

Complaint

11 F. T. C.

IN THE MATTER OF

UNION WOOLEN MILLS COMPANY, RACINE, WISCONSIN,
UNION WOOLEN MILLS COMPANY, JACKSON, MICHIGAN, MAX COHEN

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

Docket 1375. Complaint, Mar. 31, 1926—Decision, Jan. 25, 1928

Where an individual engaged in the manufacture of men's made to measure suits and overcoats in one of the large cities, and in the sale thereof in that and other cities in several near-by States, both directly and through the medium of organizations and corporations owned or controlled by him, and so operated in the matter of selection and purchase of supplies, keeping and handling of accounts, credits, payment of salaries, selection of sites, filling of orders, supervision, preparation of advertising, and otherwise, as to constitute, in effect, a single business, under his control and management; and said corporations; neither owning, operating, controlling nor having any interest in any mill manufacturing cloth, though engaged in competition with manufacturers having such mills, as also with others who did not employ the term "mills" in connection with the manufacture and sale of their products, used the words "Union Woolen Mills Company" as their corporate and trade name, and on their business signs, stationery, billheads, circulars, trade literature, and in their newspaper and other advertising, and in the labels attached to their garments, and on the containers thereof, together, in some instances, with the names of the aforesaid cities; with the capacity and tendency to mislead and deceive and with the effect of misleading and deceiving the consuming public into believing that they owned and operated mills manufacturing the cloth from which the suits and overcoats sold by them were made, and their customers into believing that in purchasing of them they were buying directly from the manufacturer of the cloth and thereby saving the profits of middlemen, and with the capacity and tendency to induce, and with the effect of, inducing many of the purchasing public to deal with them in such belief:

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

Mr. E. J. Hornibrook for the Commission.

Mr. John J. Spear, of Chicago, Ill., 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 Union Woolen Mills Co., of Racine, Wis., respondent Woolen Mills Co., of Jackson, Mich., Wisconsin and Michigan corporations, respectively, and respondent Max Cohen, organizer,

president, and treasurer of the aforesaid companies, with principal place of business at Chicago, but also doing business at Kenosha, Wis., as Union Woolen Mills Co., with adopting or using misleading corporate or trade names, 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.

Respondent corporations, as alleged, organized by respondent Cohen² for the purpose of jointly conducting with him an interstate business in the manufacture of men's clothing and in the sale thereof at retail; and respondent Cohen, at his said Kenosha business;³ maintained at each of their places of business a sign conspicuously setting forth and displaying their aforesaid corporate or trade names, Union Woolen Mills Co., featured the same upon their letterheads, billheads, invoices and other business stationery and labeled the clothing so dealt in by them "Union Woolen Mills Co., Chicago, Milwaukee, Racine, Kenosha, Jackson," notwithstanding the fact that they neither owned, operated nor were interested in any woolen mills whatsoever and sold their clothing at substantially prevailing retail prices for comparable clothing.

Such practices, as alleged, had the effect of misleading and deceiving many of the public into believing that they were owners and operators of woolen mills manufacturing the cloth used by them in the making of their clothing, and that persons buying from them were purchasing directly from the manufacturers of both the cloth and the clothing, thereby saving the profits of middlemen, had the capacity and tendency to cause such effect and to cause many of the public to deal with them and purchase their clothing in such belief, had the result of diverting business from and otherwise injuring and prejudicing competitors, many of whom manufacture the materials from which their clothing is made and sell the same directly to the consumers and others of whom purchase the materials from which their clothing is made from manufacturers and jobbers without in anywise falsely representing themselves as owners or operators of woolen mills in which they manufacture such materials, and had the tendency so to do; all to the prejudice of the public and of respondents' competitors.

² Engaged in the purchase from manufacturers and jobbers, of material for men's clothing, in the bolt, for transportation to the places of business of his aforesaid corporations for display by them for the making of clothes to the order of their customers, in the making of such clothes at Chicago upon orders and measurements there received from said corporations, and in the return of such clothes to them for delivery to such customers.

³ Conducted along the same lines as employed in the case of the two corporations.

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, Union Woolen Mills Co., Racine, Wis., Union Woolen Mills, Jackson, Mich., and Max Cohen, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances by their representative, John J. Spear, esquire, thereupon, testimony of witnesses was submitted on behalf of the Commission, and by the respondents, before Henry P. Alden, an examiner for the Federal Trade Commission, 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. Respondent, Max Cohen, is an individual, residing in the city of Chicago in the State of Illinois. In the year 1911 he began trading under the name and style of Union Woolen Mills Co. in said city. Under such trade name he is now and at all times since the year 1911 has been engaged in the business of manufacturing and selling men's suits and overcoats of the "made to measure" type in said city. Since the year 1920 he has been engaged in such manufacture and sale under said trade name in commerce, in the manner hereinafter set forth. He causes said clothing, when so manufactured, to be shipped from his said place of business to the other respondents for the purpose of distributing the same to purchasers thereof, who are located in States of the United States other than the State of Illinois.

