

IN THE MATTER OF

REGENT TAILORS, INC., DUNDEE WOOLEN MILLS CO.,
DUNDEE TAILORING CO., MAX GREENGARD, AND
DAVID GREENGARD

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

Docket 1494. Complaint, Feb. 4, 1928—Decision, Nov. 21, 1928

Where a corporation engaged in the manufacture of men's made to order clothing and in the sale thereof to retail stores (of which some were owned in whole or in part by its president and secretary or by a corporation officered by them, and which displayed samples of suitings in their places of business, took and transmitted the measurements of the ultimate consumer, and, upon the return of the suit made up by such first named corporation, delivered the same to him); the corporation officered as above set forth; a subsidiary corporation named Dundee Woollen Mills Co.; and the aforesaid president and secretary; in competition in the manufacture and sale of men's clothing with concerns making cloth into men's clothing without employing the words "woolen mills" or "mills" as a part of their corporate, firm, or trade names, and with others using such words and in fact manufacturing woollen cloth from the raw material and selling the same and/or clothing made therefrom;

Displayed, used, and sanctioned, or brought about the display and use, through their request, consent and authority, of the words "Dundee Woollen Mills," by their aforesaid retail store customers as a part of their business, trade or corporate names, and on their signs, business stationery, billheads, circulars, labels, newspapers, and other advertising matter, in connection with the offer and sale to the public of men's made to order clothing by the aforesaid first named corporation, notwithstanding the fact that none of the aforesaid corporations or individuals owned, controlled or operated a woollen mill or mills manufacturing fabrics from which men's clothes were made, but that orders received by said first named corporation were filled by it from fabrics procured by purchase in the open market or otherwise from producers thereof, and made at mills owned or controlled by concerns other than the aforesaid corporations and individuals;

With the capacity and tendency to mislead a substantial portion of the purchasing public into believing the ultimate purchaser of the clothing was dealing directly with a concern owning, controlling, or operating a mill or mills converting raw materials into the fabrics of such clothing, and receiving the benefit in prices and quality incident to the passing of such clothing directly from the maker of the fabric to the wearer of the clothing, without the intervention of other persons:

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

Mr. M. A. Morrison for the Commission.

Samuels, Lawton & Wittelle, 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 respondents, Regent Tailors, Inc., Dundee Woolen Mills Co., and Dundee Tailoring Co., Illinois corporations with principal places of business in Chicago, and respondents Max Greengard and David Greengard, also with principal places of business in said city, with adopting and using misleading trade or corporate name 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 Regent Tailors, Inc., as alleged, is engaged in the manufacture of men's clothes and sale thereof at wholesale and retail, carrying on its business under and in the corporate name of respondent Dundee Woolen Mills Co., or under the trade name Dundee Woolen Mills, and selling its said clothing to a large number of retailers throughout the several States.¹ Respondent Dundee Woolen Mills Co. is dominated and controlled by respondents Greengard, who use the same solely as a subsidiary to the other respondents and who are president and secretary of said first-named respondent corporation Regent Tailors, Inc., and of respondent Dundee Tailoring Co., used solely as a subsidiary to respondent Regent Tailors, Inc., and, like the Dundee Woolen Mills Co., in aid of the business activities herein concerned, and, as with the Regent Tailors, Inc., controlled and dominated by said individuals.

Respondent Regent Tailors, Inc., as charged, engaged, controlled, and dominated as above set forth, for the purpose of inducing the purchasing public to believe that its business is conducted by a

¹ The business of respondent Regent Tailors, Inc., is further described in the complaint as follows:

"Respondent, Regent Tailors, Inc., in the conduct of its said business, has furnished the fabrics and necessary materials therefor and has made and manufactured therefrom men's clothing and has supplied the same and caused the same to be transported to said several retail stores of the several kinds above set out, to be therein offered for sale and sold to the public in and under the corporate name or trade name above alleged, namely, Dundee Woolen Mills, and continues so to do; said clothing being so made and manufactured at said city of Chicago in the State of Illinois and transported into and through the several States of the United States to said several retail stores so located in the several States of the United States, said clothing being so offered for sale and sold to the public in said several retail stores. In all of said business respondent, Regent Tailors, Inc., has been and is in competition with many other corporations, firms or persons engaged in making or manufacturing men's clothing and in offering the same for sale and selling and distributing the same in interstate commerce in and among the several States of the United States."

