

IN THE MATTER OF
TAILOR-MADE SHOE SYSTEM, WILLIAM GINSBURG,
AND SAM GINSBURG

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

Docket 1562. Complaint, Feb. 18, 1929—Decision, May 12, 1930

Where a corporation engaged in the sale of shoes direct to the wearers through advertisements in newspapers, periodicals, and circulation of catalogues, leaflets, and other literature, and through agents supplied with catalogues, and other matter, who solicited orders, took measurements of the customer's foot, and transmitted measurements and orders to said corporation to be by it filled from its stock of ready-made shoes; and under the management of two individuals, president, and secretary and treasurer thereof, respectively, and principal stockholders therein, theretofore engaged in the conduct of a business identical in character and operation;

- (a) Employed the corporate name "Tailor-Made Shoe System", notwithstanding the fact that it neither made the shoes sold by it nor had an interest in any shoe factory, with the tendency and capacity to mislead and deceive the public and prospective customers into believing it to be the owner and operator of a shoe factory, eliminating profits of the middleman and enabling purchasers to obtain a special advantage in price;
- (b) Designated its shoes as "tailor-made shoes" and through such statements as "The scientific tailor-made way of fitting shoes to six actual foot measurements eliminates all possibility of imperfect fit", " * * * we use Ohio patent leather in making the Cadet", " * * * unlike most companies we have put into these (work) shoes careful workmanship and construction so that they will stand up", etc., and through other methods falsely represented itself as manufacturer of the shoes offered by it;
- (c) Depicted a large building upon the covers of its catalogues and a workman cutting leather while looking at an order for "tailor-made shoes"; and
- (d) Represented that it had over 800,000 satisfied customers and was the largest concern of its kind in the world, notwithstanding the fact that many competitors were larger, and in some cases incomparably larger, both in number of customers and volume of sales;

With the capacity and tendency to deceive the purchasing public and induce the purchase of its merchandise in reliance upon the truth of the aforesaid representations and in the belief that they were dealing directly with the manufacturer and thereby obtaining shoes at prices substantially lower than those charged by nonmanufacturing shoe dealers:

Held, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and of competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Maurice M. Loman, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Tailor-Made Shoe System, an Illinois corporation, and respondents William and Sam Ginsburg, its principal stockholders and managers, and president and secretary, respectively, engaged in the sale of shoes direct to the wearers,¹ and doing no manufacturing, and with no interest in any shoe factory, with principal place of business in Chicago, with assuming and using misleading corporate and trade names, misrepresenting business status or advantages and connections, and advertising falsely or misleadingly in regard thereto and as to nature and quality of product, 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 (acting under direction of and including respondent individuals, who are charged with the same practices, in their individual capacities)—

Features the corporate and trade names Tailor-Made Shoe System and Triangle Shoe Factories upon letterheads, order blanks, labels, and other trade stationery, and in advertisements and in the transaction, generally, of its business;

Falsely represents in advertisements and orally through officers and agents that it has offices in Paris and New York and branches in the principal cities of the United States, that the business is the largest of its kind in the world, has 800,000 satisfied customers, and annual sales amounting to a million dollars, and depicts on the front covers of the agents' catalogue or sample book, shown to prospective customers (1) a large seven-story building representing a factory and (2) a workman cutting leather while looking at an order for "Tailor-Made Shoes", the facts being that respondent is not manufacturing, has no branches or offices elsewhere than in Chicago; its annual sales do not exceed \$100,000 or customers 20,000, and many competitors are larger both in respect of customers and volume of sales, and describes the shoes dealt in, in its catalogues and other advertising literature as "Tailor-Made Shoes", thereby falsely importing that they are made to order of the customer upon his individual measurements;

Falsely represents, by numerous other methods including statements in its trade literature and oral statements by its agents, "that

¹ As alleged, upon orders received through the mail in response to advertisements in newspapers and other periodicals, but principally, through circulation of catalogues, leaflets, and other trade literature and agents who solicit business from the users, showing catalogues supplied them and samples of letters, and transmitting measurements of customer's foot, together with customer's order to respondent for filling from its ready-made stock.

Findings

14 F. T. C.

it manufactures the shoes which it offers for sale, to the order and individual measurements of the customer, and as such manufacturer, sells direct to the public, and that therefore the profits of jobbers and retailers do not enter into the prices asked by respondent"; and

Falsely represents that its shoes are better than those ordinarily purchased and shown in retail stores, and will give better and longer service;

