

Complaint

12 F. T. C.

IN THE MATTER OF
BERKEY & GAY FURNITURE 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 1396. Complaint, July 27, 1926—Decision, Sept. 25, 1928

Where a corporation engaged in the manufacture of dining room, living room and bedroom furniture with solid mahogany, walnut or gumwood legs, posts, stretchers and rails, and with broad or flat parts of plywood of gumwood, poplar, chestnut or wood of similar grade, veneered with mahogany or walnut, where exposed to view, and in the sale thereof in competition with manufacturers of truthfully described veneered and solid furniture, to small town dealers who order by catalogues and price lists for their customers, and to dealers and department stores, who make their selection after personal inspection at its place of business, or from photographs or illustrations, after solicitation, and follow the practice of requiring manufacturers to describe furniture purchased upon invoices, tagging furniture displayed in accordance therewith, and so advertising the same in daily papers; described said furniture in catalogues, price lists, photographs, and illustrations furnished to wholesale and retail dealers, in invoices reflecting the sale thereof, and in advertisements in periodicals and trade papers of general circulation among the purchasing public, as "walnut", or "mahogany", or "walnut and gumwood", or "mahogany and gumwood", as the case might be, without disclosing its veneered composition, or the relatively small amount of mahogany or walnut used therein, and thereby led to the offer and sale of such furniture by the aforesaid dealers and stores (and probably by the ultimate purchaser or consumer, if resold by him) as mahogany, mahogany and gumwood, or walnut and gumwood; with the capacity and tendency to mislead and deceive purchasers and prospective purchasers of it and of its dealers into buying such furniture as and for furniture consisting entirely of mahogany or walnut or of the designated wood or woods, as above set forth, and not veneered:

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

Mr. James M. Brinson for the Commission.

Knappen, Uhl & Bryant and *Mr. Francis D. Campau*, of Grand Rapids, Mich., 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 Michigan corporation engaged in the manufacture and

Complaint

12 F. T. C.

sale of dining room and bedroom furniture, and with principal office and place of business at Grand Rapids, with misrepresenting product and advertising falsely or misleadingly in regard thereto 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, engaged as above set forth, for about three years last past described, advertised, and invoiced as "walnut and gumwood", "mahogany and gumwood" or by other combinations of names of the different woods from which its said furniture is made, bedroom and dining-room furniture made by it and composed principally of gum or chestnut wood or other woods of similar grade and quality, veneered, in practically all cases, with a thin covering of mahogany or walnut, about two twenty-eighths of an inch thick, without disclosing in its said descriptions and advertisements in catalogues distributed to customers and prospective customers and in magazines and in trade journals of nation-wide circulation, and in its invoices of sales to retailers, that said furniture is veneered.

The designation, as alleged, by respondent of veneered furniture made and sold by it as above set forth, "as 'Mahogany and Gum', 'Walnut and Gum', or by a designation composed only of the names of the principal woods included in the construction of the furniture, without disclosing that such furniture is veneered, results in placing in the hands of the retail dealers through whom furniture manufactured and sold by respondent, is sold to the consuming public, the means whereby such dealers can commit a deception or fraud upon the public by merely describing such furniture to customers and prospective customers by the designations given it by respondent, without disclosing that the mahogany or walnut wood used in the construction of such furniture consists only of a thin veneer about two twenty-eighths of an inch in thickness, and numerous persons have been induced by such means to purchase veneered furniture manufactured and sold by respondent in the belief that the exposed portions of such furniture was made of solid mahogany or solid walnut".

Respondent's said practice, as charged, causes trade to be diverted to it from competitors, many of whom manufacture mahogany and walnut veneered furniture and describe the same in their invoices, catalogues, and advertisements as "veneered", giving the name of the wood composing the veneer as well as that of the wood from which the core of the furniture is made, and others of whom manufacture and sell furniture made entirely of mahogany or walnut; 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, 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 a complaint upon the Berkey & Gay Furniture Co., a corporation, hereinafter called the respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer, testimony and documentary evidence were received and duly recorded, and filed in the office of the Commission; thereafter the proceeding regularly came on for decision before the Commission on such complaint, answer, the testimony and evidence received, briefs and arguments of counsel, and the Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Berkey & Gay Furniture Co., for several years last past has been, and now is, a corporation organized and existing under the laws of the State of Michigan with its principal office and place of business at Grand Rapids in said State. Since some time in 1926, it has owned and controlled the Wallace Furniture Co. and the Grand Rapids Upholstering Co., each of which it utilizes for the sale of its products. Respondent and its said subsidiary corporations have been, and now are, engaged in the manufacture of dining room, living room and bedroom furniture, and its sale at their respective points of location to dealers for resale to the public. It causes its furniture, when sold, to be transported from Grand Rapids, Mich., into and through the various States of the United States to the purchasers thereof, in competition with individuals, partnerships, and corporations engaged in the sale and transportation of dining room, living room, and bedroom furniture in like commerce.

PAR. 2. In the course of its business it has been, and is, the practice of respondent to manufacture its furniture from plywood, composed of layers of gumwood, poplar, chestnut, or wood of similar grade, attached with glue. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. Usually the flat and broad parts of its furniture, such as table tops; tops, ends, and fronts of cabinet pieces are composed of five plies, but for special purposes they sometimes consist of 3, 7, 9, and even 11 plies. The central layer, which

Findings

12 F. T. C.

may be termed the basic layer, is known and described as the core, which itself consists of narrow widths of lumber joined together edgewise.

