

Complaint

IN THE MATTER OF

STRAUSS BROS. WHOLESALE TAILORS, INC., DAVIS-ROGERS TAILORING CO., INC., AND S. A. AND W. W. STRAUSS

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

Docket 1941. Complaint Apr. 27, 1931—Order, June 26, 1931

Consent order requiring respondents to cease and desist from using the words "tailors" or "tailoring" in their corporate or trade names, or from representing that the ready-made clothing made and dealt in by them is cut and made to the individual tailoring measurements of the respective purchasers, or is composed entirely of wool or of wool and silk, when such is not the case; all as in said order set forth and qualified.

Mr. James W. Nichol for the Commission.

COMPLAINT

Acting in the public interest, 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", the Federal Trade Commission charges that Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Strauss Bros. Wholesale Tailors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Chicago, in said State, said respondent is owned and controlled by said individual respondents, and is now and for more than one year last past has been engaged in the manufacture and/or purchase of men's ready-made clothing, and in the sale and distribution thereof in commerce between and among various States of the United States, through the instrumentality of a number of distributing companies, including respondent Davis-Rogers Tailoring Co., Inc., Howard Tailoring Co., Hudson Tailoring Co., Mills & Hall, Strauss Bros., and United American Tailors, all of which are owned, controlled, and operated by said individual respondents and have their offices and principal

Complaint

15 F. T. C.

places of business in the city of Chicago, in the State of Illinois. In the course and conduct of its business said respondent corporation is and was at all the times herein referred to in competition with persons, firms, and other corporations engaged in the sale and distribution in interstate commerce of similar or competing products.

PAR. 2. Respondent, Davis-Rogers Tailoring Co., 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 in the city of Chicago, in said State. Said respondent corporation is owned and controlled by the said individual respondents and is now and for more than one year last past has been engaged as a selling agent or distributor for said respondent, Strauss Bros., Wholesale Tailors, Inc., in the sale and distribution of men's clothing in interstate commerce in the manner hereinafter set forth.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, Strauss Bros., Wholesale Tailors, Inc., in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised, sold, and distributed through its distributing companies, including the respondent Davis-Rogers Tailoring Co., Inc., Howard Tailoring Co., Hudson Tailoring Co., and United American Tailors, and advertised said names, including the words "tailoring" and "tailors", appearing therein, through the medium of sample or swatch books, order blanks, and by other means.

PAR. 4. Respondent, Strauss Bros., Wholesale Tailors, Inc., in soliciting the sale of and selling its products in interstate commerce through the medium of respondent Davis-Rogers Tailoring Co., Inc., offers for sale and sells its products, as hereinafter more particularly described, to the consumers or ultimate purchasers thereof, through agents or salesmen stationed or operating at various places in and throughout the several States of the United States. Prospective purchasers make and deliver, to such agents or salesmen, orders for such clothing, accompanied by a specified cash deposit, as hereinafter set forth, which orders are by such agents or salesmen forwarded to principal place of business of respondent, Davis-Rogers Tailoring Co., Inc., in the city of Chicago, State of Illinois, and when a prospective purchaser so makes and delivers such order, said respondent accepts the same, and thereupon and thereunder undertakes to sell and deliver the clothing so ordered to such purchaser at his place of residence, through the United States mails or otherwise.

Thereafter, and in pursuance of such order, respondent, Strauss Bros., Wholesale Tailors, Inc., furnishes and causes to be transported

from its said factory and principal place of business in the city of Chicago, State of Illinois, through the United States mails, parcel post, or otherwise, into and through the several States of the United States, and to be delivered to such purchaser at his place of residence, the clothing so sold to such purchaser, said purchaser paying to the agent and employee of the United States making such delivery, as set forth in the contract with respondent Davis-Rogers Tailoring Co., Inc., the balance of the purchase price still remaining unpaid, which balance is by said agent or employee remitted to said respondent at its office and principal place of business in the city of Chicago, and State of Illinois; the several purchasers of such clothing residing, being and remaining in and throughout the several States of the United States.

