

Complaint

IN THE MATTER OF
JEFFERSON FURNITURE MANUFACTURING
CORPORATION

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

Docket 1605. Complaint, Apr. 22, 1929—Decision, June 29, 1929

Where a corporation engaged in the sale, at retail, of furniture, rugs, lamps, etc., to members of the public in various States, and neither a manufacturer nor jobber,

- (a) Adopted and used a corporate name including the word manufacturing, and featured said name in its advertisements and circulars, together with the slogan "Factory to Home"; and
- (b) Made such statements and representations in its aforesaid advertisements and circulars as "High Grade Furniture Direct from Factory to You"; "Manufactured at Tremendous Savings Direct to Consumer"; "Made in Our Own Factory"; "Here's What you Save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory direct to your home"; "Made in our own factory to sell direct to you at real wholesale"; "While we are manufacturers, we of course have a large furniture store trade, and like most manufacturers, have a regular retail list price which is 100 per cent more than our wholesale price. In other words, our discount to customers is 50 per cent off the list price"; "Manufacturers living room suites, upholstered chairs, tables—Novelty furniture—Jobbers—Bedroom and dining room furniture, cedar chests, bed springs, mattresses, breakfast suites"; "You owe it to yourself—buy wholesale—save your money. Here proves the power of the manufacturer. Mail orders are solicited"; "Do you know that its products are sold direct to the consumer at wholesale?";

With the capacity and tendency to mislead and deceive many among the consuming public into believing it to own, control, and operate a factory making the products dealt in by it and/or to be a jobber thereof, and to induce many to purchase said products in the belief that they were saving the profits of the middlemen:

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

Mr. Baldwin B. Bane for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Alabama corporation engaged in the sale separately or in suites of dining room, bed room, parlor or living room suites, pieces of furniture, rugs, lamps, etc., at retail to members of the

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public in various States and with principal place of business in Birmingham, with using misleading corporate name, misrepresenting business status or advantages 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, as charged, engaged, as above set forth, and neither a manufacturer nor jobber, in advertising the articles dealt in by it, in newspapers and magazines of general circulation and in circulars sent to prospective customers, features its aforesaid corporate name and its slogan "Factory to Home" and makes such statements and representations as "High-grade furniture direct from factory to you"; "Manufactured at tremendous savings direct to consumer"; "Made in our own factory"; "Here's what you save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory direct to your home"; "Yes, sir! You owe it to yourself to at least come see what you save"; "Made in our own factory to sell direct to you at real wholesale"; "While we are manufacturers, we of course have a large furniture store trade, and like most manufacturers have a regular retail list price which is 100 per cent more than our wholesale price. In other words, our discount to customers is 50 per cent off the list price"; "Manufacturers, living-room suites, upholstered chairs, tables—Novelty furniture—Jobbers—Bed room and dining room furniture, cedar chests, beds, springs, mattresses, breakfast suites"; "Come to the factory for your rugs. Buy them at wholesale. All sizes."

According to the complaint, the name, slogan, statements, and representations as used by respondent in the manner set out above, signify to and are understood by a substantial part of the public to mean that respondent manufactures the products which it sells and/or is a jobber of such products, selling direct to the consuming public, whereas in truth and in fact respondent is not such a manufacturer or jobber. Said name, slogan, statements, and representations so used by respondent are false and misleading and have the capacity and tendency to mislead and deceive many among the consuming public to believe that respondent owns, controls, and operates a factory in which it manufactures the products which it offers for sale and/or is a jobber of such products, and to induce many of the consuming public to purchase said products of the respondent in the belief that in so doing they are saving the profits of the middlemen, 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 (38 Stat. 717), the Federal Trade Commission issued and served upon the respondent above named, on the 24th day of April, 1929, a complaint, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act, together with notice that answer should be filed within thirty days after service of the complaint, and with a copy of the Rules of Practice of the Commission as to answers (Rule III).

The respondent did not enter an appearance and has not filed an answer to the complaint within the time required by the rules, or at all.

Thereafter, the chief counsel for the Federal Trade Commission, on June 13, 1929, filed with the Federal Trade Commission a motion moving respondent's failure to appear and answer to be deemed and taken to be an admission of all the allegations of the complaint; to authorize the Commission to find them to be true, to waive hearing on the charges set forth in the complaint, and that thereupon an order to cease and desist issue, as prayed for in the complaint.

Thereafter the Federal Trade Commission, on June 20, 1929, issued and served upon respondent said motion of the chief counsel for the Commission and notified respondent that the Commission would hear said respondent on said motion on Friday, June 21, 1929, at 10 a. m., in the hearing room of the Federal Trade Commission building, 2000 D Street NW., Washington, D. C. The respondent did not appear or answer said motion on the day fixed, or at all. No answer or return of any kind whatsoever has been filed by respondent.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, pursuant to Rule of Practice III, subdivision 3, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its principal place of business in the city of Birmingham, in the State of Alabama. Respondent was organized and incorporated January 28, 1927. Respondent is engaged in the business of selling separately or in suites, articles or pieces of furniture, rugs, lamps, etc., for use in furnishing homes, at retail, to members

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of the public located in various States of the United States, and respondent causes said products, when so sold, to be transported from its place of business in Alabama through and into other States of the United States to the purchasers thereof. In the course and conduct of its aforesaid business respondent is in competition with other corporations, partnerships, and individuals.