Plywood consisting of more than 3 layers of wood, such as 5, 7, 9, or 11 plies, contains so-called cross bands, usually one-twentieth of an inch in thickness, the grain of which runs in opposite direction to that of the layer of wood composing the so-called core. Upon one or both of the outer plies, depending upon whether or not exposed, there is glued a veneer of walnut, or mahogany, usually one twenty-sixth of an inch in thickness. The respondent uses for interior construction, such as the bottom, sides, and backs of dressers, walnut or mahogany, sometimes solid and sometimes laminated, and uses walnut, mahogany, or gumwood, for legs, posts, rails, standards, mirror frames, moldings, and chairs. Chairs and certain parts of its furniture, such as moldings, mirror frames, legs, posts, rails and standards, usually consist of solid wood, unless the design requires lumber of greater thickness than 2 inches, in which case these parts of the pieces of furniture are made from two or more layers of wood glued together.

PAR. 3. It has been, and is, the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs, and illustrations, in which it has described, and describes, its furniture constructed as stated in paragraph 2, as mahogany, or walnut, or mahogany and gumwood, or walnut and gumwood, depending upon whether or not the legs, posts, and stretchers of its products consist of walnut, mahogany, or gumwood. In other words, its furniture, consisting of solid mahogany or walnut legs, posts, stretchers, and rails, with its broad or flat parts composed of other woods, veneered with mahogany, or walnut, where exposed to view, is described as walnut or mahogany. When such broad or flat parts, so composed, are veneered with walnut, or mahogany, and the legs, posts, rails, and stretchers are composed of gumwood, the furniture so constructed is described by respondent as mahogany and gumwood, or walnut and gumwood.

After the issuance of complaint herein, this respondent began to describe furniture with broad or flat parts veneered with mahogany, or walnut, on different wood, where exposed to view, as laminated 5-ply veneered construction, in its price lists, illustrative plates and other literature for dealers, and also on cards for display of the furniture in salesrooms of retail dealers. Respondent has failed and still fails, however, in its catalogues, price lists, illustrations, or photographs, or cards furnished for display in connection with its product, to disclose or indicate the name of the wood, or woods,

composing the veneered product, or the relatively small amount of mahogany or walnut in its construction.

It has been, and still is, the practice of respondent to furnish wholesale and retail dealers, invoices reflecting sale of furniture in which it is described as mahogany, or walnut, or mahogany and gumwood, or walnut and gumwood, without any disclosure whatever of its veneered composition, or of the relatively small amount of mahogany or walnut used in its construction.

Respondent sells its furniture only to wholesale and retail dealers, but it has been and is its practice to advertise in magazines, journals, and trade papers of general circulation, among the purchasing public in the various States of the United States, in which it has followed, and still follows, the aforesaid method of describing its furniture.

PAR. 4. It is the practice in the retail furniture business, for dealers carrying furniture of the grade, character, and quality, such as manufactured by respondent, to visit its place of business at Grand Rapids, Mich., during certain seasons, and then and there to select from the furniture offered for sale by respondent, that which they sell, or offer for sale, at their respective places of business in the various States of the United States, or to order their furniture from respondent through the agency of its traveling solicitors, who furnish them with photographs or illustrations at their places of business.

There are, however, in addition to the dealers who visit Grand Rapids for the selection of furniture, or who are solicited by representatives of respondent, other dealers who neither visit Grand Rapids, nor are solicited or visited by such representatives of respondent, and who rely entirely on catalogues, price lists, and such advertising literature as respondent distributes among them. This business is small compared with that transacted by respondent with dealers who visit its place of business, or are visited by its representatives. It amounts, however, to 2 per cent of its business, and is conducted usually with small-town dealers, who, on account of the expense, are unable to carry such furniture in their stock and on their floors, and respondent sells such furniture to them through the medium of its catalogues, price lists, and advertising literature. It is the practice among such small-town dealers to submit catalogues and price lists so received from respondent to their customers desiring to purchase furniture of the grade and character manufactured by respondent, and thereupon to order from such catalogues, or price lists, that which the customer may designate. This method of business enables the dealer to earn a profit without the burden or expense of the investment required to carry such furniture in stock.

Findings

12 F. T. C.

PAR. 5. It has been, and is, the practice of retail dealers in furniture whose business constitutes a fair preponderance of the sales in medium and high grade furniture in Chicago, to expose furniture purchased from respondent, or competitors, for sale on the floors of their places of business with tags attached thereto, containing the description given in catalogues, price lists, or invoices. Such dealers include the department stores of Marshall Field & Co., and Carson, Pirie & Scott. A similar practice prevails in Boston, New York, Philadelphia, St. Louis, and Minneapolis, and large department stores in such cities follow this system of using on tags, attached to furniture displayed for inspection by purchasers or prospective purchasers, the same description as that on the invoices furnished by respondent or other manufacturers.

Many dealers in furniture, including some department stores, use in their advertisements of furniture in the daily newspapers the same description, or one similar thereto, as that furnished in its invoices by respondent.

Some of the large department stores have adopted and follow the practice of requiring manufacturers of furniture to furnish them, before they purchase furniture, or upon invoices representing the purchase, a detailed and accurate description of its construction so as to avoid any confusion or mistake on the part of their representatives in marking or describing such furniture for its display or resale to the public.