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woolen mills company which produces the fabrics composing the men's clothing herein concerned, conducts its said business solely under the corporate name of Dundee Woolen Mills Co., or trade name Dundee Woolen Mills, and authorizes and induces its retail dealer vendees to conduct their business also under said corporate name or trade name, respondent, in further aid of its said purpose, procuring and exercising control, "through the ownership, or part ownership of such retail dealers by persons who are financially, or by other means, interested in respondent, Regent Tailors, Inc., over many retail stores and shops in various towns and cities throughout the United States, in each of which is conducted a retail business in the said men's clothing so manufactured and sold by said respondent, said retail business being conducted under and in said trade name of Dundee Woolen Mills"; notwithstanding the fact that no respondent has owned or operated or owns or operates a woolen mill (to wit, "a structure provided with machinery and appliances to change the form of raw or unworked wool into cloth or other fabrics") making fabrics from which men's clothing is made, but that said clothing is made solely from fabrics manufactured in mills owned by concerns or persons other than any respondent herein, and procured by said respondent Regent Tailors, Inc., by purchase in the open market or otherwise, from the producers thereof or dealers therein.

Respondent Regent Tailors, Inc., further, as charged, in the course of its said business publishes and causes and induces its aforesaid retail dealer vendees "to publish advertisements in newspapers and trade journals of general circulation, and makes use of and causes said retail dealers to make use of, office stationery, price lists, catalogues, sample books and other printed matter, in which said corporate name of Dundee Woolen Mills Co. and said trade-name of Dundee Woolen Mills are used by respondent, Regent Tailors, Inc., and by said retail dealers in said men's clothing, to designate the producer and seller of said men's clothing".

The use by respondents, as alleged, "of said corporate name of 'Dundee Woolen Mills Co.' and of said trade-name, 'Dundee Woolen Mills' in the manners and forms as above set forth, and the use thereof as above set forth by and in connection with said retail stores, has the tendency and capacity to deceive and mislead the purchasing public into the belief that the purchaser of said clothes at retail is dealing directly with a corporation, firm or person who owns or operates a mill or mills in which raw materials are converted into the fabrics from which such clothing was manufactured, and that such retail purchaser is, therefore and thereby, re-

ceiving the benefit in prices and quality of goods that is incident to the passing of said clothing directly and without the intervention of other persons, from the maker of such fabric to the wearer of such clothing”.

Said acts and things done by respondents, and each of them, as charged, constitute unfair methods of competition in commerce within the intent and meaning of section 5.

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 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondents, Regent Tailors, Inc., Dundee Woolen Mills Co., Dundee Tailoring Co., Max Greengard, and David Greengard, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

The respondents having entered their appearance and filed answer herein and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission may take such agreed statements of facts as the facts in this case, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said agreed statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusions, and entering its order disposing of the proceeding; 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Regent Tailors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located in the city of Chicago, in said State. It is now and for more than one year last past has been engaged in the manufacture of men's made-to-order clothing and in the sale and distribution thereof in commerce between and among various States of the United States, causing said clothing when sold to be shipped from its place of business located in the State of Illinois to purchasers thereof located

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in States of the United States other than the State of Illinois. Its president and secretary are, respectively, respondents David Greengard and Max Greengard.

PAR. 2. Respondent Regent Tailors, Inc., maintains and operates a department of its business in which department respondent's made-to-order clothing is made. The large volume of its sales is made to retail stores located throughout various states of the United States who resell to ultimate consumers. Some of said retail stores, customers of respondent, are owned in whole or in part by respondents Max Greengard and David Greengard. Other of said retail stores are owned in whole or in part by respondent Dundee Tailoring Co., an Illinois corporation, located in the city of Chicago, State of Illinois. Respondent Max Greengard is president and respondent David Greengard secretary of said Dundee Tailoring Co. Still others of said retail stores, customers of respondent Regent Tailors, Inc., are neither owned in whole or in part by said respondent Regent Tailors, Inc., or by parties owning or controlling said Regent Tailors, Inc., or by respondents Max Greengard and David Greengard.

PAR. 3. All of said retail stores, customers of respondent Regent Tailors, Inc., cause to be displayed in their places of business samples of suitings, materials, and cloth from which the ultimate consumer may select clothes to be made to measure. Said retail stores take the measure of the ultimate consumer, fill in the order blank and mail same to respondent Regent Tailors, Inc., where the suit is tailored from the instructions on the aforesaid order blank. After the suit is tailored, it is returned to the retail dealer from which it originated, who delivers it to the ultimate consumer ordering same. All of said retail stores, customers of respondent Regent Tailors, Inc., use and display as a part of their business, trade or corporate name, and on signs, business stationery, billheads, circulars, labels, newspaper and other advertising matter, in connection with offering for sale and selling to the public of men's made-to-order clothing, as aforesaid, the name Dundee Woolen Mills. The said name Dundee Woolen Mills is now and at all times herein mentioned has been owned or controlled by respondent Regent Tailors, Inc., or by persons who own or control respondent Regent Tailors, Inc., or by other respondents herein.

PAR. 4. All of said retail stores using the name Dundee Woolen Mills, in connection with the offering for sale and sale of made-to-order clothing made by respondent, Regent Tailors, Inc., as aforesaid, use the name Dundee Woolen Mills at the instance and request and by permission, consent and authority of respondent Regent

Tailors, Inc., or by persons who own or control respondent Regent Tailors, Inc., or by other respondents herein.

PAR. 5. No respondent herein has owned, controlled, or operated or now owns, controls, or operates a woolen mill or woolen mills or any mill in which fabrics are manufactured out of which men's clothes are made. Respondent Regent Tailors, Inc., in the course of its business, as aforesaid, now fills and for more than one year last past has filled orders for the sale of men's clothing to the public made from cloth manufactured or fabricated by mills or factories which it neither owns, controls, nor operates. Men's clothing made by Regent Tailors, Inc., and sold to the public, as herein set forth, is made and manufactured solely from fabrics manufactured in mills owned or controlled by corporations, firms, or persons other than respondents herein, which fabrics are procured by respondent Regent Tailors, Inc., by purchase in the open market, or otherwise, from producers of such fabrics or dealers therein.

PAR. 6. "Woolen Mills" as the term is generally understood in the trade and by a substantial portion of the purchasing public is a manufacturing plant where raw wool is converted by various steps and processes of manufacture into the finished materials, such as cloth known as woolen and worsteds.

PAR. 7. The use by respondents herein of the name Dundee Woolen Mills carrying the word "mills" in connection with advertising, offering for sale, and selling men's clothing to the purchasing public, as hereinbefore set out, has the capacity and tendency to mislead a substantial portion of the purchasing public into the belief that the ultimate purchaser of said clothes is dealing directly with a corporation, firm, or person who owns, controls, or operates a mill or mills in which raw materials are converted into the fabrics from which such clothing is manufactured and that such ultimate purchaser is receiving the benefit in prices and quality of goods that is incident to the passing of said clothing directly and without the intervention of other persons from the maker of such fabrics to the wearer of such clothing.