PAR. 2. Respondents are in competition in interstate commerce with other firms, individuals, and corporations engaged in the manufacture, sale and distribution of men's suits and overcoats, which firms, individuals, and corporations do not use the term mill or mills in connection with the manufacture and sale of their said products. Respondents are also in competition in interstate commerce with makers of men's suits and overcoats who own the mills where the cloth, from which such suits and overcoats are made, is manufactured.

PAR. 3. Respondent, Max Cohen, for the purpose of the sale and distribution of the suits and overcoats manufactured by him as aforesaid, caused the respondent companies, Union Woolen Mills Co., of Racine, Wis., and the Union Woolen Mills Co., of Jackson, Mich., and also the Union Tailoring Co., of Milwaukee, Wis., and the Union Woolen Mills Co., of Chicago, Ill., to be incorporated and their capital stock to be distributed as follows:

The Union Woolen Mills Co., Racine, Wis., was incorporated in July, 1919, under the laws of the State of Wisconsin, with its principal place of business at Racine, Wis., in said State. Its capital stock is divided into 250 shares. Respondent, Max Cohen, owns 248 of such shares. The secretary of this company, one Otto Westergaard, owns one share of the capital stock in this company, for which he paid nothing. A brother-in-law of respondent Max Cohen, one A. J. Nussbaum, owns the other share. Respondent, Max Cohen, is the president and treasurer of this corporation.

The Union Woolen Mills Co., Jackson, Mich., was incorporated under the laws of the State of Michigan, in October, 1920. Its principal place of business is in the city of Jackson in said State. It was incorporated by respondent, Max Cohen, who is its president and treasurer. Its capital stock is divided into 100 shares, 48 of which are owned by respondent, Max Cohen, 48 shares by Robert Cohen, a brother of said respondent Max Cohen, and 4 shares by one A. J. Nussbaum, a brother-in-law of respondent Max Cohen. Respondent, Max Cohen, is the president and treasurer of this corporation.

The Union Tailoring Co., not made a respondent in this matter, is a corporation organized, existing and doing business under and by virtue of the laws of Wisconsin, with its principal place of business located at Milwaukee. It has adopted and uses the trade name of Union Woolen Mills Co. The said company is now and has been at all times, conducting its business in the same manner as hereinafter set forth with reference to the Racine corporation. Fifty-one per cent of the capital stock of this said company is owned by respondent Max Cohen, who is its president and treasurer, and 49 per cent is owned by A. C. Rich, a brother-in-law of respondent, Max Cohen.

The Union Woolen Mills Co., of Chicago, Ill., is not a party respondent in this matter. It was incorporated in the year 1920; it is now and has been conducting its business in the same manner as hereinafter set forth with reference to the Racine corporation. The capital stock of this company is divided into 200 shares of which 195 shares are owned by respondent, Max Cohen, who is its president and treasurer, and the balance is owned by Robert Cohen, brother of Max, and one Otto Westergaard, its secretary. The said Westergaard owns one share of the stock for which he paid nothing.

Findings

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PAR. 4. Respondent, Union Woolen Mills Co., of Jackson, Mich., and the Union Tailoring Co., of Milwaukee, Wis., and the Union Woolen Mills Co., of Chicago, Ill., each now maintain a store at the cities of Jackson, Milwaukee, and Chicago, respectively. At each of said stores a stock of cloth in bolt, ranging in value from \$5,000 to \$12,000 is kept. The manner and method of conducting the business of these said stores are the same as those employed by the respondent, The Union Woolen Mills Co., of Racine, Wis., as is herein-after set forth.