The description furnished by respondent in catalogues, price lists, photographs, and illustrations performs in this way a constant and consistent service after the furniture leaves its possession, and until it reaches that of the ultimate purchaser, and probably such description continues to function thereafter, if, or when, such furniture so purchased is resold. This is especially true of the invoice. Its function in modern business has been extended by practice to include the communication of a description to the purchaser by and in accordance with which the furniture represented by such invoice should, or may be, offered for sale to the public.

PAR. 6. Manufacturers of furniture in various parts of the United States, including competitors of respondent, at Jamestown, N. Y., Evansville and Shelbyville, Ind., Sheboygan, Wis., St. Louis, Mo., and other centers of the industry generally describe and have described since early in 1926, and some of them for many years theretofore, furniture made from plywood and veneered according to the method of construction followed by respondent, as mahogany veneer, or walnut veneer, or mahogany veneer and gumwood, or walnut

veneer and gumwood, either in catalogues, price lists, photographs, illustrations, or letter quotations transmitted to dealers, or in invoices furnished by them to purchasers of its products.

Other competitors of respondent have specified in their descriptions of furniture offered for sale, and now specify, the wood or woods of which said product is composed, including its basic or central layer, called the core.

PAR. 7. As a result of the practice of respondent in describing such veneered furniture as mahogany or walnut, or mahogany and gumwood, or walnut and gumwood, and of the practice of its competitors in describing truthfully furniture of similar construction as mahogany veneered or walnut veneered, or mahogany veneered and gumwood, or walnut veneered and gumwood, together with the practice of retail dealers in following the descriptions of the respondent and other manufacturers in their representations to the public, furniture of respondent consisting of mahogany, or walnut, veneered on different woods, has been offered for sale, and is being offered for sale, in department stores in the large cities of the United States and by a substantial proportion of the retail furniture dealers as mahogany, mahogany and gumwood, and walnut and gumwood, without describing it as veneered and disclosing the relatively small amount of mahogany, or walnut, used therein, in competition with veneered furniture truthfully described as mahogany veneered, or walnut veneered, and also in competition with furniture of other competitors consisting entirely of mahogany or walnut truthfully described.

PAR. 8. The description by respondent in its catalogues, price lists, photographs, illustrations, and invoices of its furniture as set out in paragraph 3 as mahogany, walnut, mahogany and gumwood, and walnut and gumwood, or by a designation of the wood or woods composing the veneered surface of the broad or flat parts, and the legs, posts, and stretchers, without disclosure of the veneered construction and the relatively small proportion of the designated mahogany or walnut used therein, has had, and has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent, and purchasers and prospective purchasers of the dealers in furniture to whom respondent has sold and is selling its furniture, and the natural and probable effect of such practice, will be to mislead and deceive them, into the purchase of such furniture in the erroneous belief that it consists entirely of mahogany or walnut, or of the designated wood or woods, and is not of the construction commonly known as veneered.

Memoranda

12 F. T. C.

CONCLUSION

The practice of respondent, Berkey & Gay Furniture Co., under the conditions and circumstances described in the foregoing findings as to the facts is an unfair method of competition in interstate commerce and constitutes a violation of the provisions of section 5 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 on complaint issued and served upon respondent, Berkey & Gay Furniture Co., its answer thereto, testimony, and documentary evidence, brief and argument of counsel, and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that Berkey & Gay Furniture Co. has been and is violating 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 therefore ordered, That respondent, Berkey & Gay Furniture Co., its officers, agents and employees, cease and desist from:

(1) Selling or offering for sale in interstate commerce furniture made with broad or flat parts of mahogany, or walnut, as the case may be, which have been veneered on other different wood or woods, unless such furniture be described, labeled, or designated as "veneered".

(2) Using the word "mahogany" or the word "walnut" in advertisements, catalogues, price lists, invoices, or otherwise in connection with the sale or offering for sale in interstate commerce of furniture made with broad or flat parts of mahogany, or walnut, as the case may be, which have been veneered on other different wood or woods, unless accompanied by the word or term "veneered".

It is further ordered, That respondent, Berkey & Gay Furniture Co. shall within 60 days from and after notice hereof, file with the Commission a report in writing stating the manner and form in which it has complied with the terms of this order.

MEMORANDA

The Commission as of the same date, promulgated findings and orders against 24 other Grand Rapids furniture manufacturers (against whom complaints issued as of July 27, 1926) as noted below, involving sale of veneered furniture under misleading designations

or descriptions, and substantially similar to those in the *Berkey & Gay case* above, except for the absence of a finding as to the amount of the particular respondent's business with small town dealers, and except as noted in the statement following, covering such findings and orders.¹

Appearances in these cases were: *Mr. James M. Brinson* for the Commission; *Knappen, Uhl & Bryant* and *Mr. Francis D. Campau*, of Grand Rapids, Mich., for the various respondents.

The statement referred to follows:

STOW & DAVIS FURNITURE Co., Docket 1397. High-grade office furniture, including matched equipment particularly for exclusive offices, as mahogany or walnut, said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture the broad and flat parts of its furniture from plywood composed of layers of various woods, such as chestnut, birch, and basswood veneered with walnut or mahogany. Normally its furniture consists of five layers called plies, although for such pieces of furniture as directors' tables or other heavy pieces of furniture seven or more plies may be used. The central layer of the plywood, usually known as the core, consists of narrow widths of chestnut, basswood, or similar wood joined together edgewise with glue. The layer or ply directly adjacent to the core, designated cross band, is usually composed of birch or similar wood one-twentieth of an inch in thickness. The outer layer of that part of the furniture exposed to view when placed in the generally accepted position for use consists of a veneer of mahogany or walnut, one twenty-eighth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, mirror frames, moldings, and chairs, which commonly consist of solid mahogany or walnut.