PAR. 8. Respondents herein in the course and conduct of their respective business, as hereinbefore set out, are now and for more than one year last past have been engaged in competition with other persons, partnerships, and corporations engaged in the manufacture and sale of men's clothing in interstate commerce. Among the competitors of respondents referred to herein are many who convert cloth into men's clothing, which they sell in interstate commerce and who do not use the words "woolen mills" or the word "mills" as a part of their corporate or firm or trade name. There are also

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among respondents' competitors others who use the words "woolen mills" and the word "mills" as a part of their corporate, firm, and trade name who do in truth and in fact manufacture woolen cloth from the raw material which said cloth they sell in interstate commerce and some of them also manufacture from said cloth men's clothing which they sell in interstate commerce.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors and are unfair methods of competition in interstate commerce and constitute a violation 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 upon the complaint of the Commission, the answer of respondents, and an agreed statement of facts in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in 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",

It is now ordered, That respondents Regent Tailors, Inc., a corporation; Dundee Woolen Mills Co., a corporation; Dundee Tailoring Co., a corporation; and Max Greengard and David Greengard, officers of such corporations, and their officers, directors, agents, representatives, and employees shall, each and all, jointly, separately and severally, in connection with advertising, offering for sale and selling men's clothing in commerce among the several States of the United States, cease and desist:

(1) From carrying on business under a name which includes the word "mills" in combination with the words "Dundee Woolen", or under any other name which includes the words "mill" or "mills", and from making representations through store signs, circulars, newspaper or other advertisements in any manner whatsoever designed to promote or affect interstate commerce, that respondents

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herein, jointly, severally and separately, own or control a woolen mill or mills.

(2) From authorizing, inducing, or otherwise procuring retail stores or others engaged in selling men's clothing made by respondent Regent Tailors, Inc., or any other respondent herein to advertise, offer for sale or sell or carry on business under a name which includes the word "Mills" in combination with the words "Dundee Woolen" or any other name which includes the words "mills" or "mill".

It is further ordered, That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
JAMES S. KIRK & 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 1110. Complaint, Jan. 9, 1924—Decision, Dec. 12, 1928

Where the words "Castile Soap" had long since come to mean a hard soap produced from oil or fat derived solely from olives, without the addition or admixture of any artificial perfume or substance as a filler or builder, to be so recognized in pharmacopelas in England and the United States, in dictionaries, in treatises on materia medica, and in other authorities, to be so known by physicians, druggists, soap manufacturers and dealers and a substantial part of the public, and as a very mild neutral soap, especially adapted for sensitive skins and universally recommended by authorities above and beyond all other soaps as a baby soap, to be synonymous in common usage with the term "olive oil" soap, and to denote the best known toilet soap in the world; and thereafter a corporation engaged in the manufacture of various soaps and soap products including toilet soaps, and in the sale thereof to wholesale and retail dealers in the various States and in foreign countries,

Designated, labeled, and stamped some 20 brands of its soap varying as to fatty composition from no olive oil to 90 per cent olive oil and with unknown proportions in a few cases (and sold by reason of less expensive ingredients at lower prices than castile soaps), with various combinations of the word "Castile" and/or olive oil, such as "Oreno Olive Oil Castile", "Oreno Genuine Olive Oil Castile", "Baby Bath Castile" (together with the words "Olive Oil Soap", "made with pure olive oil", and a picture of a mother bathing a baby), "Nursery Olive Oil Castile", "Lady Fair Castile", "Crown Castile", "White Hardwater Castile", "Coco Castile", "Coco Strip Castile", "Kirk's Olive—trade mark registered", etc., and advertised its said brands under the aforesaid and similar designations and descriptions, and as "real milled olive oil castile soap of the highest quality", etc., and the first two as "ideal for the nursery, hospital, and general toilet uses" by reason of their "purity" and not surpassed "by castile soaps manufactured in America or abroad", and the "Baby Bath Castile" as "Made especially for use in the nursery" and "A pure soap for tender skins", without disclosing at all in some cases and equally conspicuously in other cases, along with the aforesaid designations, etc., the absence of olive oil, or presence of other fatty ingredients, as the case might be;

With the tendency and capacity to deceive members of the public into believing the aforesaid soaps to be castile and olive oil soaps, composed entirely as to their fatty composition of fat derived from olives, and with the effect of deceiving physicians, pharmacists and other members of the public into purchasing and using the aforesaid soaps for the purpose, among others, of compounding medical prescriptions and in connection with the care of babies, in place of castile or olive oil soap, and of diverting business from