PAR. 5. The respondent, Union Woolen Mills Co., Racine, Wis., up until August, 1924, was engaged in the business of procuring orders for men's suits and overcoats from customers located within the State of Wisconsin, which orders, together with the measurements of the customers and the cloth selected by them were shipped from its said place of business in the State of Wisconsin to respondent Max Cohen, in the city of Chicago, for the manufacture by him, or by others under contract with him into suits or overcoats, as the case might be, which suits and overcoats, respondent Max Cohen, after such manufacture, caused to be shipped from the State of Illinois to the said respondent company in the State of Wisconsin for delivery by it to said customers. The usual custom of respondent, Max Cohen, upon receipt of an order from respondent, Union Woolen Mills Co., Racine, Wis., was for him to cut out the cloth in accordance with the measurements sent him and then deliver the same to some concern in Chicago for the actual sewing and making of the suit or overcoat, then such suit or overcoat was delivered to respondent, Union Woolen Mills Co., Racine, Wis., as aforesaid. The respondent, Union Woolen Mills Co., Racine, Wis., first required a deposit from a customer when an order was taken for a suit of clothes or overcoat, and upon delivery by it of said suit or overcoat it collected the balance due from the customer and deposited all such receipts in a local bank, subject to withdrawal only when a check was countersigned by respondent, Max Cohen, as president and treasurer. The charter of the Racine, Wis., company has not been surrendered, but the business thereof has been temporarily suspended with the intention of resuming the same under said name of Union Woolen Mills Co., using the methods hereinbefore described, as soon as business conditions will warrant. Respondent, Union Woolen Mills Co., Racine, Wis., maintained a store in said city, where bolts of cloth to be used in the manufacture of such suits or overcoats were kept. Usually the customer selected the cloth which he desired for a suit or overcoat at this store and the same was shipped to Chicago for manufacture as hereinabove set forth. It

frequently happened that respondent, Union Woolen Mills Co., Racine, Wis., did not have sufficient cloth in stock to make the garment desired by the customer. Each bolt of cloth in said store had a number and the manager of the store at Racine and respondent, Max Cohen, at Chicago, each knew the number of each bolt of cloth. Whenever there was not sufficient cloth of a certain number to make a garment desired by a customer, the number, together with the measurement of such customer, was sent on to Chicago to respondent, Max Cohen, who either took the cloth corresponding to such number from his own stock or went into the open market and purchased the same, and made or caused the same to be made into a garment and shipped back to respondent, Union Woolen Mills Co., Racine, Wis., as hereinabove described.

PAR. 6. Respondent, Max Cohen, until 1927, owned and operated a store at Kenosha, Wis., where men's suits and overcoats of the "made to measure" type were sold. The said store was conducted under the trade name and style of Union Woolen Mills Co., Kenosha, Wis., and the business of said store was in all respects conducted in the same manner as hereinabove set forth with respect to the Racine corporation. This store and business was not incorporated. This business is now temporarily suspended, but respondent, Max Cohen, intends to resume the operation of the same under the same name and to use the same methods in the operation thereof, as soon as conditions will warrant.

PAR. 7. Respondent, Max Cohen, has at all times exercised general supervision over the businesses of the said five stores, to wit: The stores at Racine, Jackson, Kenosha, Milwaukee, and Chicago, requiring and receiving from each of them daily reports and other reports setting forth in detail the business transacted by them, including a complete itemized list of sales, together with the names of customers to whom such sales were made. The books of account of respondent corporations and the Kenosha, Milwaukee, and Chicago stores together with the personal books of respondent, Max Cohen, are kept at the Chicago office of the last-named respondent. These books are kept by one Otto Westergaard. Respondent, Max Cohen, owns the store building in which these books are kept, and no rental is charged these said stores for the space in which their books and records are kept. The selection and supervision of advertising matter for the above-named stores is made by respondent, Max Cohen, at Chicago.

PAR. 8. Respondent corporation of Jackson, Mich., and the Milwaukee and Chicago corporations now maintain and respondent corporation of Racine, Wis., and the store at Kenosha, Wis., did main-

tain during the period of their operation, upon the outside of the store buildings of said stores, a sign upon which is conspicuously displayed the words or legend "Union Woolen Mills Co.", and such words or legend appears upon their letterheads, billheads, invoices, receipts and other business stationery. Each garment sold at said stores is, or was, as indicated, delivered to a customer in a box or container on which is, or was, as indicated, printed the words "Union Woolen Mills Co.". To each garment delivered to a customer, as hereinbefore set out, respondent, Max Cohen, causes to be attached on the inside breast pocket of the coat, labels bearing the legend "Union Woolen Mills Co., Milwaukee, Racine, Kenosha, Jackson," or the legend "Union Woolen Mills Co." with the address of one of the said stores. These labels are attached to the said clothes at the time of delivery to the purchaser, and placed therein at Chicago, at the direction of respondent, Max Cohen. In addition to the use of the words "Union Woolen Mills Co." as above set forth, respondents also advertise in local papers and in their advertisements they feature in conspicuous letters the words or legend "Union Woolen Mills Co." Respondents also make use of the word "mills" in circularizing their customers, and in circulars thus used by them they employ the words "Union Woolen Mills Co." in large letters. This circularization does not reach persons residing outside of the States wherein said stores are located. Each customer of said stores upon selecting a piece of cloth from which he desires a suit or overcoat made is required to make a deposit. When a deposit is made by a customer, he is given a receipt upon which the words or legend "Union Woolen Mills" are printed. Business cards bearing the name "Union Woolen Mills Co." are used by respondent corporations and were used by the Kenosha store and handed out to customers thereof.