¹ Possibly the following variations in the different cases should be noted, the findings and orders in all other respects (except as set forth) being apparently substantially identical in form and substance:

The findings in the *Berkey & Gay case* above (par. 3), to the effect that following the issuance of the complaint, respondent began, in its price lists, illustrative plates, display cards, and other literature for dealers, but not in invoices, to describe its furniture concerned as veneered (though failing to indicate the name of the woods composing the veneered product, or relatively small amount of mahogany or walnut used in its construction), and to the effect that such respondent while selling only to wholesale and retail dealers, has made a practice of advertising in magazines, journals and trade papers of general circulation among the purchasing public in the various States, and of employing the challenged method of describing its furniture in said advertising, are, with one exception, not found in the other cases.

The exception referred to is that of the Imperial Furniture Co., in which it was also found that, following issuance of complaint, respondent commenced in its catalogues, but not in its invoices, to describe its furniture as veneered, and that it was respondent's practice, while selling its furniture only to wholesale and retail dealers, to advertise in magazines, journals and trade papers of general circulation among the purchasing public in the various States, in which advertising, it failed to disclose the relatively small amount of mahogany or walnut used in the broad or flat parts of its furniture.

Memoranda

12 F. T. C.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs, illustrations, and invoices, in which it has described and describes its furniture constructed as stated in paragraph 2 as mahogany or walnut, according to the particular wood composing the solid parts of the furniture and the exposed exterior ply of the broad or flat parts. Respondent has described and describes in its price lists certain director's tables as made in part of veneers or of plywood, although in its invoices of furniture sold there is no disclosure of veneered construction nor indication of the relatively small amount of mahogany or walnut in the furniture or parts thereof described as mahogany or walnut.

THE GUNN FURNITURE Co., Docket 1398. Sectional bookcases, desks, and tables as genuine mahogany, mahogany or walnut, said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture its furniture from plywood composed of layers of birch, gum, poplar, chestnut, or wood of similar grade, attached with glue. Upon one or both of the outer layers, usually called plies, depending upon whether or not exposed, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. This plywood is so constructed that the grain of one layer of wood runs in opposite direction to that of the grain of the adjacent layer or layers of wood. The broad and flat parts of its furniture, such as table tops; tops, ends, and fronts of bookcases and desks are generally composed of five plies. The central layer of the plywood which may be termed the basic layer is known and described as the core, usually consisting of narrow widths of lumber joined together edgewise. The layer or ply directly adjacent to the core, designated the crossband, is usually one-twentieth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, and standards, which commonly consist of solid mahogany or walnut.

The finding in the *Berkey & Gay case* (par. 4) to the effect that the practice of retail dealers as there specified, of exposing furniture purchased from respondent or competitors, for sale on their floors, tagged in accordance with the description given in catalogues, price lists, or invoices, also "prevails in Boston, New York, Philadelphia, St. Louis, and Minneapolis, and large department stores in such cities follow this system," etc., takes the form, in some of the cases, of setting forth that a "similar practice prevails in Boston, New York, Philadelphia, St. Louis, and Minneapolis, among retail dealers in furniture, including some of the largest department stores in such cities".

The finding in the *Berkey & Gay case* (par. 7), to the effect that as a result of the condemned practice "furniture of respondent consisting of mahogany, or walnut, veneered on different woods, has been offered for sale and is being offered for sale, in department stores in the large cities of the United States and by a substantial proportion of the retail furniture dealers as mahogany, mahogany or gumwood, and walnut and gumwood, without describing it as veneered and disclosing the relatively small amount of mahogany, or walnut, used therein", etc., takes the form in some of the cases of a finding that as a result of such practice, the furniture in question has been and is being offered for sale, "in department stores in the large cities of the United States, and by retail furniture dealers, as mahogany or walnut without describing it as veneered", etc., as above set forth, or has been so offered by such department stores and "by the retail furniture dealers" as mahogany, etc., as hereinabove set forth.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs, and illustrations, in which it has described and describes its sectional bookcases constructed as stated in paragraph 2 as genuine mahogany, and when sold to so describe it in its invoices, and its desks and tables as mahogany or walnut as the case may be, without disclosing in connection therewith the veneered construction, or the relatively small amount of walnut or mahogany used in ends, tops, and fronts of bookcases, desks, and tables, or in the broad or flat parts thereof. In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers, and rails, with broad or flat parts veneered with mahogany or walnut, where exposed to view, is described as genuine mahogany, or mahogany, or walnut.

JOHN WIDDICOMB Co., Docket 1400. Bedroom furniture as mahogany or walnut.

Said furniture is made from—

Plywood composed of layers of chestnut, birch or woods of similar grade attached with glue. Upon one or both of the outer layers, usually called plies depending upon whether or not exposed, there is glued a veneer of mahogany or walnut usually one twenty-eighth of an inch in thickness. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. The flat and broad parts of its furniture, such as table tops; tops, ends, and fronts of cabinet pieces are generally composed of five plies. The central layer of the plywood, which may be termed the basic layer, is known and described as the core, usually consisting of narrow widths of chestnut joined together edgewise. The layer or ply directly adjacent to the core, designated crossband, generally consists of birch or similar wood one-twentieth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, mirror frames, moldings, and chairs, which commonly consist of solid mahogany or walnut.