PAR. 5. Davis-Rogers Tailoring Co., Inc., as agent for respondent, Strauss Bros., Wholesale Tailors, Inc., and under direction of said individual respondents, conducts its said business in part as follows:

Said respondent solicits and procures orders for its said clothing through agents or salesmen stationed or operating at various places in and throughout the several States of the United States. Such agents or salesmen are supplied by said respondent with kits or outfits prepared for that purpose, said kits or outfits including illustrations of the clothing sold by said respondent, each such illustration bearing a model or fashion number; samples or swatches of cloth, each bearing an identifying number; said respondent's "iron clad guarantee;" order and measure blanks; and all needed or helpful articles and appliances for taking measurements of prospective purchasers and orders for said clothing.

From among the samples or swatches of cloth herein referred to, the prospective purchaser selects the particular sample or samples of which he desires the clothing so to be ordered by him to be made, and the model or fashion number. This information is then transferred by said salesman or agent to the order and measure blank, together with the names and addresses of said prospective customer and of the salesman or agent taking such order, and shipping instructions. The prospective purchaser is then measured by said salesman or agent for the particular article or articles of clothing desired, the measurements being written by said salesman or agent on the order or measure blank referred to. Said prospective purchaser, after paying to the said salesman or agent the required deposit, as hereinafter referred to, affixes his signature at the bottom of the said order and measure blank, with his post-office address, reciting the amount of the deposit paid said salesman or agent, and that the order is to be shipped C. O. D. for the balance remaining

Complaint

15 F. T. C.

unpaid. Said salesman or agent furnishes said prospective purchaser with a receipt when the order is placed. The order in question, after being made out as aforesaid, is left by the prospective purchaser with the agent or salesman taking the same, to be forwarded, and is by said salesman or agent forwarded, to said respondent's said principal place of business in the city of Chicago, State of Illinois. Said respondent's established prices for its articles of clothing are as follows:

Article	Price	Deposit
3-piece suit.....	\$19.95	\$3.00
Suit and extra pair of trousers.....	26.50	4.00
Trousers.....	6.85	1.00
Topcoat.....	19.95	8.00

With an extra charge of \$2 where the chest or waist measure is 46 inches or over, and other provisions for such measurements when 50 inches or over. The deposit above referred to is the amount paid by the purchaser to such agent or salesman at the time such order is given, and is accepted by said agent or salesman as his commission or profit on such transaction. The difference, in each instance, between such deposit and the established price of the article of clothing so ordered by the purchaser is, as aforesaid, paid by the purchaser to said respondent, at the time of the delivery of the article or articles of clothing to said purchaser, through the medium of the agent or employee of the United States making such delivery, the purchaser paying, in addition to said difference, the postage charge on such shipment.

The clothing sold and distributed by said respondent, Davis-Rogers Tailoring Co., Inc., as herein set forth, is manufactured by respondent Strauss Bros., Wholesale Tailors, Inc., at its factory in the city of Chicago, State of Illinois, or is purchased by respondent Strauss Bros., Wholesale Tailors, Inc., as hereinbefore set forth, and after said clothing has been so manufactured or purchased, it is thereafter kept in stock by respondent, Strauss Bros., Wholesale Tailors, Inc., at its said principal place of business in the city of Chicago, State of Illinois, to be used in filling orders sent in from time to time by said agents or salesmen of said respondent Davis-Rogers Tailoring Co., Inc., as above set forth. All orders received by respondents are filled by selection from such clothing so kept in stock by respondent Strauss Bros., Wholesale Tailors, Inc., after causing necessary alterations to be made therein. The clothing sold by said respondents is not tailored to measure.

PAR. 6. In the course and conduct of its said business, as hereinbefore set forth, and for the purpose of aiding said agents and salesmen to procure from prospective purchasers such orders for the purchase of its said clothing, and of inducing the public and prospective purchasers to purchase and pay for said clothing, respondent Strauss Bros., Wholesale Tailors, Inc., through the medium of respondent Davis-Rogers Tailoring Co., Inc., has caused and now causes advertisements and descriptions of its said clothing to be inserted and made accessible to the public and to prospective purchasers through the medium of agents' sample or swatch books, order blanks, and by other means. In such advertisements and descriptions, said respondents, among others, make the following statements and representations:

On the outside of the swatch book appears an illustration of a seven-story building, under which the following words appear:

VISIT OUR MODERN DAYLIGHT PLANT WHEN IN CHICAGO

DAVIS-ROGERS TAILORING CO., INC.