PAR. 9. All of the cloth for each of these stores is selected, bought by and shipped to them by respondent, Max Cohen, and purchased in his own name from various manufacturers or jobbers, and credit in the purchase of said cloth is extended by the vendor thereof to Max Cohen personally. In the instances of purchase of cloth for the respondent corporations, the purchase price thereof is charged to the respondent corporations. These said stores were opened and established by respondent, Max Cohen, personally. He selected their various locations, entered into the various rental contracts therefor, and established a credit in the banks of the cities or towns in which said stores were located. Respondent, Max Cohen, visits said stores on an average of once a month, and once every three months said bookkeeper, Westergaard, visits said stores and checks up their stock of goods. The salaries of the managers of said stores are arranged

by agreement between the managers and respondent, Max Cohen. In one instance, the salary of the manager of the Jackson store was increased from \$35 to \$60 per week and the books of that corporation show no resolution providing for such increase. This increase was brought about by verbal agreement between respondent, Max Cohen, and his brother, Robert Cohen, manager of said store. In one instance, the salary of the bookkeeper, said Westergaard, was increased without resolution on the part of either of the respondent corporations.

PAR. 10. Respondent corporations have declared no dividends nor have they distributed any profits. Such dividends or profits are standing on the books of the companies as accumulated.

PAR. 11. All of the materials used by respondent, Max Cohen, respondent, Union Woolen Mills Co., Racine, Wis., respondent Union Woolen Mills Co., Jackson, Mich., and the Kenosha and other said stores, were and are purchased in the open market by respondent, Max Cohen, from others who manufacture them. None of said respondents ever owned, operated, controlled or had, or have, any interest in a mill in which cloth was, or is, manufactured.

PAR. 12. The use by respondents of the word "mills" in their corporate and trade names, and the use of the word "mills" on their signs, business stationery, billheads, circulars, labels, in newspaper and other advertising and trade literature, as hereinbefore set out, has the capacity and tendency to and does mislead and deceive the consuming public into the belief that respondents own and operate mills in which they manufacture cloth from which the said suits and overcoats sold by them are made, and customers purchasing clothing from respondents are led to believe by the use of the word "mills," as aforesaid, that they are buying directly from the manufacturer of said cloth, thereby saving the profits of middlemen, and such use of the word "mills" has the capacity and tendency to, and does, induce many of the purchasing public to deal with respondents in that belief.

CONCLUSION

The said practices of respondents under the circumstances set forth in the foregoing findings 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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission 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 respondents Union Woolen Mills Co., Racine, Wis., Union Woolen Mills Co., Jackson, Mich., and respondent Max Cohen, and each of them, their officers, agents, representatives, servants, and employees, cease and desist:

(1) From using the word "mill" or "mills", or words of like import, in or as a trade or corporate name in the carrying on of the business of manufacturing, selling or distributing men's clothing in interstate commerce, until the said respondents actually own or directly control or operate a mill or mills in which the cloth from which said clothing is made is manufactured.

(2) From making, in connection with the sale and distribution of men's clothing in interstate commerce, representations through advertisements, circulars, business stationery, trade or corporate names, signs, or labels attached to such clothing, or in any manner whatsoever, to the effect that respondents are the manufacturers or makers of cloth from which such clothing is made, until such respondents actually own or directly control or operate a mill or mills in which such cloth from which such clothing is made, is manufactured.

It is further ordered, That respondent, Max Cohen, cease and desist from using or employing the word "mill" or "mills", or words of like import, as a part of the corporate or trade name for or in connection with any corporation, firm, association or store which he may organize or establish, or cause to be organized or established in the future, for the purpose of selling or distributing men's clothing in interstate commerce, until respondent, Max Cohen, or such corporation, firm, association, or store, actually owns or directly controls or operates a mill or mills, in which the cloth from which such clothing is made is manufactured.

It is further ordered, That respondents Union Woolen Mills Co., Racine, Wis., Union Woolen Mills Co., Jackson, Mich., and respondent, Max Cohen, 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.