

Complaint

IN THE MATTER OF

MORTON F. BAUM AND MARCUS BAUM, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE MICHIGAN SAMPLE FURNITURE CO.

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

Docket 1150. Complaint, Apr. 5, 1924—Decision, Nov. 28, 1927

Where a firm engaged as retail furniture dealers in the sale and distribution of household furniture, and selling their furniture at substantially prevailing retail prices, including the costs and profits of the manufacturers, and of the wholesalers from whom they purchased said furniture, as well as their own costs and profit, and neither manufacturing any of such furniture nor selling the same direct from factory to consumer, nor eliminating middlemen who customarily participate in the marketing of furniture from manufacturer to retailer,

- (a) Represented, described, advertised, offered and sold large quantities of furniture made of woods other than walnut, chiefly gumwood, stained and finished so as to resemble walnut in general appearance and color, as and for walnut, with the effect of causing many of the consuming public to purchase the same as and for genuine walnut furniture; and
- (b) Represented in their advertising matter that they were selling their furniture at prices substantially lower than prevailing retail prices, and in some instances at manufacturer's cost, and direct from the manufacturer at wholesale prices;

With the capacity and tendency to mislead and deceive the consuming public into purchasing such furniture in reliance upon the truth of the aforesaid representations, and with the effect of so doing in the case of a substantial number, and of unfairly diverting trade from competitors engaged in the sale of genuine walnut furniture, under truthful representations, competitors engaged in the sale of furniture finished to resemble the same, but in nowise misrepresented, and competitors engaged in the sale and distribution of furniture at prevailing retail prices without representing the same as offered at less than such prices or at prices eliminating all profits and equal to manufacturing costs only, or as sold and distributed direct from manufacturer to consumer:

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

Mr. Henry Miller for the Commission.

Mr. Samuel J. Houston, of Philadelphia, 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 individual,¹ engaged in the sale of furniture at retail to

¹ See second paragraph of "Report, Findings," etc., below.

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purchasers in various States, and with place of business in Philadelphia, with advertising falsely or misleadingly in misrepresenting business status or affiliation, and product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, purchasing the furniture dealt in by him from manufacturers and wholesalers and reselling the same to the consuming public at a profit and at substantially prevailing retail prices, made such false and misleading statements and representations in his advertisements in newspapers of general circulation, as "Buy direct at wholesale prices," "We represent most of the good furniture factories of the country," "This is your chance to get a new bedroom suite at the factory cost of manufacturing," with the capacity and tendency to mislead and deceive many of the public into believing that respondent sold furniture at prices substantially below prevailing retail prices, and eliminated the profits of one or more middlemen, and in some instances, all profits, and to cause many to purchase the same in such belief.

Respondent further, as charged, in his aforesaid advertisements set forth depictions of certain furniture offered by him in connection with the word "Walnut," in a manner calculated to mislead and deceive and with the capacity and tendency of misleading and deceiving the public into believing the furniture so depicted, made of wood other than walnut, though imitating walnut, to be genuine walnut wood.

The aforesaid alleged acts and practices were, as alleged, all to the prejudice of the public and respondent's competitors, of whom there are a number of retail dealers selling their furniture at prevailing retail prices without in any manner representing the same as offered at substantially lower prices or at prices eliminating all profits and equaling cost of manufacture only, and of whom there are a number dealing in genuine walnut furniture and a number dealing in furniture made of other woods and not in imitation of walnut, who do not represent the same as made of walnut.

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 respondent Morton F. Baum, an individual doing business under the trade name and style Michigan Sample Furniture Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Answer to said complaint was duly filed by Morton F. Baum and Marcus Baum, copartners doing business under the name and style of Michigan Sample Furniture Co., as respondents; and it appearing that said copartners are the owners and operators of the business of said Michigan Sample Furniture Co., Morton F. Baum and Marcus Baum entered of record herein their consent and agreement that said complaint may be considered as having been amended as of the date thereof, so that the parties respondent therein shall by its terms be "Morton F. Baum and Marcus Baum, doing business under the trade name and style of Michigan Sample Furniture Co.," in lieu of "Morton F. Baum, an individual doing business under the trade name and style Michigan Sample Furniture Co.," and that wherever in said complaint the respondent or Morton F. Baum is mentioned or referred to, it shall in lieu thereof be considered as mentioning or referring to Morton F. Baum and Marcus Baum, copartners doing business under the trade name and style Michigan Sample Furniture Co.; that wherever in said complaint the business of said Michigan Sample Furniture Co. is referred to, it may be considered as the business of Morton F. Baum and Marcus Baum; that said complaint as amended may be considered as having been duly and legally issued by the Federal Trade Commission on April 5, 1924, and to have been duly and legally served upon said Morton F. Baum and Marcus Baum as parties respondent therein; that said answer filed herein by Morton F. Baum and Marcus Baum may be considered as the answer of said parties respondent to said complaint as amended, and that the Federal Trade Commission may proceed to final conclusion and issue its orders herein upon said complaint as amended. A hearing for the taking of testimony was held before an examiner of the Federal Trade Commission, theretofore duly appointed, at which hearing a stipulation of facts in lieu of testimony, agreed upon by and between respondents and the attorney for the Commission, was entered of record, whereupon the privileges of filing briefs and presenting oral argument before the Commission was waived by counsel.