LARGEST CONCERN OF ITS KIND IN THE WORLD

Similar illustrations of this building or plant appear on the labels pasted on respondent's swatches, and on the outer cover of respondent's "measure blanks and shipping instructions."

We guarantee: That every garment sent out by us will correspond to measurements ordered—and will be a perfect fit. We stand ready to alter clothes free of charge—or make entire new garments free—in the event that they do not fit.

We guarantee: That every Davis-Rogers suit or overcoat is tailored exactly like our newest fashion models * * *

We guarantee: That the workmanship and tailoring in every Davis-Rogers suit is of the very finest and most painstaking * * *

Orders are put into work soon as received, and can not be cancelled (appearing on customer's receipt, given at the time an order is taken).

Sample (in the swatch book) Makes a very handsome stylish suit.

Sample (in the swatch book) Makes a handsome suit for young and old.

Sample (in the swatch book) Makes a high-grade stylish appearing suit.

Sample (in the swatch book) Tailored into a handsome stylish topcoat.

The word "tailor" in the mind of the public signifies one whose occupation is to cut out and make, or repair, men's or women's outer garments, the name usually being restricted to one who makes such garments to order; and use by corporate respondents of the words Tailors and Tailoring as a part of their corporate names, taken in connection with the excerpts from respondents' advertising matter, previously quoted in this paragraph, and the fact that customers' measurements are taken by respondents' agents or salesmen—signifies in the mind of, and has the capacity and tendency to mislead

Complaint

15 F. T. C.

and deceive the public and prospective and actual purchasers of respondents' clothing into the erroneous belief that respondents are engaged only in the business of making clothing to the measurements of the several purchasers whose orders they have solicited; and that the said clothing offered to them by or purchased by them through the medium of respondents' said agents or salesmen, is in fact tailor-made by said respondent, Davis-Rogers Tailoring Co., Inc., to their individual measure—when in truth and in fact the orders were and are filled with ready-made clothing carried in stock by respondent Strauss Bros., Wholesale Tailors, Inc., as hereinbefore set forth, and altered to fit the measurements of purchasers where necessary.

PAR. 7. Respondent, Strauss Bros., Wholesale Tailors, Inc., also, in soliciting the sale of and selling its products in interstate commerce, as hereinbefore set forth, advertised, and represented the cloth from which its products were made, in swatch books used by its said salesmen or agents in soliciting orders for its clothing, as:

We guarantee: That every yard of woollens is exactly as represented.

No. 3201—Fine silk inlaid worsted.

No. 3203—Handsome silk inlaid fine novelty worsted.

No. 3205—Fine silk inlaid worsted.

No. 3208—Handsome silk inlaid fine novelty worsted.

No. 3209—Fine worsted.

No. 3210—Handsome silk overplaid in fine novelty worsted suiting.

No. 3211—Beautiful silk inlaid fine decorated novelty worsted.

The word "worsted" in the mind of the public, signifies a yarn or fabric made wholly of wool; and the word "silk" in the mind of the public signifies, when applied to thread or textile goods, materials derived from the cocoon of the silkworm; and the use by said respondents of the words "silk" and "worsted" in designating certain samples of cloth, as aforesaid, signifies in the mind of the public that the samples thus designated are composed wholly of the product of the cocoon of the silkworm and of wool; and the use by said respondents of the word "worsted" in designating a certain sample of cloth, as aforesaid, signifies in the mind of the public that the sample thus designated is composed wholly of wool; when, in truth and in fact, the fabrics designated, as aforesaid, by the use of the words "silk" and "worsted" contain no product of the cocoon of the silkworm, and only a portion of wool, a substantial portion thereof being cotton; and the fabric designated, as aforesaid, by the use of the word "worsted" contains only a portion of wool, a substantial portion thereof being cotton; and the statements and representations so made by said respondents as hereinbefore

set forth in this paragraph have the capacity and tendency to mislead and deceive the public and prospective and actual purchasers into the erroneous belief that the clothing so offered for sale and sold by respondent is made of cloth or fabric composed either wholly of silk and wool, or wholly of wool, as the case may be; and that all statements and representations made by respondent as hereinbefore set forth, are true.

PAR. 8. A considerable portion of the public and many purchasers and prospective purchasers of men's clothing prefer and desire to purchase clothing which has been cut and made exclusively according to measurements of the several purchasers thereof, as distinguished from clothing cut from conventional or standard measurements and made up in advance, and kept in stock for sale to persons whom it may be found to fit.

In addition to respondents, there are persons, firms, and other corporations in the United States who manufacture or purchase men's ready-made clothing, or clothing not tailored to individual measurements, and who sell said clothing in interstate commerce, who do not, through any of the means hereinbefore described as employed by the respondent herein, or otherwise, seek to create or create the impression, among purchasers and prospective purchasers, that the clothing so made or purchased, and offered for sale and sold by them is, in fact, tailored to the individual measure of customers or prospective customers.

There are also, in the United States, persons, firms and other corporations selling in interstate commerce clothing which is, in fact, tailored to the individual measure of customers.

PAR. 9. A considerable portion of the public and many purchasers and prospective purchasers of men's clothing prefer, and desire to purchase clothing which is made of cloth or fabric that is composed entirely of wool, or of wool and silk, as the case may be, as distinguished from clothing made of cloth or fabric composed in whole or in part of some other material or ingredient.

In addition to respondents, there are persons, firms, and other corporations in the United States who manufacture or purchase men's clothing which is made of cloth or fabric not composed entirely of wool, or of silk and wool, as the case may be, and who sell said clothing in interstate commerce, who do not, through any of the means hereinbefore described as employed by the respondents herein, or otherwise, seek to create or create the impression, among purchasers and prospective purchasers, that the clothing so made or purchased and offered for sale and sold by them is, in fact, composed entirely of wool, or of silk and wool, as the case may be.

Order

15 F. T. C.

There are also in the United States persons, firms, and other corporations who sell in interstate commerce clothing which is made of cloth or fabric composed entirely of wool, or of silk and wool, as the case may be.

PAR. 10. Respondent, Strauss Bros., Wholesale Tailors, Inc., in the sale and distribution of its ready-made men's clothing in interstate commerce through its distributing companies, Howard Tailoring Co., Hudson Tailoring Co., Mills & Hall, Strauss Bros., and United American Tailors, has employed and employs the same or similar methods employed by it in connection with respondent, Davis-Rogers Tailoring Co., Inc., as hereinbefore set forth.

PAR. 11. The acts of respondents as set out herein, have tended to induce and have induced, the purchase of men's clothing from respondents in reliance upon the erroneous belief that said clothing was made to the measurement of said purchasers, from cloth made wholly of wool, or silk and wool, as represented and have thus tended to divert trade, and have diverted trade, from and thereby injured competitors of respondents.

PAR. 12. The above acts and things done by the respondents are all to the injury and prejudice of the public and respondent corporations' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

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", the Federal Trade Commission on the 27th day of April, 1931, issued and served its complaint upon respondents charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents thereafter on the 11th day of June, 1931, filed their answer to the complaint, and in said answer state that they and each of them waive hearing on the charges set forth in the complaint and desire not to contest the proceeding under the complaint herein.