And is described in catalogues, price lists, photographs, illustrations, and invoices distributed among or furnished to wholesale and retail furniture dealers as mahogany or walnut.

In other words its furniture consisting of solid mahogany or walnut legs, posts, stretchers, and rails with broad or flat parts veneered with mahogany or walnut, on a different wood or woods where exposed to view, is described as mahogany or walnut.

LUCE FURNITURE CO. AND THE FURNITURE SHOPS, INC.,² Docket 1401. Dining room, bedroom, library, living room, and hall furniture as mahogany, walnut, mahogany and gumwood, or walnut and gumwood.

Said furniture is made as described in paragraph 2 of the findings, reproduced below:

PAR. 2. In the course of their business it was the practice of respondents, and since February 1, 1926, has been, and now is, the practice of The Luce Furniture

² Predecessors of Luce Furniture Shops. See paragraph 2.

Memoranda

12 F. T. C.

Shops to manufacture furniture from plywood composed of layers of various woods, attached with glue. Usually such plywood consists of five layers, although it has been and is sometimes constructed with additional layers, when its intended use so requires. The largest amount of lumber in such plywood, whether five or more layers of wood, consists normally of the central or basic layer, called the core, composed of narrow widths of gumwood, chestnut or similar woods joined together edgewise by glue. Upon both of the flat surfaces of this core is a so-called crossband usually of birch or similar wood one-twentieth of an inch in thickness attached thereto by glue. Upon the outer layers of this composition depending upon exposure to view there are glued veneers of mahogany or walnut one twenty-eighth of an inch in thickness. Plywood, or veneered construction, is rarely used by respondents in legs, posts, rails, standards, mirror frames, moldings, and chairs, which commonly consist of solid mahogany, solid walnut or solid gumwood.

And is described in catalogues, prices lists, photographs, and illustrations distributed among or supplied to wholesale and retail furniture dealers, and in invoices, as mahogany or walnut, etc., as set forth above.

In other words, their furniture consisting of solid mahogany, or walnut, or gumwood legs, posts, stretchers and rails, with broad or flat parts veneered with mahogany or walnut on different wood or woods, where exposed to view, is described as mahogany or walnut, as well as mahogany and gumwood, or walnut and gumwood.

CENTURY FURNITURE Co., Docket 1402. Library, living room and dining room furniture, as mahogany or walnut, made from plywood composed of layers of mahogany, maple, and other woods, attached with glue as set forth in the *Widdicomb case*, above (p. 237, except for use of maple or mahogany, instead of chestnut, for core), and described as above, in catalogues, etc., distributed among or supplied to, wholesale and retail furniture dealers, and in invoices.

DAVID UHL, trading under the firm name and style—Grand Rapids Fancy Furniture Co., Docket 1403. Household furniture, including desks, piano benches and music cabinets, as mahogany or walnut,^a said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of his business, it has been and is the practice of respondent to manufacture his furniture from plywood, composed of layers of various woods attached with glue, and upon one or both of the outer layers, depending upon whether or not exposed to view when the piece of furniture is placed in the generally accepted position for use, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. This plywood, however, has been and is used only in construction of the broad and flat parts of the furniture, such as table tops; tops, ends, and fronts of cabinet pieces and legs, posts, rails, standards, and moldings consist usually of solid

^a See paragraph 3.

wood. The thick center layer of plywood used in construction of the broad and flat parts of such furniture, known as the core, is composed of narrow widths of chestnut, gum, or similar wood, joined edgewise with the grain of alternate widths reversed and held together with glue. The layer or ply attached to the broad surface of the core, called cross band, on which the mahogany or walnut veneer is glued, is made of veneers of birch or similar wood one-twentieth of an inch in thickness.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, dealers in furniture catalogues, price lists, and invoices in which he has described and describes his furniture as mahogany or walnut, when its broad or flat parts are made of plywood, as described in paragraph 2, veneered with mahogany or walnut, and the so-called solid parts made of mahogany or walnut. In his catalogue this respondent states that, "all medium-priced goods described as mahogany or walnut are veneered mahogany and walnut fronts and imitation ends and all goods, unless designated as solid wood, are veneered fronts and ends". This specification of veneered construction, however, respondent fails to include in his invoices to dealers, which as found in paragraph 5 hereof serves as a guide to the dealers for description of the furniture.

VALLEY CITY DESK Co., Docket 1404. Office furniture as mahogany or walnut, said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture its furniture from plywood composed of layers of gumwood, poplar, chestnut or wood of similar grade, attached with glue. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. Usually the flat and broad parts of its furniture, such as table tops; tops, ends and fronts of cabinet pieces are composed of five plies. The central layer, which may be termed the basic layer, is known and described as the core, which itself consists of narrow widths of lumber joined together edgewise.

Plywood consisting of more than three layers of wood, such as five plies, contains so-called cross bands usually one-twentieth of an inch in thickness, the grain of which runs in opposite direction to that of the layer of wood composing the so-called cores. Upon one or both of the outer plies, depending upon whether or not exposed, there is glued a veneer of walnut or mahogany usually one twenty-eighth of an inch in thickness.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs and illustrations, and invoices, in which it has described and describes its furniture constructed as stated in paragraph 2, as mahogany or walnut without disclosure of the veneered construction or of the relatively small amount of mahogany or walnut used therein.

