

IN THE MATTER OF
H. L. LOMAX, DOING BUSINESS UNDER THE TRADE
NAME OF LOMAX RUG MILLS

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

Docket 1715. Complaint, Oct. 29, 1929—Decision, July 26, 1930.

Where an individual engaged in the sale of rugs to retail dealers and, largely, direct to the consumer, included the words "rug mills" in his trade name and featured and employed the same and such slogans, statements, and representations in his advertisements in daily papers, circulars, and mailing cards as "Buy direct from the mills and save", "Eight years ago we originated the plan of direct selling from the mill to the consumer. * * * The best brains * * * were trying to devise ways and means of reducing the high cost of living. Our method * * * was just the thing. We eliminated the middleman and his profits. * * * We saved the buyers of rugs many thousands of dollars. We raised the quality of our product; * * *," "Just off the looms", "Buy direct at mill prices", "Factory to you", "The only firm which can show you the looms weaving"; notwithstanding the fact that said individual had no looms and manufactured none of the rugs dealt in by him, but fabricated 10 per cent thereof from standard carpet material and purchased the balance, chiefly trade-marked, from leading manufacturers, and from his father's separate and distinct carpet mill business or enterprise, which he managed and had come to be financially interested in, and which was conducted in the same building as his own, under certain mutual arrangements; with capacity and tendency to mislead and deceive the purchasing public into buying rugs and carpets from said dealer as from the manufacturer, with a supposed saving of the middleman's profit, and at a price supposedly lower than if bought from the retailer, all to the prejudice of the public and competitors:
Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. Albert T. Bauerle, 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 as Lomax Rug Mills in the sale of rugs and carpets to purchasers in various States, and with principal place of business in Philadelphia, with using misleading trade name, and advertising falsely or misleadingly as to business status, in vio-

lation 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, features his aforesaid trade name in his business and in his advertisements in newspapers of general circulation and in his trade literature further represents himself as a manufacturer of the rugs and carpets dealt in by him, through such slogans, statements, and phrases as "Buy direct from the mill and save", "Eight years ago we originated the plan of direct selling from the mill to the consumer. This was just at the time when the country was groaning under the burden of war-time inflation. The best brains of the land were trying to devise ways and means of reducing the high cost of living.

"Our method of direct selling was just the thing. We eliminated the middleman and his profits; we eliminated several other items of overhead expense.

"We saved the buyers of rugs many thousands of dollars; we raised the quality of our product; we brought to many a house the fine atmosphere of home. * * *" notwithstanding the fact that respondent does not own or operate a rug or carpet mill or factory, nor sell direct from factory to user, but purchases the merchandise dealt in by him from other rug or carpet manufacturers.

Said false and misleading representations, and use by respondent, of his aforesaid trade name, as alleged, "have the tendency and capacity to cause, and have caused many of the purchasing public residing in various States of the United States to purchase respondent's merchandise in and on account of a belief in the truth of such representations", and that respondent owned or operated a rug mill or factory and said alleged acts and practices, as charged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

*Other such statements and representations as set forth in the complaint were as follows:

"You save \$5 to \$50 on each rug that you buy from our mills." "Buy rugs from the mill." "Just off the looms." "You save buying from the mill." "Buy direct at mill prices." "Our mills are easily accessible by motor from every direction. Plenty of parking space in our mill yard." "Factory to you." "Lomax is the only firm which can show you the looms weaving." "Every day is a sale day at the Lomax Rug Mills. * * *"

"Rugs. Come to the mill. Lomax Rug Mills makes and sells direct to you." "Sold where they are made. Lomax rugs. From loom to home." "Rugs. Loom to room. Save \$5 to \$50." "Rugs, \$200,000 stock, all kinds, all sizes, at less than wholesale prices."

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, the Federal Trade Commission issued and served a complaint upon H. L. Lomax, doing business under the trade name of Lomax Rug Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance, and having filed his answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and respondent, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. L. Lomax, is engaged in business under the trade name and style of Lomax Rug Mills, with his place of business located at Jasper and Orleans Streets, in the city of Philadelphia, State of Pennsylvania. His business consists of the purchase of rugs and carpets from the manufacturers thereof, and the resale of said rugs and carpets to retail dealers in various States of the United States, and direct to consumers at his said place of business in the city of Philadelphia. Respondent causes the rugs and carpets sold by him to retail dealers, and to consumers when necessary, when sold, to be transported from his said place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States, to the purchasers thereof at their respective points of location, and in the course and conduct of his said business respondent is now and has been in competition with other individuals, partnerships, and corporations likewise engaged in the sale of rugs and carpets and the transportation of the same in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent established his said business in 1920, and the trade name under which the business is conducted, Lomax Rug Mills, was registered at Harrisburg, the capital of the State of Pennsylvania, in 1922, under a State statute requiring the registration of all

fictitious business names. In the year 1928 the volume of sales of respondent aggregated approximately \$200,000, most of said sales being in the Metropolitan district of Philadelphia, including cities and towns in near-by New Jersey. Respondent employs nine persons at his place of business, and also employs several salesmen who travel throughout the United States selling his products to retail dealers. Approximately 90 per cent of the sales of rugs made by respondent consist of the resale by him of rugs purchased from the manufacturers thereof; the remaining 10 per cent being rugs which have been fabricated by respondent from standard carpet material purchased from the manufacturers thereof. More than 50 per cent of the total sales made by respondent are made direct to the consumers from his place of business in the city of Philadelphia.