The aforesaid false and misleading representations and the use of the aforesaid corporate and trade names by respondent corporation and respondent individuals, have, as charged, the tendency and capacity to mislead and deceive the public and prospective customers into believing respondents to be manufacturers of the shoes dealt in by them, and that purchasers from them are enabled to and do obtain a substantial advantage in price through the elimination of middlemen's profits, and to mislead and deceive the purchasing public and induce the purchase of respondents' shoes in reliance also upon the truth of the other representation hereinabove set forth; all to the prejudice of the public and of 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" (38 Stat. 719), the Federal Trade Commission, on the 18th day of February, 1929, issued and served its complaint against the respondents Tailor-Made Shoe System, a corporation, William Ginsburg and Sam Ginsburg, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents, having entered their appearance and filed their answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tailor-Made Shoe System, is now and since September, 1928, has been a corporation organized and existing

under and by virtue of the laws of the State of Illinois, having its principal place of business in the city of Chicago, in said State. It is and has been since its incorporation engaged in the business of selling shoes direct to the wearers thereof, and in the distribution thereof from its principal place of business throughout the various States of the United States. The respondent does not manufacture the shoes sold by it nor have any interest in any shoe factory. It causes said merchandise, when sold, to be transported in interstate commerce, and chiefly by mail, from its place of business at Chicago, Ill., into and through States other than the State of Illinois, to the vendees thereof at their respective points of location. In the course and conduct of its said business said respondent is in competition with other individuals, partnerships, and corporations located in the United States, some of whom are engaged in the sale and transportation of shoes in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent, Tailor-Made Shoe System, solicits its business by advertising in the newspapers and other periodicals, and principally by the circulation of catalogues, leaflets, and other like literature, and by means of agents employed by said respondents. Said agents are furnished by respondent with catalogues purporting to show the latest styles of shoes and samples of leather, and are also furnished with order blanks, leaflets, circulars, foot measurement blanks, and other matter. Said agents solicit business from the users of shoes by exhibiting to them the catalogues and other advertising matter, and when an order is obtained the agent measures the foot of the customer and inserts same in the blank furnished for that purpose, which said measurements together with the customer's order are transmitted by the agent to respondent at its principal place of business. Respondent, upon receipt of the order and measurement, fills the same by selecting from its stock of ready made shoes a pair of shoes and sending same C. O. D., and usually by mail, to the customer.

PAR. 3. The individual respondents, William Ginsburg and Sam Ginsburg, are and have been since the incorporation, respectively, president and secretary and treasurer of the respondent corporation, and the principal stockholders therein, and they are, and have been since the incorporation in charge of the conduct of the business of said corporation. The corporation was organized in September of 1928, to take over and succeed to the business acquired by the respondent Sam Ginsburg in February of 1928, and thereafter conducted by the said respondent as owner, and the respondent William Ginsburg as manager, up to the time of the incorporation. The business conducted by the individual respondents was identical in its

Findings

14 F. T. C.

character and operation to the business described in paragraphs 1 and 2 hereof, and was carried on under the trade names of Tailor-Made Shoe System and Triangle Shoe Factories. The trade name, however, of Triangle Shoe Factories was abandoned by the said respondents shortly after the acquisition of the business by Sam Ginsburg, in February, 1928. Certain letterheads acquired by the respondent Sam Ginsburg in the acquisition above mentioned, containing the words "branches in principal cities", and which also stated, in effect, that the business had offices in New York and Chicago, were also abandoned by the said respondents shortly after said acquisition.

PAR. 4. In anticipation of the organization of the corporate respondent, the individual respondents prepared a catalogue which was thereafter circulated by the respondent corporation and was received in evidence as Commission's Exhibit No. 2. Said catalogue was superseded by another catalogue issued in September, 1929, which was in use at the time of the hearing, September 18, 1929, and was received in evidence as Respondent's Exhibit No. 1. Both of these catalogues were prepared for the purpose of being shown to prospective customers by the agents of the respondent corporation, and contain, among other things, pictures showing styles of shoes, samples of leather, and certain descriptions thereof, together with certain representations which will be hereinafter mentioned. In connection with these catalogues the respondent corporation sends written instructions to its agents as to how to approach prospective customers, and as to the representations which said agents shall make to prospective customers.

PAR. 5. Respondent corporation, under the management of said individual respondents, in the course and conduct of its business, and in order to secure customers, makes in its advertisements, catalogues, and other trade literature, and orally, through its officers and agents, numerous false and misleading statements and representations, among which are the following:

(a) Respondent corporation, upon the covers of its catalogues, depicts a large building and also a workman cutting leather while looking at an order for "Tailor-Made Shoes". Such a picture imports and signifies that the respondent is a manufacturer of shoes.

(b) Respondent represents that it has over 800,000 satisfied customers and that it is the largest of its kind in the world; when in truth and in fact, many competitors of respondent are larger, and some incomparably larger than the respondent corporation, both in number of customers and volume of sales. Respondent's customers do not exceed in number 25,000, and the usual annual sales do not exceed in volume \$150,000.

(c) Respondent, in its catalogues and numerous other species of advertising literature, and orally through its agents, designates the shoes which it sells as "Tailor-Made Shoes". Such designation as applied to shoes imports and signifies that the shoes designated are made to the order of the customer, upon his individual measurements.

(d) Respondent, by numerous other methods, including statements in its catalogues and literature and oral statements made by its agents, represents that it manufactures the shoes which it offers for sale. For example, in Commission's Exhibit No. 2 the respondent states:

TAILOR-MADE SHOES are made of quality leathers to fit your feet. Naturally they give twice the wear of an ordinary shoe, and retain their fine shape to the very last (p. 1).

The scientific Tailor-Made way of fitting shoes to six actual foot measurements eliminates all possibility of imperfect fit (p. 1).

Tailor-Made Shoes are fitted to six actual foot measures—they fit throughout—give foot comfort and twice the wear (p. 10).

Other representations of like character are to be found in Commission's Exhibit 2 at pages 20, 25, 28, and 29. In the catalogue circulated by the respondent at the time of the hearing the following statements appear (Resp. Ex. No. 1.):

Our shoes are built the way that nature would build shoes—moulded to the contour of the foot (p. 2).

Our Built-In Features. We use Ohio patent leather in making the Cadet, assuring you of lasting satisfaction, so far as wear is concerned. The life of this shoe is guaranteed by the hand processed Goodyear Welt construction, the solid leather insole and counters, the kid lining and the First Quality Rubber Heels (p. 15).

We are proud of our work shoes. Unlike most companies we have put into these shoes careful workmanship and construction so they'll stand up, no matter what your work may be (p. 40).

Other similar statements appear in said catalogue at pages 21, 23, 29, 35, 40, 42, 45, 50, 51, 56, 58, and 60.

PAR. 6. The use by respondent of its corporate name, Tailor-Made Shoes System, is deceptive, in that said name imports and signifies that the respondent corporation is a manufacturer of shoes, and the use of said name has the tendency and capacity to mislead and deceive the public and prospective customers of respondent into the erroneous belief that respondent owns and operates a factory where the shoes it offers for sale are made; and by reason thereof, and the consequent elimination of the middleman's profit, that purchasers of respondent's shoes are enabled to obtain, and do obtain, a special advantage in price.

PAR. 7. The false and misleading representations mentioned in paragraphs 4 and 5, and each of them, are false and deceptive and have the capacity and tendency to deceive the purchasing public,

Order

14 F. T. C.

and to induce the purchasing public to purchase respondent's merchandise in and on account of the belief that such representations are true, and in the belief that they, because of dealing directly with the manufacturer, are to obtain shoes at prices substantially less than those charged by dealers in shoes who are not manufacturers.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and of respondent's competitors, and are unfair methods of competition in 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and evidence introduced, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent Tailor-Made Shoe System, its officers, agents, and employees, and respondents William Ginsburg and Sam Ginsburg, in connection with the sale or offering for sale of shoes in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(a) Using in any manner the corporate name "Tailor-Made Shoe System".

(b) Designating or describing in any manner the shoes offered for sale by respondent Tailor-Made Shoe System as "Tailor Made" shoes.

(c) Representing in any manner that the corporate respondent is the largest of its kind in the world, or that it has 800,000 customers.

(d) Representing in advertisements, pictures, or otherwise, that the corporate respondent is a manufacturer of shoes.

It is further ordered, That the said respondents shall, within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
VAL BLATZ BREWING CO.

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

Docket 1608. Complaint, Apr. 23, 1929—Decision, May 12, 1930

Where a corporation engaged in the manufacture and sale of a malt sirup flavored with domestic and imported Bohemian hops in the proportion of four to one,

- (a) Designated and advertised the same as " * * * Bohemian Malt Sirup Hop Flavored * * *" and so labeled the containers thereof; and
- (b) Made such statements in its advertisements thereof in newspapers and other publications as "Flavored with world-famous imported, genuine Saazer hops". " * * * Guaranteed by the Czechoslovak Government certificate attached to each bale of Saazer hops exported" (along with a purported facsimile thereof), together with pictures of a European peasant woman, sprinkling hops into a can thereof, and, in some cases, a prominent map of Czechoslovakia, and the words, "Flavored with a blend of Bohemian Saazer and domestic hops";

With tendency and capacity to mislead and deceive and with effect of misleading and deceiving purchasing public into believing said sirup to be flavored exclusively with such higher priced and highly reputed imported hops, and with tendency to divert business from and otherwise prejudice and injure competitors representing use of Bohemian or imported hops on their labels and in advertising matter, and competitors using exclusively domestic hops and making no such representation as above set forth:

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

Mr. Everett F. Haycraft for the Commission.

Richmond, Jackson, Wilkie & Toebeas, of Madison, Wis., 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 Wisconsin corporation engaged in the manufacture and sale of malt sirup, and with principal place of business in Milwaukee, with misbranding or mislabeling and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, labels containers of its aforesaid product, neither manufactured in Bohemia