

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

respondent, an Illinois corporation (and respondents Dustin and Rose, its principal stockholders and managers), engaged in selling shoes purchased from the factories direct to the wearers, in the various States, and with principal place of business in Chicago, with misrepresenting business status and 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 soliciting its business through advertisements in newspapers and other periodicals, and, principally, through catalogues, leaflets, and other like literature and agents, who transmit to it orders secured (together with the individual's foot measurements), for filling by respondent from its stock of ready-made shoes;

Inserted a picture of a large four-story building with respondent's name thereon, together with the words "The Manchester Building—Where we have a capacity for 1,000 pairs of quality shoes every working-day—Quality shoes built this plant"; notwithstanding the fact that said building was not, as implied by the aforesaid language, a shoe factory owned by it, but a structure in which it used only one floor;

Falsely represented in its advertisements, catalogues, etc., and orally through its officers and agents, in soliciting persons to be its agents as well as in order to secure customers, that it manufactured the shoes dealt in by it to the order and measurements of the customer, and sold the same direct to the public at a saving of jobbers' and retailers' profits;

Falsely represented that its shoes were specially made and better than those ordinarily carried by retail stores, and would give better and longer service, the fact being that they were similar to those ordinarily manufactured by shoe factories and sold at retail stores throughout the United States.

Such false and misleading representations, and each of them, as charged, had the capacity and tendency to deceive those solicited to be its agents into entering its employ believing in the truth of the aforesaid representations, and to deceive the purchasing public and induce the purchase of its merchandise by reason of a belief in the truth thereof.

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,

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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 Manchester Shoe Co., a corporation, Forrest Dustin and C. G. Rose, 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 Manchester Shoe Co. is now and since March, 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 of such shoes from its principal place of business throughout the various States of the United States. 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 business respondent is in competition with other individuals, partnerships, and corporations located in the United States engaged in the sale and transportation of shoes in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent Manchester Shoe Co. solicits its business by advertising in newspapers and other periodicals, but 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 respondents with catalogues purporting to show the latest styles of shoes, samples of leather, and also with order blanks, leaflets, circulars, and other advertising matter. Said agents solicit business from the users of shoes, and when an order is obtained, the agent measures the foot of the customer and inserts the measurements in an order blank, which blank, together with the

order, is thereafter transmitted by the agent to the respondent at its principal place of business. The respondent, upon receipt of the order and measurements, fills the same by selecting from the stock of ready-made shoes a pair of shoes, and sending them C. O. D., and usually by mail, to the customer.

PAR. 3. The individual respondents, Forrest Dustin and C. G. Rose were, from the inception of the Manchester Shoe Co. up to some time in March, 1929, managers of and in control of the business of said respondent, Manchester Shoe Co. Said individual respondents were at the date of the filing of the answer herein, March 22, 1929, respectively, president and secretary, and vice president and treasurer of said corporation and were at said time also the principal stockholders. Shortly after the last-mentioned date the said Dustin retired from the corporation, since which retirement the individual respondent, C. G. Rose, has been president and manager of said corporation and the principal stockholder therein.

PAR. 4. Respondent corporation under the management of said individual respondents is detailed in paragraph 3 hereof, in the course and conduct of its business and in order to secure customers has made and makes in its advertisements, catalogues and other trade literature and orally through its officers and agents certain false and misleading statements and representations among which are the following:

(a) That the business of respondent corporation is that of manufacturing, and selling direct to the wearer, shoes. Such representation is made by respondent's agents in calling and in the solicitation of business, and also occurs in numerous places in respondent's trade literature. For example:

1. Respondent's catalogue in use before and at the time of the hearing of the case, January 21, 1930, and which catalogue goes directly to the public in the solicitation of business by agents, contains on the first page thereof, the slogan as follows:

BUY DIRECT FROM MANUFACTURER

and wear a quality shoe at a reasonable price

Such slogan is followed by the statement:

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—by eliminating expenses and profit of both jobber and retailer we claim we give for \$6.85 a shoe that compares very favorably with any pair of \$10 shoes sold at retail.

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And also by another statement as follows:

By ordering direct from Manchester you are assured of the best in quality, in material and in workmanship and yet you pay no more than you do for ordinary shoes. (Resp. Ex. No. 1.)