And thereupon this proceeding came on for decision; and the Commission having duly considered the record and being now 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 Morton F. Baum and Marcus Baum are and have been for more than five years last past copartners trading under the name and style Michigan Sample Furniture Co., and engaged as retail furniture dealers in the business of selling and dis-

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tributing household furniture to the consuming public with their salesrooms and place of business in the city of Philadelphia, State of Pennsylvania. In carrying on said business respondents solicit trade from, and offer for sale and sell their furniture at retail to, the general consuming public through and by means of advertising leaflets, circulars, and advertisements published by them from time to time in daily newspapers of general circulation throughout several States, and also by means of credit agents, commonly known as purchasing agents, who solicit orders for respondents' furniture from the consuming public. Respondents cause their furniture, when so sold, to be transported in commerce from their said place of business in Philadelphia, Pa., through and into other States, particularly the States of Delaware and New Jersey, to the respective purchasers thereof in such other States; and in so carrying on their business they are, and at all times herein mentioned have been, engaged in interstate commerce, and in direct, active competition with many other individuals, partnerships, and corporations engaged in the business of selling and distributing household furniture in commerce among the several States and to the consuming public of the States of Pennsylvania, New Jersey, and Delaware. Respondents spend annually about \$6,000 in advertising their furniture to the public, and their gross annual sales of furniture amount to approximately \$85,000.

PAR. 2. In the course and conduct of their business as aforesaid, respondents represented, described, advertised, offered for sale and sold large quantities of furniture as and for "Walnut," and thereby caused many of the consuming public to believe said furniture to be composed of walnut wood, and to buy said furniture in such belief; whereas, in truth and in fact, said furniture was not composed of walnut wood, but was made of woods other than walnut, chiefly gumwood, stained and finished so as to resemble walnut in general appearance and color.

PAR. 3. In the course and conduct of their business respondents also represented to their customers and prospective customers, through their aforesaid advertising matter, that they, the respondents, were selling their said furniture at prices substantially less than prevailing retail prices, and in some instances, at prices equal in amount to the cost of manufacturing said furniture; that they were selling and distributing their furniture direct from the manufacturers thereof at wholesale prices, whereas, in truth and in fact, respondents sold said furniture at retail prices substantially the same as the retail price prevailing in the trade for furniture of the kind and quality similar to the furniture dealt in and sold by respondents; and respondents' prices included the costs and profits of the manufacturers and the

wholesalers from whom respondents purchased their furniture as well as the cost and a profit to respondents. Respondents did not manufacture any of their furniture, and the sale and distribution of their furniture was not direct from factory to consumer and did not eliminate the middlemen who customarily participate in the marketing of furniture from the manufacturer to the retailer.

PAR. 4. The representations made by respondents, as set forth in paragraphs 2 and 3 hereof, were misleading, and had the capacity and tendency to mislead and deceive the consuming public into the belief that said representations were and are true in fact, and thereby to cause persons to purchase said furniture in such erroneous belief; and in fact misled and deceived a substantial number of persons into purchasing their furniture in the belief that such representations were true.

PAR. 5. There are a number of competitors of respondents mentioned in paragraph 1 hereof who sell and distribute their furniture in interstate commerce at prevailing retail prices, and who do not in any manner represent that they offer for sale and sell their furniture at prices substantially less than prevailing retail prices, or at prices eliminating all profits and equal to the costs of manufacturing only, or that their furniture is sold and distributed direct from manufacturer to consumer. There are also many competitors of respondents who sell walnut furniture truthfully represented as walnut, and also many who sell furniture finished so as to resemble walnut but who in no wise represent that said furniture is, in fact, made of walnut. Respondents' above-mentioned acts and practices tend to and do unfairly divert trade from said competitors and are to the prejudice and injury of the public.

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 complaint of the Commission as amended by stipulation of respondents, the answer of respondents thereto, the testimony and agreed statement of facts, and the Commission having made its find-

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ings 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 Morton F. Baum and Marcus Baum, their agents, representatives, servants, and employees, cease and desist in connection with the sale and distribution of furniture in interstate Commerce:

(a) From advertising, labeling, describing, offering for sale, and selling as "walnut" any such furniture the exposed parts of which consist, in whole or in part, of wood other than walnut.

(b) From falsely or misleadingly representing in any manner whatsoever that respondents are the manufacturers of any such furniture, or that any such furniture so sold comes directly from the manufacturer to the purchaser, or that the sale price of any such furniture is the wholesale price thereof or is only equal to the cost of manufacturing same.

It is further ordered, That respondents Morton F. Baum and Marcus Baum 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.

Complaint

IN THE MATTER OF
SCHOOL OF APPLIED ARTCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1485. Complaint, Oct. 19, 1927—Decision, Nov. 28, 1927*

Where a corporation engaged in conducting a correspondence school in applied art; in its advertisements, correspondence, and business literature,

- (a) Represented that it would give a special or extra discount of 20 per cent from the regular price of any of its courses to pupils enrolling within a stated limited time, the fact being that the purported reduced prices were its regular, usual prices; and
- (b) Represented that it would give free of charge to pupils taking any of its courses of instruction, an artist's outfit of tools, materials and appliances, to be used in connection with its courses of instruction, and to pupils completing its courses, a set of instruction books covering and relating to the same, the fact being that in both cases the price of the outfit and books was included in the price demanded and received by it for its said courses;

With the capacity and tendency to cause many of the public to subscribe for and purchase its courses in reliance upon the truth of the aforesaid representations, and to take its courses in preference to those of competitors, who do not make misrepresentations as to reductions in prices or the giving of outfits of tools and appliances, books or other things, with their courses, free of charge, and thus to divert business from and otherwise injure and prejudice such competitors:

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

Mr. Alfred M. Craven for the Commission.

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 Michigan corporation, engaged in giving courses of instruction in applied art by correspondence through the mail, and with principal office and place of business in Battle Creek, with advertising falsely or misleadingly in misrepresenting prices and in offering falsely as free, commodities or services charged for in price demanded, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.