Thereupon this proceeding came on before the Federal Trade Commission on such complaint and answer and the Commission having accepted and considered such answer and being fully advised in the premises,

It is now ordered, Pursuant to subdivision (2) of Rule III of the rules of practice heretofore adopted by the Commission, that respondents, Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, their officers, agents, representatives, servants, and employees, in the course and conduct of their business of selling and distributing men's clothing in commerce between and among the several States of the United States—cease and desist:

(1) From using the words "tailors" or "tailoring" in their corporate or trade names, unless and until all articles of said clothing, in their manufacture, are cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers thereof; provided that, when a substantial part of said articles of clothing is so cut and made, and the words "tailors" or "tailoring" are used by said respondents in their corporate or trade names, said words shall not be so used unless said trade or corporate names are immediately accompanied with some other word or words, displayed in type equally as conspicuous, clearly and unequivocally indicating that said articles of clothing are not cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers thereof, and that will otherwise clearly and unequivocally indicate that said articles of clothing are in part cut and made to or in accordance with conventional or standard measurements.

(2) From making or causing to be made any representation, statement or assertion, directly or indirectly, in any manner whatsoever, to the effect that any of its said articles of clothing are tailor-made or are cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers thereof, unless and until said articles of clothing, so represented, are in fact cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers; provided that, when part only of such articles of clothing are so cut and made, it shall be clearly and unequivocally disclosed in connection with all sales promotion activities connected therewith, that the certain other part or parts of such articles of clothing are not so cut and made, but are cut and made to or in accordance with conventional or standard measurements.

(3) From making or causing to be made any representation, statement or assertion, directly or indirectly, in any manner whatsoever, to the effect: (a) That any of its said articles of clothing are made of cloth composed entirely of wool, when such is not the case; or (b)

Order

15 F. T. C.

that any of its said articles of clothing are made of cloth composed entirely of wool and silk, when such articles of clothing are not, in fact, made of cloth composed entirely of wool and of silk, the product of the cocoon of the silkworm; provided that, when such articles of clothing are made of cloth composed in part only of wool, or in part only of wool and silk, as the case may be, representations, statements or assertions shall be made clearly and unequivocally disclosing that fact.

It is further ordered, That respondents, Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, shall, within 60 days after the service upon them of copies of this order, file with the Federal Trade 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 hereinabove set forth.

Syllabus

IN THE MATTER OF

TITUS INSTITUTE, INC., W. HARRY TITUS, INDIVIDUALLY, AND AS PRESIDENT OF TITUS INSTITUTE, INC., AND RALPH H. SINCLAIR

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

Docket 1681. Complaint, July 3, 1929—Decision, June 30, 1931

Where a correspondence course in physical development consisting principally of illustrations, with explanatory matter, depicting the founder performing various physical exercises and particularly featuring his personal, individual instruction and adaptation of the course to individual needs and requirements, was carried on and conducted by him for many years until his death, and advertised through pictures representing him as a young vigorous and athletic man, and describing in detail successful results accomplished by his method; and thereafter a corporation organized under the family name by said founder's son to carry on the business, and an advertising agent, closely associated with the conduct thereof and familiar with the circumstances pertaining thereto, without disclosing the death of said founder, whose experience, skill, and reputation as a physical instructor gave said family name its only significance or value in the business of physical instruction, or that individual instruction, or adaptation of the course to individual needs or requirements would be made by said son instead of aforesaid founder,

- (a) Made statements and representations in their advertisements in magazines implying that they were those of the founder of the business and that it was being conducted by him and he was giving his individual attention and instruction to purchasers in accordance with their individual needs and requirements;
- (b) Made statements and representations implying that he had awarded and was awarding large prizes in money to those making the greatest improvement under his direction and that purported checks depicted in advertisements as thus given, and guarantees were copies of checks actually signed and given by him for such purpose and of his actual guarantees, facts being that his purported signature had been appended to such checks and guarantees by the son in conducting the business in question through the corporate instrumentality above set forth;
- (c) Set forth "before and after" pictures including one of a certain individual, together with such statements as "one—two—three, just like that", "The boy you see above changed from a puny weakling into a physical giant", and falsely represented pictures depicted under the caption "before", "30 days after" and "60 days after" as truthfully reflecting the physical condition of the individuals exhibited before and after receiving instruction, and that apparent improvement and development were the result of their course, facts being that said individual at time of beginning course was a well-developed, sturdy man, disclosed by his application blank as a person of exemplary habits, who took systematic physical culture, the