

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:

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

Mr. James M. Brinson for the Commission.

Mr. Jess B. Fields, of Bloomington, Ind., 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, an Indiana corporation engaged in the manufacture of furniture consisting chiefly of dining-room suites, bedroom suites, kitchen cabinets and radio cabinets, and in the sale thereof to wholesale and retail dealers in several different States, and with office and principal place of business in Bloomington, Ind., and with factories in said city and also in Bloomfield, Ind., and Burlington, Iowa, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in its catalogues, pamphlets, circulars, and other trade literature sent to its aforesaid customers and prospective customers and by them displayed to the purchasing public in connection with the offer and sale of respondent's said furniture, and in advertising in trade papers designated and described certain articles of furniture offered and sold by it, composed of gum, chestnut, beechwood, or other woods of similar grade and quality, with tops, sides, and ends and in some instances drawer bottoms veneered with mahogany or walnut about one twenty-eighth of an inch thick "as composed of 'walnut', 'mahogany', 'combination walnut', 'combination mahogany', 'combination blended walnut', or 'combination blended mahogany', and [by] similar terms embodying the words 'mahogany' and 'walnut' said terms being written in conspicuous type as captions appearing directly above the pictures of the said articles, and as particular descriptions of sundry items thereof"; respondent further in its said catalogues and other literature, describing certain articles as being equipped with drawers with mahogany bottoms.

The use, as alleged, "by respondent in its said catalogues and other trade literature of the terms 'walnut', 'mahogany', 'combination walnut', 'combination mahogany', 'combination blended walnut', 'combination blended mahogany' and similar terms embodying the words 'mahogany' and 'walnut,' to describe its said furniture

* * * is deceptive, and, when used by said dealers in the course of

Findings

12 F. T. C.

offering for sale and selling said furniture to their customers among the consuming public * * * has the capacity and tendency to mislead said customers into the belief that said furniture is composed wholly of mahogany or walnut as the case may be, with certain surfaces veneered with a layer of the same wood, or that said furniture is furniture, certain parts of which are composed wholly of mahogany or walnut and the remaining portions of woods other than mahogany or walnut", respondent thereby placing in the hands of said dealer an instrument and means whereby they may commit a fraud upon a substantial portion of the consuming public.

Said acts and practices of respondent, as charged, tend to divert trade from and otherwise to injure competitors who sell and distribute in interstate commerce furniture composed wholly of mahogany or walnut, with layers of mahogany or walnut veneered upon certain surfaces, and who so designate and describe their said furniture, and competitors who sell and distribute in interstate commerce furniture composed in part of mahogany or walnut and in part of other woods and who so designate and describe the same; all to the prejudice of the public and of respondent's 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 Showers Brothers Co., 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, a stipulation of the facts for the purpose of the proceeding was made, all other testimony and evidence, briefs and argument, waived and it was agreed by and between respondent and counsel for the Commission, that the Commission may proceed, without further processes or formalities, all of which were waived, so far as consistent with the law and the rules of the Commission, to enter its order disposing of the proceeding; thereafter it came on regularly for decision before the Commission on such complaint, answer and stipulation and the Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts, with its conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Showers Brothers Co., has been for several years last past, and now is, a corporation organized and existing under and by virtue of the laws of the State of Indiana, with office and principal place of business at Bloomington in said State, and other offices and places of business at Bloomfield, Ind., and Burlington, Iowa. It has been for several years last past, and now, is, engaged in the manufacture of furniture consisting chiefly of dining-room and bedroom suites, kitchen tables and radio cabinets, and the sale and transportation of such products to wholesale and retail dealers in the various States of the United States and the District of Columbia, in competition with individuals, partnerships, associations, and corporations also engaged in the sale and distribution of furniture in commerce among the various States of the United States.

PAR. 2. In the course of its business it has been, and is, the practice of respondent to manufacture its furniture from so-called "laminated" or "built-up" wood, either of three or five ply construction. The five-ply wood used by respondent in the construction of its furniture consists of a basic layer, called the core, composed of gumwood, chestnutwood, beechwood, or other hardwood of similar grade or quality with two inner plies of the same or similar woods; one attached by glue to the upper and the other to the lower surface of the said basic layer, and two outer or exterior surface plies likewise attached by glue, of the approximate thickness of one twenty-eighth of an inch, one or both, consisting of mahogany or walnut as the case might be, depending upon the position for which the piece of furniture was, or is, designed, in actual use. The three-ply wood used in the construction of furniture by respondent has been and is composed of a basic layer or core of the same or similar woods used as stated for the core of five-ply wood, with a lower and upper ply attached thereto by glue, of the approximate thickness of one twenty-eighth of an inch, the upper ply of walnut or mahogany, as the case might be, and the lower of wood of the grade or quality of that used for the core. Legs, posts, stretchers, frames of mirrors, rungs of chairs, are, and for many years have been, made from gum, chestnut, beechwood or other hardwood of similar grade or quality. The bottoms of drawers in the furniture of respondent consist of three-ply wood, constructed as hereinbefore described.

PAR. 3. In the course of its business it has been for many years heretofore, and now is, the practice of respondent from time to time to transmit to customers and prospective customers in the several States

Findings

12 F. T. C.

of the United States, pamphlets, circulars, and other trade literature containing written descriptions and pictures of the furniture respondent has offered for sale and sold or offers for sale and sells, and to cause to be published in trade papers having wide circulation in the various States of the United States, advertisements of its furniture in which respondent has represented to the trade and the public the style and appearance of furniture offered for sale and the materials from which it was or is constructed. Customers of respondent, Showers Brothers Co., that is to say—the wholesale and retail dealers in furniture, in the course of offering for sale and selling the furniture of respondent, display to the purchasing public the said catalogues, pamphlets, circulars, and other trade literature prepared by respondent and advertise said furniture as shown by respondent, Showers Brothers Co., in their catalogues, pamphlets, circulars, and other trade literature. Retail dealers in furniture, or a large proportion of them, follow the practice of describing furniture offered for sale in advertisements and on tags attached to the furniture on the floor of their places of business by designating the wood or woods of which the furniture is composed, as described or designated by the manufacturer of the furniture in catalogues, price lists, circulars, or invoices.