PAR. 2. In the course and conduct of its aforesaid business respondent causes advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and in various sections thereof, and causes circulars to be sent through the mails to prospective customers in various States of the United States in which advertisements and circulars respondent causes to be prominently displayed its name "Jefferson Furniture Manufacturing Corporation," and its slogan, "Factory to Home." Respondent in such advertisements and circulars makes such statements and representations as, "High-grade furniture direct from factory to you"; "Manufactured at tremendous savings direct to consumer"; "Made in our own factory"; "Here's what you save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory direct to your home"; "Buy direct from the big factory that has been operating at this same plant for four years"; "While we have only sold exclusively to dealers for the past four years, we have been building up a reputation for high-grade furniture, and since opening our sales-room three months ago, selling to anyone who wishes to buy, our business has doubled and our prices reduced 25 per cent"; "Yes, sir! You owe it to yourself to at least come see what you save"; "Made in our own factory to sell direct to you at real wholesale"; "While we are manufacturers, we of course have a large furniture store trade, and like most manufacturers, have a regular retail list price which is 100 per cent more than our wholesale price. In other words, our discount to customers is 50 per cent off the list price"; "Just come and see our magnificent sample room, loaded with bedroom, living room, and dining room furniture, odd chairs, end tables, library tables, lamps, and novelties"; "Made by two men of nation-wide reputation—Men who know the furniture business from every angle"; "Manufacturers' living room suites, upholstered chairs, tables—Novelty furniture—Jobbers—Bedroom and dining room furniture, cedar chests, beds, springs, mattresses, breakfast suites"; "Come to the factory for your rugs. Buy them at wholesale. All sizes." "You owe it to yourself—Buy wholesale—Save your money. Here proves the power of the manufacturer. Mail orders are solicited"; "Do you know that its products are sold direct to the consumer at whole-

sale?" "Made in our own factory, 100 beautiful hand-painted floor lamps"; "Built from the ground up in our big modern factory. Come see it to-morrow sure. You will be well pleased"; and many other statements and representations of similar and like import.

PAR. 3. The name, slogan, statements, and representations as used by respondent in the manner set out above, signify to and are understood by a substantial part of the public to mean that respondent manufactures the products which it sells and/or is a jobber of such products, selling direct to the consuming public, whereas, in truth and in fact, respondent is not such a manufacturer or jobber. Said name, slogan, statements, and representations so used by respondent are false and misleading, and have the capacity and tendency to mislead and deceive many among the consuming public into the belief that respondent owns, controls, and operates a factory in which it manufactures the products which it offers for sale and/or is a jobber of such products, and to induce many of the consuming public to purchase said products of the respondent in the belief that in so doing they are saving the profits of the middlemen.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Jefferson Furniture Manufacturing Corporation, its agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution of furniture in interstate commerce:

1. From conducting business under the name Jefferson Furniture Manufacturing Corporation, or under any other corporate or trade name containing the word "Manufacturing".

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2. From using the phrases: "Factory to home"; "High-grade furniture direct from factory to you"; "Manufactured at tremendous savings direct to consumer"; "Made in our own factory"; "Here's what you save: Tremendous retail profits, high freight rates, extra delivery hauling, enormous overhead expenses, and you get clean, crisp, new furniture right out of the factory, direct to your home"; "Buy direct from the big factory that has been operating at this same plant for four years"; or any phrase or slogan of similar import; or any statement or representation whatsoever that respondent is the manufacturer or jobber of furniture and is selling and distributing same direct from the manufacturer or factory to its customer purchasers without the intervention of middlemen.

3. Making representations or statements in any manner whatsoever that the prices at which respondent is offering for sale and selling furniture are factory or manufacturer's prices, or jobber's prices.

It is further ordered, That respondent shall, within 60 days after service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF

I. J. ROSENBLOOM AND JAKE A. ABLIN, PARTNERS
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE THE RESTORAL 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 1616. Complaint, May 6, 1929—Decision, June 29, 1929

Where a firm engaged in the sale of a shampoo and of a hair color restorer, which (1) operated simply as a dye, (2) did not bring back the natural color of the hair except as, applied over a sufficient length of time, it brought a shade possibly very similar to or even identical with the original, (3) contained as its essential ingredients Sodium Thiosulphate, Resorcinol, and Lead Acetate, long used for dyeing the hair and a poison apt to be harmful when frequently rubbed into the scalp, and (4) possessed no tonic properties and had no efficacy in making the hair grow, or in preventing dandruff, and which preparation, together with said shampoo, was sold by it, under the name Restoral, by mail, and was extensively advertised in magazines, booklets, circulars, and other printed matter,

- (a) Falsely labeled the bottles containing said hair restorer "RESTORAL 'Double Duty' Tonic For Gray Hair For Falling Hair Not a dye but a new kind of tonic that brings back the original color to the hair and promotes the growth of new hair";
- (b) Stated in its said advertisements that said Restoral would gradually bring back the original color of the hair and aided the growth thereof through its excellent tonic qualities, with no harmful ingredients;
- (c) Advised the use thereof from one to three times a week as needed, after the restoration of the natural color, as a tonic for the scalp and to insure beautiful color permanence, and advised the user not to be alarmed at possible development at first of a slight variation of shades but to continue the treatment as directed, which would soon bring the desired shade, the facts being, in addition to those above set forth, that said variation usually happened and was of long persistence and that the desired shade rarely developed; and
- (d) Falsely and unfairly stated in the labels and advertisements of its said Restoral Shampoo, endorsed by it for use with said tonic, that the same was free from harmful ingredients found in average soaps, many of which were injurious to the scalp, containing free alkali, strong chemicals, and other harmful ingredients, notwithstanding the fact that there were on the market excellent soaps free from such ingredients and chemicals;

With the tendency and capacity to mislead and deceive the public into purchasing said Restoral in the false belief that the same was a natural hair color restorer and not a dye, and a preparation which would restore the original color by replenishing the color glands, stop falling hair and prevent