PAR. 3. Respondent's father is Joseph Lomax, who operates a carpet mill under the trade name and style of Joseph Lomax Carpet Mills, and who has been in said business in the city of Philadelphia since 1893. Said Joseph Lomax Carpet Mills weaves carpets and rugs, and has machinery for that purpose. The rugs manufactured by the said Joseph Lomax Carpet Mills are of the cheaper grades, selling at retail for from \$13 to \$15. The Joseph Lomax Carpet Mills sell throughout the United States to retail dealers by means of salesmen who travel from point to point, and said salesmen are the same as those employed by respondent herein, taking orders for carpets and rugs for both respondent and his father. The accounts of respondent's business and that of his father are kept separate and distinct, and there is no connection between the two businesses other than that of buyer and seller, as set forth hereinafter.

Respondent became connected with his father's business in 1904, and has been manager of said business since 1924. Both businesses are located in a large mill building in Kensington, a suburb of Philadelphia, respondent occupying part of the first floor of said building and the Joseph Lomax Carpet Mills occupying the remainder of the first floor; the floors above the first floor are rented out to tenants. Respondent pays his father rent for the space which he occupies, and a share in the profits of his business. In January, 1929, respondent invested \$20,000 in the business of the Joseph Lomax Carpet Mills, and acquired a one-third interest in that business. Prior to that time respondent had no financial interest in his father's business.

PAR. 4. Respondent buys rugs and carpets from many of the leading rug manufacturers of the country, such as Bigelow-Hartford Carpet Co., Mohawk Carpet Mills, Whittall's Associates, and others, and resells said rugs as heretofore set forth. Said rugs and carpets

Findings

14 F. T. C.

are mostly trade-marked articles, and bear the name of the manufacturer stamped on them. The carpets purchased by respondent are fabricated by him into rugs of various sizes. To fabricate a rug is to cut up carpet material into the desired sizes, sew it together, hem the ends and put a fringe on it. Respondent has two machines for this purpose, consisting of an overlocking machine, which finishes the ends of rugs, and a hemming machine, for hemming and putting fringes on rugs. These are the only machines owned and operated by respondent. Respondent also purchases rugs from the Joseph Lomax Carpet Mills, and resells them.

PAR. 5. In the course and conduct of his business as aforesaid, respondent, under the trade name and style of Lomax Rug Mills, has prepared and caused to be inserted in the daily newspapers of the city of Philadelphia, advertisements of his said business. Said newspapers have a large circulation in the adjacent cities and towns of New Jersey. Respondent also has prepared and distributed circulars, consisting of four pages, and private mailing cards addressed to the "Lady of the house", which said circulars and private mailing cards contain advertisements of respondent's rugs. Said advertising material is distributed by respondent from door to door in the Metropolitan district of Philadelphia, including the nearby cities and towns in the State of New Jersey. All of the aforesaid advertising material used by respondent bears the trade name of respondent, Lomax Rug Mills, prominently displayed, together with his address, and also contains numerous other statements, slogans, phrases, and representations to the effect that respondent is the manufacturer of the rugs and carpets which he sells. Among said statements, slogans, phrases, and representations are the following:

BUY DIRECT FROM THE MILLS AND SAVE

Eight years ago we originated the plan of direct selling from the mill to the consumer. This was just at the time the country was groaning under the burden of war-time inflation. The best brains of the land were trying to devise ways and means of reducing the high cost of living.

Our method of direct selling was just the thing. We eliminated the middleman and his profits; we eliminated several other items of overhead expense,

WE SAVED THE BUYERS OF RUGS MANY THOUSANDS OF DOLLARS**WE RAISED THE QUALITY OF OUR PRODUCT****WE BROUGHT TO MANY A HOUSE THE FINE ATMOSPHERE OF HOME**

You save \$5 to \$50 on each rug that you buy from our mills.

Buy rugs from the mill.

You save buying from the mill.

This anniversary sale is the product of many months of careful planning and preparations. For the past few months our mills were kept running

190

Findings

at full speed to turn out the latest patterns of rugs in order to take care of this great sale. We combed the raw material markets for price and quality. We were fortunate in obtaining many concessions; we kept down the cost of production, and we have effected tremendous savings.

JUST OFF THE LOOMS

BUY DIRECT AT MILL PRICES

FACTORY TO YOU

Lomax is the only firm which can show you the looms weaving.

We manufacture our own rugs and we also act as factory representatives for some of the leading rug mills in the country.

Motor out to our mills. Come and see the looms weaving.

LOMAX RUG MILLS MAKES AND SELLS DIRECT TO YOU!

Back in 1920 the Lomax Rug Mills originated the policy of selling its rugs direct from factory to user. This plan entirely eliminates the jobber and retailer. * * * Come, see the looms in operation, profit by this special sale.