FOOTE-REYNOLDS Co.,⁴ Docket 1405. Beds as mahogany, walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the preceding case, and described in catalogues, price lists, photographs, illustrations and invoices distributed among or furnished to wholesale and retail furniture dealers, as mahogany or walnut, or mahogany and—

⁴ Name changed to Kindel Furniture Co.

Memoranda

12 F. T. C.

gumwood, or walnut and gumwood, depending upon whether or not the legs, posts, and stretchers of its products consist of walnut, mahogany or gumwood. In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers and rails with its broad or flat parts so veneered with mahogany or walnut, where exposed to view, is described as walnut or mahogany. When the broad and flat parts are veneered with walnut or mahogany, and the legs, posts, rails and stretchers are composed of gumwood, the furniture so constructed is described by respondent as mahogany and gumwood, or walnut and gumwood.

PRITCHETT-POWERS Co., Docket 1406. Living room, library, and hall furniture as combination mahogany and gumwood, combination walnut and gumwood, mahogany and gumwood, and walnut and gumwood, and made as set forth in paragraph 2 of the findings below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture the broad and flat parts of its furniture from plywood composed of layers of gumwood, chestnut or wood of similar grade attached with glue. Upon one or both of the outer layers, usually called plies depending upon whether or not exposed, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. This plywood is so constructed that the grain of one layer of wood runs in opposite direction to that of the grain of the adjacent layer or layers of wood. The broad and flat parts of its furniture, such as table tops; tops, ends and fronts of cabinet pieces are generally composed of five plies. The central layer of the plywood which may be termed the basic layer is known and described as the core, usually consisting of narrow widths of lumber joined together edgewise. The layer or ply directly adjacent to the core, designated the cross band, is usually one-twentieth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, mirror frames, moldings and chairs, which commonly consist of solid mahogany, walnut or gumwood.

And described in catalogues, price lists, photographs, illustrations, and invoices, distributed among or furnished to wholesale and retail furniture dealers—

as combination mahogany and gumwood, combination walnut and gumwood, mahogany and gumwood and walnut and gumwood, and when sold [so described] in its invoices. In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers, and rails with broad and flat parts veneered with mahogany or walnut, where exposed to view, is described as combination mahogany and gumwood, combination walnut and gumwood, mahogany and gumwood and walnut and gumwood.

JOHNSON FURNITURE Co. AND JOHNSON-HANDLEY-JOHNSON Co.,⁵ Docket 1407. Bedroom, dining room, and library furniture as mahogany or genuine mahogany, and walnut or genuine walnut.

⁵ All the stock of the last-named respondent is owned by certain stockholders of the first company and the two companies, with the same place of business, officers, directors, and management are operated as a single business unit.

Said furniture is made from "plywood composed of layers of gum, poplar, birch, or woods of similar grade, attached with glue," etc., as set forth in the preceding case (but with solid mahogany or walnut legs, posts, etc.⁶), and, as also then set forth, is described in their catalogues, etc., distributed or furnished to wholesale and retail furniture dealers and in their invoices as stated in the first paragraph hereof.

GRAND RAPIDS CHAIR Co., Docket 1408. Dining room, library, and hall furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood.

Such furniture is made from plywood, as set forth in the *Valley City Desk case*, above (p. 239), except that—

The respondent uses for interior construction, such as the bottom, sides and backs of dressers, walnut or mahogany, sometimes solid and sometimes laminated, and uses walnut, mahogany or gumwood for legs, posts, rails, standards, mirror frames, moldings and chairs. Chairs and certain parts of its furniture, such as moldings, mirror frames, legs, posts, rails and standards usually consist of solid wood, unless the design requires lumber of greater thickness than two inches, in which case these parts of the pieces of furniture are made from two or more layers of wood glued together.

And described in catalogues, etc., supplied to wholesale and retail furniture dealers as set forth in the first paragraph hereof, depending upon composition of the legs, posts, rails, and stretchers of the product (i. e., whether solid mahogany, walnut, or gumwood) and the veneer used on the broad or flat parts.

HEKMAN FURNITURE Co., Docket 1409. Living room and hall furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood.

Said furniture is made as set forth in paragraph 2 of the findings below:

PAR. 2. In the course of its business it has been, and is, the practice of respondent to manufacture the broad and flat parts of its furniture from plywood consisting of several layers, usually five, of various woods attached with glue. The principal part of such plywood in size and thickness consists of the so-called core, which is formed from narrow widths of chestnut or wood of similar grade and quality, glued together edgewise, and amounts to approximately five-sixths of the entire thickness of the panel. There is glued to the broad surface of the core so-called cross bands of birch, or wood of similar grade and quality, with grain running in opposite direction to course of the grain in the core and usually one-twentieth of an inch in thickness. Such

⁶ While the complaint alleges use of gumwood also for the legs, etc., the improper designations charged appear to relate only to that furniture in which mahogany or walnut was so used.

of these broad and flat parts of furniture so constructed as will be, or are, exposed to view when placed in the generally accepted position for its use, are veneered with a layer of mahogany or walnut, normally one twenty-eighth of an inch in thickness. Respondent manufactures other parts or pieces of its furniture, such as legs, posts, rails, standards, mirror frames, moldings and some of its chairs of the same kind of wood throughout the structure, consisting commonly of walnut, mahogany or gumwood.