PAR. 4. In the catalogues, pamphlets, and other trade literature which respondent has furnished customers and which they display to the purchasing public as aforesaid, respondent Showers Brothers Co., until some time during the month of May, 1927, generally designated and described articles of furniture constructed and composed as stated in paragraph 2 hereof, as consisting of walnut, mahogany, combination walnut, combination mahogany, combination blended mahogany or combination blended walnut and similar terms embodying the words mahogany and walnut, said terms being written in conspicuous type as captions appearing practically above the pictures of the said articles and as particular descriptions of sundry items thereof.

For several years heretofore respondent has also designated articles of furniture made from plywood as laminated or veneered, or as consisting of plywood construction without, however, indicating the composition of the plywood or the relatively small amount of mahogany or walnut used therein.

In its invoices to purchasers, representing sales of its furniture, respondent neither now nor at any time heretofore has disclosed, indicated, or suggested veneered construction of its furniture, but has described as American walnut or mahogany furniture in the construction of which no mahogany or walnut has been used, except

on the outer or exposed ply of the tops, ends, or broad or flat surfaces. The core, inner plies, legs, posts, stretchers, and rungs of chairs in furniture so described have consisted of other woods than walnut or mahogany, such as gumwood, chestnut, beechwood, poplar, or hardwoods of similar grade or quality.

PAR. 5. The words "mahogany" and "walnut" when used to designate or describe furniture, or any part thereof signify and mean, and have been for many years, and now are, understood by the trade and the purchasing public to signify and mean furniture in which the parts as well as and including the surface thereof, exposed to view when the piece of furniture is placed in the generally accepted position for use consist, or are composed entirely of mahogany or walnut, either in solid or laminated condition.

PAR. 6. There have been for many years last past, and now are, manufacturers of furniture selling in interstate commerce, dining room, bed room, living room, hall and library furniture, as well as novelties consisting entirely of mahogany or walnut, solid or laminated, and designating and describing it as mahogany or walnut as the case may be; and others so selling furniture consisting of mahogany or walnut combined with other woods and so designating and describing it; and still other manufacturers selling in interstate commerce furniture consisting of mahogany or walnut veneered on other wood and designating and describing it as mahogany or walnut veneered, with the name of the wood or woods composing the legs, posts, or other solid parts thereof in catalogues, price lists, and invoices.

PAR. 7. As a result of the practice of respondent in describing its veneered furniture as mahogany or walnut, combination mahogany, combination walnut, combination blended mahogany, or combination blended walnut, or similar terms embodying the terms, mahogany or walnut, and of the practice of its competitors in describing truthfully furniture of similar construction as mahogany veneer or walnut veneer, together with the practice of dealers in following the description of the respondent and other manufacturers in their representations to the public, such veneered furniture of respondent has been offered for sale and is being offered for sale by the retail furniture dealers, without describing it as veneered and disclosing the relatively small amount of mahogany or walnut used therein, in competition with veneered furniture and with furniture 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, or walnut, or by a designation of the

Order

12 F. T. C.

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.

CONCLUSION

The practice of respondent, Showers Brothers 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, Showers Brothers Co., its answer thereto, and a stipulation as to the facts by and between counsel for the Commission and respondent, in courses of formal hearing to take testimony, and in lieu thereof, all other testimony and evidence, briefs and argument, having been waived, and it having been expressly stipulated and agreed by and between said counsel that the Commission may proceed to enter its order disposing of the proceeding, and the Commission having thereupon made its report in writing, stating its findings as to the facts and its conclusion that respondent, Showers Brothers 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 now ordered, That respondent, Showers Brothers 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, Showers Brothers Co., shall, within 60 days from and after service upon it of this order, file with the Commission a report in writing stating the manner and form in which it has complied with its terms.

IN THE MATTER OF

JOSEPH C. MARGULIAS, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF CHESTER HAIR WORKS

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

Docket 1493. Complaint, Feb. 3, 1928—Decision, Oct. 15, 1928

Where an individual engaged in the purchase, preparation, cleaning, and packing of horse, cattle, and hog hair, and tampico and sisal, substitutes therefor, and in the sale thereof to furniture and bedding manufacturers, offered and sold animal hair intermingled with the aforesaid or other substitutes, as and for curled hair, in price lists and otherwise; with the capacity and tendency to mislead and deceive the aforesaid manufacturers into purchasing such product as and for curled hair, and with the result of furnishing them with the means of misleading and deceiving dealers in articles composed in whole or in part of such product, and of furnishing said dealers a means for similarly misleading and deceiving their customers into purchasing said articles as and for those containing only natural animal hair and with the further tendency and capacity to divert trade from competitors engaged in the sale of hair, hair substitutes, or combinations thereof, and truthfully labeling, advertising, and otherwise offering and selling their products:

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

Mr. James M. Brinson for the Commission.

Wolf, Block, Schorr & Solis-Cohen, 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, engaged in the purchase, preparation, cleaning and packing of horse, cattle, and hog hair and of hair substitutes, known as tampico and sisal, and in the sale thereof to furniture and bedding manufacturers in the various States, and with principal office and place of business in Chester, Pa., 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 in advertisements, price lists, and otherwise offers and sells as and for "curled