The only firm which can show you the looms weaving.

Direct from Lomax mills.

Direct from the factory to you.

Just off the looms, an array of the new rug patterns that excels any previous presentation we have ever offered.

We make and sell rugs direct.

PAR. 6. Said various statements, slogans, phrases, and representations set forth in paragraph 5 herein, are false, deceptive, and misleading, because the fact is that respondent has no looms for the weaving of carpet or rugs, and does not manufacture any of the carpet or rugs which he sells. All of the rugs sold by him are purchased from the manufacturers thereof, and the only operation which he performs in his place of business is to cut up carpet material and fabricate it into rugs, as hereinbefore set forth. Respondent does not save purchasers the middleman's profit on rugs which he sells, and does not sell direct from the factory to the consumer, as he represents in the above advertising, but in fact acts as the middleman himself, as he buys all the finished rugs and carpets which he sells, and resells the same to the consuming public and retail dealers.

Respondent's place of business is located in a district of Philadelphia several miles from the center of the city, where rents are cheaper than downtown, and respondent's overhead expenses are lower than those of the downtown stores.

PAR. 7. The use by respondent of the trade name and style of Lomax Rug Mills for his business as set forth herein, is false and misleading and has the capacity and tendency to, and does, mislead

Order

14 F. T. C.

and deceive the purchasing public into believing that respondent manufactures the rugs and carpets which he sells.

PAR. 8. The use by respondent of the trade name and style of Lomax Rug Mills, and the statements, slogans, phrases, and representations above set forth in his advertising literature, and other similar statements and representations, is false, deceptive and misleading, and has the capacity and tendency to, and does, mislead and deceive the purchasing public into purchasing rugs and carpets from respondent in the erroneous belief that respondent manufactures the rugs and carpets which he sells, and that by so doing they are saving the middleman's profit and thus obtaining said rugs and carpets at a lower price than if they bought them from a retail dealer in rugs and carpets.

PAR. 9. The acts and practices of respondent, as set forth hereinbefore, are all to the prejudice of the public and respondent's competitors.

CONCLUSION

The practices of respondent, H. L. Lomax, doing business under the trade name of Lomax Rug Mills, under the conditions and circumstances described in the foregoing findings, 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony taken and briefs filed herein, and oral argument of counsel, and the Commission having made its findings as to the facts and conclusion that the respondent has 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, H. L. Lomax, individually, and doing business under the trade name of Lomax Rug Mills, his agents, representatives, servants, and employees, in connection with the sale of rugs in commerce between the several States of the United States and the District of Columbia, cease and desist from:

(1) Doing business under the trade name and style of Lomax Rug Mills, or any other trade name which includes the words

190

Order

"mill" or "rug mills", unless and until said respondent actually owns or operates a factory or mills in which he manufactures the rugs and/or carpets which he sells.

(2) Inserting or causing to be inserted advertisements in newspapers, magazines, or other periodicals, or distributing circulars, handbills, private mailing cards, or any other forms of advertising literature, which contain statements, slogans, words, phrases, sentences, or representations which indicate or create the impression that said respondent is the manufacturer of the articles which he sells unless and until such respondent does actually manufacture such articles.

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

IN THE MATTER OF
MANCHESTER SHOE COMPANY, FORREST DUSTIN
AND C. G. ROSE

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

Docket 1561. Complaint, Feb. 18, 1929—Decision, July 29, 1930

Where a corporation engaged in the sale of shoes direct to the wearers; and two individuals, president and secretary, and vice president and treasurer, respectively, thereof, and the principal stockholders therein; in advertising their said product in newspapers and other periodicals and through catalogues, leaflets, and other like literature, and in soliciting the sale thereof through agents who transmitted customers' foot measurements in the order blanks sent to said corporation at its principal place of business, for filling from its ready-made stock,

- (a) Falsely represented said corporation as a manufacturer engaged in the sale of shoes direct to the wearers, through such slogans and statements as "Buy direct from manufacturer and wear a quality shoe at a reasonable price", "We sell our shoes the new way—direct to the consumer with only one small profit standing between ourselves and the man who wears the shoes. Because of this * * * we claim we give for \$6.85 a shoe that compares very favorably with any pair of \$10 shoes sold at retail", "By ordering direct * * * you are assured of the best in quality, in materials, and in workmanship and yet you pay no more than you do for ordinary shoes * * *", "We use one of —'s highest grade tan calfskins in constructing the 'Drake' * * *", the fact being that said corporation did not manufacture the shoes dealt in by it, but purchased same from shoe manufacturers; and
- (b) Falsely represented that said shoes were specially made and better than those ordinarily carried by retail stores, the facts being that they were "In stock shoes", and did not differ in the making thereof in any respect from shoes of the same general kind and nature sold by manufacturers generally to the shoe trade;

With capacity and tendency to deceive the purchasing public and to induce purchase of said corporation's shoes in and on account of the belief that aforesaid representations were true and that purchasers were dealing directly with a manufacturer, and thereby obtaining shoes at prices substantially lower than those charged by nonmanufacturing dealers:

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

Mr. Alfred M. Craven for the Commission.

Mr. John A. Nash, 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