And described in catalogues, price lists, photographs, illustrations, and invoices distributed among or supplied to wholesale and retail furniture dealers—

As mahogany or walnut, when its broad and flat parts are veneered with mahogany or walnut, with solid mahogany or walnut legs, posts, rails, standards, mirror frames, moldings and chairs, and as mahogany and gumwood, or walnut and gumwood, when the broad and flat parts are so veneered and the so-called solid parts consist of gumwood.

WAGEMAKER Co., Docket 1411. Office desks and filing cabinets as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, said furniture being respectively made and sold as described in paragraphs 2 and 3 below:

PAR. 2. In the course of its business it has been, and is, the practice of respondent to manufacture the broad and flat parts of its furniture from plywood composed of layers of various woods. Commonly drawer fronts, legs, rails, and stretchers of its furniture consist of solid wood. The various layers of plywood used in the broad or flat parts of its furniture are composed of gumwood, chestnut, or wood of similar grade or quality with mahogany or walnut veneers one twenty-eighth of an inch in thickness, as an exterior ply or exposed parts of its furniture, except that solid parts, such as legs, posts, rails, standards and moldings, consist usually of gumwood, oak, mahogany or walnut.

PAR. 3. It has been, and is, the practice of respondent to distribute among, or furnish to, dealers in furniture, catalogues, price lists, photographs, illustrations and invoices in which it has described and describes its furniture constructed as set out in paragraph 2 as mahogany, or walnut, or mahogany and gumwood, or walnut and gumwood, depending upon the veneer used on the broad or flat parts and the wood or woods composing the solid parts.

ROBERT W. IRWIN Co., Docket 1412. Dining room, library and bedroom furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the *Johnson Furniture case* above (see p. 240) and described in catalogues, etc., distributed among wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon the composition of the solid posts, stretchers and rails (i. e., whether mahogany, walnut, or gumwood), and the veneer used upon the broad or flat parts.

STANDARDIZED FURNITURE Co., Docket 1413. Dining room, living room, and bedroom furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand*

Rapids Chair case above (p. 241, except that flat and broad parts of respondent's furniture such as table tops, ends and fronts of cabinet pieces, usually composed of 5 plies, sometimes consist of 3, 7, 9 and even 11 plies), and described in catalogues, etc., distributed among wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon the composition of the solid legs, etc., and veneer used on the broad or flat parts exposed to view.

H. E. SHAW FURNITURE Co., Docket 1414. Dining room furniture and house desks as mahogany or walnut, mahogany and gumwood or walnut and gumwood, made as set forth in the *Valley City Desk case* above (p. 239) and described in catalogues, etc., distributed to wholesale and retail furniture dealers and invoices, as above set forth, depending upon the composition of the solid legs, etc., of the products, and the veneer used upon the broad and flat parts thereof, where exposed to view.

WIDDICOMB FURNITURE Co., Docket 1415. Bedroom furniture as mahogany or walnut, or mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand Rapids Chair case* above (p. 241), and described in catalogues, etc., furnished to retail and wholesale furniture dealers and in invoices, as above set forth, depending upon the composition of the legs, etc., and the veneer used upon the broad or flat parts where exposed to view.

IMPERIAL FURNITURE Co., Docket 1416.⁷ Dining room furniture as mahogany or walnut, or mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand Rapids Chair case* above (except that flat and broad parts such as table tops, etc., usually composed of 5 plies, sometimes, for special purposes, consists of 3, 7, 9, and even 11 plies; see p. 241), and described in catalogues, etc., furnished to wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon the composition of the legs, etc., and the veneer employed upon the broad or flat parts where exposed to view.

WILLIAMS-KIMP FURNITURE Co., Docket 1417. Dining room and living room furniture as mahogany or walnut, made as set forth in the *Johnson Furniture Co. case* above (except that the woods named as constituting the plywood were gumwood, chestnut or woods of similar grade instead of "gum, poplar, birch or wood of

⁷ One of the findings in this case recites that in 1927, or since the issuance of the complaint in the case, respondent commenced in its catalogues to describe its furniture as veneer, but that it is still its practice to furnish invoices describing the same as mahogany or walnut, etc., without any disclosure of the furniture's veneered composition, or the relatively small amount of mahogany or walnut therein used.

similar grade"; see p. 240), and described in catalogues, etc., sent to wholesale and retail furniture dealers and in invoices, as above set forth. (The legs, etc., being usually solid mahogany or walnut.)

PAALMAN FURNITURE Co., Docket 1418. Tea wagons, dinner wagons, magazine stands, and ends, occasional, nested and tilt-top tables as mahogany or walnut, mahogany and gumwood, or walnut and gumwood.

Such furniture is manufactured by respondent—

From plywood composed of layers of gumwood, chestnut, or other wood of similar grade, attached with glue. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. Usually the flat and broad parts of its furniture, such as table tops; tops, ends, and fronts of cabinet pieces are composed of five plies. The central layer, which may be termed the basic layer, is known and described as the core, which itself consists of narrow widths of lumber joined together edgewise. Plywood consisting of more than three layers of wood, such as five plies, contains so-called cross bands usually one-twentieth of an inch in thickness, the grain of which runs in opposite direction to that of the layer of wood composing the so-called core. Upon one or both of the outer plies, depending upon whether or not exposed, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, and moldings, which commonly consist of solid mahogany or walnut, although gumwood is sometimes used for such purposes.

And is described in catalogues, etc., sent to wholesale and retail furniture dealers and in invoices, as above set forth, depending upon the composition of the legs, etc., and the veneer employed upon the broad or flat parts where exposed to view.

