FURNITURE WORKS, AND BIG G FURNITURE WORKS, 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 1242. Complaint, Oct. 31, 1924—Decision, Feb. 10, 1927

Where a firm and a corporation engaged in the sale of furniture at retail, operated as one business by the principal and controlling party in interest in both, and neither manufacturing any furniture, nor owning, controlling or operating any furniture factory, nor factory representatives, agents or branches of the manufacturers of the furniture dealt in by them, which they purchased as middlemen in the usual course of commerce from manufacturers or others and sold to the public at prices fixed and determined by them as dealers; by means of large signs at their place of business, and by their newspaper advertisements and business correspondence represented that they manufactured the furniture dealt in by them and sold the same at manufacturers' prices directly to their customer purchasers to the exclusion of middlemen, thereby saving the former the costs and profits of the latter; with the effect of misleading and deceiving the purchasing public and thereby causing many to purchase their furniture, and of unfairly diverting trade from competitors who manufacture and sell their furniture directly to the consuming public to the exclusion of middlemen, and from competitors who neither manufacture the furniture dealt in by them nor falsely hold themselves out as so doing, and distributing the same directly from manufacturer to consumer to the exclusion of middlemen; to the prejudice and injury of said competitors and the public:

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. Jesse I. Miller, of Washington, D. C., 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, engaged in the sale of furniture at retail to persons in various States, and with principal office and place of business in New York City, and respondent corporation similarly there engaged, and officered and owned by Jacques, Sidney, and Ernst Greenberger, purchasing the furniture dealt in by them

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and reselling the same at a profit to themselves, and not manufacturers, with assuming and using misleading trade and corporate names, 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 for many years past, as charged, conducted their aforesaid businesses under the trade name and style "Big G Furniture Works," prominently displaying said name at their places of business, together with such statements as "Buy direct from factory at wholesale prices," and in their advertisements in newspapers of general circulation likewise featured their aforesaid names together with such statements as "Direct from factory to you," "No middleman's, jobber's, or salesman's commissions are added to the purchase price," "Furniture direct from the factory floor to your floor means savings of 35 per cent to 55 per cent. We are the factory and DO sell everything for the home at wholesale factory prices," and upon their letterheads, billheads and trade stationery and literature featured the aforesaid trade and corporate names.

Such acts and practices had the capacity and tendency, as charged, to mislead and deceive many among the consuming public into believing that the purchasers from respondents were buying directly from the manufacturers of the furniture, and thereby saving the profits of middlemen, and to induce many to purchase said furniture in that belief; all to the prejudice of the public and respondent's competitors, a number of whom as manufacturers, sell their furniture direct to the consuming public and a number of whom as retail dealers do not in any manner hold themselves out as manufacturers of the furniture dealt in by them.

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 respondents Jacques E. Greenberger and Carrie Greenberger, individually, and as copartners, trading as "Big G Furniture Works," and Big G Furniture Works, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed their answers herein to said complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said 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 and 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Jacques E. Greenberger and Carrie Greenberger are copartners doing business as and under the trade name and style of "Big G Furniture Works," with their office and place of business in the City and State of New York. They are, and at all times since prior to July, 1921, have been engaged, as herein-after more fully set forth, in the business of selling and distributing household furniture in commerce from their place of business in New York City, N. Y., to the consuming public throughout various States of the United States, particularly the States of New York and New Jersey. In the course and conduct of said business, respondent individuals are and at all times herein mentioned have been engaged in direct, active competition with many other individuals, partnerships and corporations similarly engaged in the sale and distribution of furniture in commerce between and among various States of the United States.

PAR. 2. Respondent Big G Furniture Works is a corporation organized in July, 1921, and existing under the laws of the State of New York, with its principal office and place of business in the City and State of New York. The business of said respondent corporation is the selling and distributing of household furniture in commerce from its said place of business in New York City, N. Y., to the consuming public throughout various States of the United States, particularly the States of New York and New Jersey. In the course and conduct of its said business respondent corporation is and at all times since July, 1921, has been in direct, active competition with many persons, partnerships and other corporations similarly engaged in the sale and distribution of household furniture between and among various States of the United States.

PAR. 3. Respondents Jacques E. Greenberger and Carrie Greenberger, as said copartners, and respondent corporation Big G Furniture Works have, for more than four years last past, conducted their said businesses as a single unit, jointly and in association with each other maintaining the same office and place of business, which is a furniture store located at and occupying premises Nos. 203 to 207

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East Seventy-sixth Street, New York City, and which joint business is managed, conducted and controlled for and on behalf of all respondents by respondent Jacques E. Greenberger, who is the principal and controlling party in interest in the business of said partnership and is the principal and controlling stockholder of said corporation. Respondents' said place of business, their stock in trade, advertising matter, sales and delivery activities are maintained and operated by them jointly and in such a manner that ostensibly to the public such businesses appear in all respects to be the business of one concern operating under the name of "Big G Furniture Works".

PAR. 4. In the course and conduct of their businesses, as aforesaid, respondents have, at all times since July, 1921, offered for sale and solicited trade for their said furniture through and by means of advertisements which they cause to be published from time to time in daily newspapers of general circulation throughout several States particularly the States of New York and New Jersey and through which advertisements members of the consuming public residing in the State of New Jersey and other States were induced to make purchases of such furniture from respondents. In the conduct of said business, respondents also offered for sale and displayed to the consuming public their furniture at said place of business in New York City, N. Y., and there received, from the consuming public of various States, orders for the purchase of said furniture. Respondents maintained their own delivery trucks by which in filling said orders and in completing the sales of their furniture to their customers they caused said furniture to be transported in interstate commerce from their place of business in New York City, N. Y., to points in various other States of the United States particularly in the State of New Jersey, and to be delivered to their customers in New Jersey and such other States. They also made delivery of furniture to customers residing within the State of New York. Said furniture business of respondents is very large and they sold and delivered large quantities of their furniture in interstate commerce as aforesaid to customers in New Jersey for which purpose they operate their delivery trucks on a regular, continuous schedule. Said business was conducted by respondents in general open competition with manufacturers and all other dealers serving the consuming public in said territory served by respondents.

PAR. 5. Through and by means of large signs publicly displayed at their place of business, and in their newspaper advertisements and business correspondence, respondents for more than three years last past represented to their customers and prospective customers—

(a) That they, the respondents, were and are the manufacturers of the furniture in which they dealt, as aforesaid, and owned, con-

trolled or operated a factory or factories by which said furniture was produced; and

(b) That said furniture was being sold and distributed by respondents at the manufacturers' prices and directly from the manufacturers thereof to their customer-purchasers to the exclusion of middlemen, thereby saving to such customer-purchasers the costs and profits of middlemen.

PAR. 6. In truth and in fact said place of business from which respondents distributed their furniture to the public is not a factory, and neither they nor either of them manufactured any of the furniture in which they dealt as aforesaid. None of the respondents have ever at any time herein mentioned, owned, controlled, or operated any furniture factory nor has either of them been a factory representative, agent, or branch of the manufacturers of the furniture in which they dealt. In the conduct of said business respondents were and are dealers or middlemen, and their stock in trade was purchased by them as dealers in the usual course of commerce from the manufacturers or other dealers and sold by them to the public at dealers' prices or prices fixed and determined by them as such dealers. None of said furniture sold and distributed by said respondents was sold at prices fixed and determined by the manufacturers thereof, or distributed directly from the manufacturers or factory to respondents' customer-purchasers.

PAR. 7. Respondents' representations of their business and furniture as set forth in paragraph 5 hereof are false and misleading and are calculated to and had and have the capacity and tendency to and do mislead and deceive the purchasing public and thereby cause many thereof to purchase said furniture from respondents in the erroneous belief that said representations were and are true in fact.

PAR. 8. There are a number of furniture manufacturers who sell in interstate commerce, and distribute their furniture directly to the consuming public to the exclusion of middlemen, and who do not misrepresent the character of their business or the method of distribution of said furniture. There are also a number of furniture dealers selling and distributing their furniture in competition with respondents who do not in any manner hold themselves out or pretend that they manufacture the furniture in which they deal or that they distribute their furniture directly from manufacturer to consumer to the exclusion of middlemen; and the false and misleading and deceptive practices of respondents as hereinabove set forth have the capacity and tendency to and do unfairly divert trade from above-mentioned competitors and prejudice and injure the business of said competitors and the public.

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CONCLUSION

The acts and things done by the 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 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 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 the respondents Jacques E. Greenberger and Carrie Greenberger, their agents, representatives, servants, and employees cease and desist, in connection with the sale and distribution of furniture in interstate commerce, from directly or indirectly—

(a) Using the slogan "Direct from Factory to You," or any other slogan of similar import, or any statement or representation whatsoever that said Jacques E. Greenberger and Carrie Greenberger, are the manufacturers of said furniture and are selling and distributing same direct from the manufacturer or factory to their customer-purchasers without the intervention of middlemen; or

(b) Making representations or statements in any manner whatsoever that the prices at which said Jacques E. Greenberger and Carrie Greenberger are offering for sale and selling said furniture are factory prices or manufacturer's prices;

Unless and until said Jacques E. Greenberger and Carrie Greenberger own and operate or directly and absolutely control a factory or factories wherein or by which is made all such furniture so offered for sale and sold.

It is further ordered, That respondent Big G Furniture Works, a corporation, its officers, agents, representatives, servants, and employees cease and desist, in connection with the sale and distribution of furniture in interstate commerce, from directly or indirectly—

(a) Using the slogan "Direct from Factory to You," or any other slogan of similar import, or any statement or representation whatso-

ever that said Big G Furniture Works, a corporation, is the manufacturer of said furniture or is selling and distributing same direct from the manufacturer or factory to its customer-purchasers without the intervention of middlemen; or

(b) Making representations or statements in any manner whatsoever that the prices at which said Big G Furniture Works, a corporation, is offering for sale and selling said furniture are factory prices or manufacturer's prices;

Unless and until said Big G Furniture Works 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.

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

M. SAMUELS & COMPANY, INCORPORATED

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

Docket 1374. Complaint, Mar. 30, 1926—Decision, Mar. 22, 1927

Where a corporation engaged in the manufacture of a shoe with a sole composed chiefly of rubber and carbon black and painted and polished so as to resemble the appearance of leather, though containing none, and in the sale thereof, together with other shoes made by it, through a large number of retail stores which it operated, and also by means of mail-orders; stamped and imprinted the word "Tufhide" upon the sole of said shoe and in its advertising and display cards furnished to its retail stores described the same as soled with "Tufhide" soles; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing the material so designated and described to be leather and to cause them to purchase said shoes in such belief, and to divert trade from and otherwise prejudice competitors engaged in the sale of shoes soled with genuine leather, and so described by them to purchasers, and competitors engaged in the sale of shoes neither so soled nor so represented: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Mr. Robert E. Barry, of Washington, D. C., 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, a Delaware corporation engaged in the manufacture of shoes and in the sale thereof through retail stores owned and operated by it, through wholesale and retail dealers, and also direct to the consuming public, in various States, and with principal office and factory in Baltimore, with misbranding or mislabeling 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, for about five years preceding the complaint, respondent stamped and imprinted the word and legend "Tufhide", upon soles containing no leather, attached to many of its shoes, and advertised said shoes in newspapers, magazines and periodicals of general circulation throughout the United States and certain sections thereof, and in circulars distributed among retailers, and the consuming public, as shoes with "Tufhide" soles, with the