2. On page 30 of said catalogue, respondent in the description of the shoe depicted thereon called "The Lite-Waite", states: "We have constructed our 'Lite-Waite' for the man who is easy on shoes."

3. On page 11 of said catalogue, respondent states in its description of a shoe called "The Drake" as follows:

We use one of Pfister & Vogel's highest grade tan calfskins in constructing the "Drake" shown below; no finer leather tanned.

4. On the inside page of the back cover of said catalogue, appears the following:

We use only solid leather heel base in our shoes. Many shoe manufacturers use a fiber or composition. Our shoes have solid leather where most needed.

The said representations are false and misleading for the reason that the respondent corporation does not manufacture the shoes in which it deals, but purchases same from shoe manufacturers.

(b) That the shoes sold by the respondent corporation are specially made shoes and are better than shoes ordinarily carried by retail stores, when in truth and in fact the shoes sold by respondent are purchased by it from shoe manufacturers and are what are called in the trade "In stock shoes", meaning shoes made and carried by the manufacturer ready to ship when an order is received. The shoes dealt in by the respondent do 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.

PAR. 5. The false and misleading representations mentioned in paragraph 4 hereof are false and deceptive and have the capacity and tendency to deceive the purchasing public 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, the said purchasers, are dealing directly with a manufacturer of shoes, and because of that fact are to obtain shoes at prices substantially less than the prices 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 viola-

tion 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 Manchester Shoe Co., its officers, agents, and employes, and the individual respondents, Forrest Dustin and C. G. Rose in connection with selling and 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) Representing in any manner either directly or indirectly that the respondent Manchester Shoe Co. is a manufacturer of shoes.

(b) Representing in any manner either directly or indirectly that the shoes sold by the respondent Manchester Shoe Co. are shoes that are specially made.

(c) Representing in any manner either directly or indirectly that the individual respondents, Forrest Dustin and C. G. Rose, or either one of them are shoe manufacturers or sell specially made 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.

IN THE MATTER OF
ARTHUR MURRAY, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF ARTHUR MURRAY
SCHOOL OF DANCING

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

Docket 1723. Complaint, Nov. 21, 1929—Decision, July 30, 1930

Where an individual engaged in operating a city studio of dancing, and in conducting a correspondence course of instruction therein, for pupils in various States; in advertising and describing the same in newspapers, magazines, periodicals, and other publications of general circulation throughout the several States, and in numerous letters, circulars, pamphlets, folders, and similar matter,

- (a) Represented that said course, in the studio, would cost \$500, the facts being that twenty lessons, at a cost of \$20 each, by said individual, would suffice for the average apt pupil, and four times as many, at \$5 per lesson, would be required in the case of one of said individual's instructors, and that the average pupil is able to learn to dance well by studying only the first ten pages of the course; with effect of inducing and persuading prospective pupils to subscribe in the belief that they were obtaining at a very low price instruction which would cost \$500 at the studio;
- (b) Represented that very large numbers, variously given as 120,000, 200,000, 250,000 and 400,000 persons, here and abroad, had learned to dance by subscribing, the fact being that up to 1923 he had sold only between 5,000 and 15,000 complete courses and since then between 150,000 and 200,000;
- (c) Represented that he was selected by the Naval Academy to train the Academy's dancing teachers and that there were included among former pupils ex-presidents, governors, senators, many members of European royal families, millionaires and leading stage and screen stars, the facts being that at the instance of said Academy's Navy Athletic Association, not officially connected therewith, he gave 2½ hours of personal instruction to one of its dancing instructors, supplied him with his courses at a cost of \$10, and arranged to and did, for a time, send him such new dance steps as thereafter came out, he had never instructed any ex-presidents or senators, but had given dancing instruction to two governors, and was able to name no stage people and only three motion picture actresses and actors as among his pupils, and no royalty, though many socially prominent people were and had been numbered among pupils of his said studio;
- (d) Represented that he could make a pupil an "even more than an excellent dancer", and a "marvelous dancer", and guaranteed so to do, the facts being that he had never seen any pupil of his correspondence course whom he would describe as a "marvelous dancer", and that advantages of age, previous experience, and natural aptitude to an exceptional degree were