In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers and rails with its broad or flat parts veneered with mahogany or walnut, where exposed to view, is described as mahogany or walnut. When the broad and flat parts are veneered with walnut or mahogany, and the legs, posts, rails and stretchers are composed of gumwood, the furniture so constructed is described by respondent as mahogany and gumwood, or walnut and gumwood.

THE CABINET SHOPS, Docket 1419. Dining-room furniture as walnut, made as set forth in the *Valley City Desk case* above (except that the instant case involves only walnut, and not mahogany; see p. 239), and so described in catalogues, etc., supplied to wholesale and retail furniture dealers, and in invoices, as above set forth, without disclosure of the veneered construction thereof or relatively small amount of walnut used therein.

FURNITURE STUDIOS, INC., Docket 1420. Living room and hall furniture as maple or walnut, or walnut decorated, or Georgian wal-

nut decorated, made as set forth in the *Valley City Desk case* (except that no mahogany veneer was used, and a maple as well as walnut veneer was employed; see p. 239) and described in catalogues, etc., distributed to wholesale and retail furniture dealers, and in invoices, as above set forth, without disclosure of its veneered construction or the relatively small amount of walnut or maple used therein.

THE MACEY Co., Docket 1421. Sectional bookcases and office furniture as mahogany or walnut, or genuine mahogany or genuine walnut, or as combination mahogany and gumwood, etc., as set forth below.

Such furniture is made as to the broad and flat parts thereof such as—

Tops of desks and tops, ends, and fronts of cabinet pieces from panels of plywood, which vary in thickness from 1 inch to 1½ inches. These panels consist of layers of gumwood, chestnut, or other wood of similar grade, attached with glue. Upon the outer layer, where exposed to view in the generally accepted position for use, there is glued a veneer of walnut or mahogany one twenty-eighth of an inch in thickness. There are in such panels either three or five layers, including the outer ply or veneer. Solid woods, such as mahogany, walnut, and gumwood are used in the construction of legs, posts, stretchers, or those parts of the furniture usually known or described as solid parts.

And is described in catalogues, etc., distributed among and furnished to wholesale and retail furniture dealers, and in invoices—

As mahogany or walnut, or genuine mahogany, or genuine walnut, where the broad or flat parts consist of plywood [as above described] veneered with mahogany or walnut, and the legs, posts, stretchers, and rails are made of mahogany or walnut, or as "combination mahogany and gumwood" with "all panels" as "genuine mahogany," or "combination walnut and gumwood" with "all panels" as "genuine walnut" where the posts, legs, and stretchers are made from gumwood and the main body of the structure consists of such plywood veneered with mahogany or walnut.

GRAND RAPIDS FURNITURE Co., Docket 1422. Dining room and living room furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand Rapids Chair Co. case* above (except that the plywood in the instant case is composed of layers of chestnut, birch, or other woods of similar grade instead of gumwood, poplar, chestnut or other woods of similar grade; see p. 241) and described in catalogues, etc., distributed among or furnished to wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon whether the usually solid parts such as legs, posts, and stretchers consist of mahogany, walnut, or gumwood.

IN THE MATTER OF
SHOWERS BROTHERS 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 1450. Complaint, Apr. 5, 1927—Decision, Sept. 25, 1928

Where the words "mahogany" and "walnut" signified and meant and had for many years been understood by the trade and purchasing public as signifying and meaning that furniture so designated was composed entirely, both as to exposed surface and parts thereof, of the aforesaid woods, either solid or laminated; and thereafter a corporation engaged in the manufacture, chiefly, of dining room and bedroom suites, kitchen tables and radio cabinets of "laminated" or "built-up" wood of three or five ply construction, with basic layer or core and one or more successive adjacent layers of gumwood, chestnutwood, beechwood, or other similar wood, and outer layers of mahogany or walnut one twenty-eighth of an inch thick, and with legs, posts, stretchers, mirror frames, and chair rungs of gum or other similar woods, and three-ply drawer bottoms, and in the sale thereof to wholesale and retail dealers (who displayed its catalogues, pamphlets, circulars, and other trade literature to the purchasing public, and advertised, and tagged the furniture on their floors in accordance with the manufacturer's description in catalogues, price lists, circulars, or invoices), in competition with manufacturers of furniture and novelties of mahogany or walnut entirely, of furniture thereof combined with other woods, and of furniture of mahogany or walnut veneered on other wood, and variously so designated and described by them in catalogues, price lists, and invoices, together with name of the wood or woods composing the legs, posts, or other solid parts of said veneered furniture,

- (a) Conspicuously designated its furniture by such terms as walnut, mahogany, combination walnut, combination mahogany, combination blended mahogany, or combination blended walnut, and also as laminated or veneered, or of plywood construction, without indicating the composition thereof or the relatively small amount of mahogany or walnut used therein, in catalogues, pamphlets and other trade literature furnished its customers; and
- (b) Described said furniture as American walnut or mahogany in its invoices to purchasers, without disclosing, or suggesting its veneered construction, involving no mahogany or walnut except on the outer or exposed ply of tops, ends, and broad or flat surfaces;

With the result that said furniture was offered and sold by retailers without disclosing the veneered character thereof and the relatively small amount of mahogany or walnut used therein, in competition with veneered furniture, and with furniture entirely of mahogany or walnut, truthfully described, and with the capacity and tendency to mislead and deceive purchasers and prospective purchasers of it and of its customer dealers into the purchase thereof as and for furniture entirely of mahogany or walnut, or of the designated wood or woods, and not veneered: