

Complaint

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IN THE MATTER OF
JOSEPH SCULLER

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

Docket 1890. Complaint, Jan. 5, 1931—Decision, Jan. 29, 1932

Where an individual engaged in sale of watches, rings, diamonds, and a variety of jewelry and similar articles at wholesale and retail, set forth upon the letterheads employed by him in carrying on his aforesaid business, the words "Manufacturing and Wholesale Jeweler Importer of Diamonds and Swiss Watches," notwithstanding fact said individual neither owned, operated, nor controlled a plant or machinery for manufacture of jewelry dealt in by him and was not an importer of diamonds or Swiss watches; with result of misleading and deceiving retailers of jewelry and of aforesaid articles into believing said individual to be a manufacturer and importer as above set forth and of thereby diverting sales of articles concerned from competitors who as manufacturers, or dealers only, or as importers, or nonimporting dealers, truthfully represent their operations and status, and with further effect of misleading and deceiving purchasing public into buying from retailers, said individual's watches, jewelry, and diamonds in the mistaken belief that in so doing they were saving the profit of a wholesaler, and of thereby injuring competition of a substantial character and to a substantial extent; all to the prejudice and injury of competitors and the public:

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

Mr. Edward L. Smith for the Commission.

Mr. Waymon B. McLesky, of Columbus, Ohio, 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 in sale at wholesale and at retail of watches, rings, diamonds, and a variety of jewelry and gift articles and with principal place of business in Columbus, Ohio, with misrepresenting business status and advertising falsely or misleadingly in said respect; in that for more than one year last past, neither owning, operating, nor controlling any plant, factory, or machinery for manufacture of articles dealt in by him as above set forth and by him obtained from sources within the United States, he has displayed the legend, "Manufacturing and Wholesale Jeweler,

Importer of Diamonds and Swiss Watches," on circulars, letterheads, cards, and other printed matter distributed through traveling salesmen and otherwise to customers and prospective customers in States other than Ohio, with effect of misleading and deceiving the public into believing him to be a manufacturer or importer of the articles dealt in by him as aforesaid, and thereby of diverting sales from competitors who do not manufacture the articles dealt in by them, and from retailers who neither misrepresent themselves as manufacturers nor as importers; all to the prejudice of the public and 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, the Federal Trade Commission issued and served a complaint upon the respondent, Joseph Sculler, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer to said complaint, hearings were had before a trial examiner of the Federal Trade Commission, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint. Thereafter counsel for respondent waived the taking of testimony in defense of the charges stated in the complaint and waived the service of a brief in support of the charges of the complaint, waived the filing of a brief in defense of the allegations in the complaint and oral argument, whereupon this proceeding came on for final hearing before the Federal Trade Commission, and the Commission having 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, Joseph Sculler, is an individual trading under his own name and having his principal place of business in the city of Columbus, State of Ohio, where he is now and for several years last past has been engaged in the business of selling and distributing, at wholesale and retail, watches, rings, diamonds, and a variety of jewelry and similar articles in interstate commerce. Respondent causes and has caused said articles when sold to be shipped from his place of business in the city of Columbus, State of Ohio, to purchasers thereof located in the State of Ohio and to purchasers thereof located in other States of the United States. In the course of his said business, respondent is now and has been

at all times hereinafter mentioned, in competition with other individuals, and with firms, partnerships, and corporations engaged in the sale and distribution, at wholesale and retail, of watches, rings, diamonds, and a variety of jewelry and such similar articles, in interstate commerce.

PAR. 2. In the course and conduct of his business as aforesaid, respondent in soliciting the sale of and in selling in interstate commerce, the articles hereinabove mentioned, has caused letterheads to be distributed in interstate commerce to customers and prospective customers located in States other than the State of Ohio. Said letterhead contained the following:

Manufacturing and Wholesale

JEWELER

Importer of Diamonds and Swiss Watches

The aforesaid representation by means of respondent's letterheads was made continuously by respondent for several years until after the issuance of the aforesaid complaint.

In truth and in fact respondent is not and never has been a manufacturing jeweler and he does not own, operate nor control, nor has he ever owned, operated or controlled a plant, factory or machinery for the manufacture of the jewelry which he sells and distributes in interstate commerce. In truth and in fact respondent is not, nor has he ever been, an importer of diamonds or of Swiss watches. The jewelry dealt in by respondent has been manufactured by others and the diamonds and Swiss watches which he has sold and distributed have been bought by him from importers of such diamonds and of Swiss watches.

PAR. 3. There are among the competitors of respondent, described in paragraph 1 hereof, manufacturers of jewelry similar to that which respondent sells, who truthfully represent that they are manufacturing jewelers, and there are among the competitors of respondent, described in paragraph 1 hereof, wholesalers and retailers who do not manufacture the jewelry which they sell and who do not represent that they are the manufacturers of such jewelry; and there are also among the competitors of respondent, described in paragraph 1 hereof, importers of diamonds and Swiss watches who truthfully represent that they are importers of diamonds and Swiss watches; and there are also among the competitors of respondent, described in paragraph 1 hereof, dealers in diamonds and Swiss watches who do not import such diamonds and Swiss watches and who do not represent that they are importers of diamonds and Swiss watches.

PAR. 4. The effect of the acts and representations of the respondent as above described is and has been to mislead and deceive retailers of

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jewelry and of diamonds and Swiss watches into the belief and understanding that the respondent manufactures the jewelry which he advertises and sells and that he imports the diamonds and Swiss watches which he sells and thereby to divert sales of such articles from the competitors of respondent described in paragraph 3 hereof; further effects of the aforesaid acts and representations of the respondent as above described, are to mislead and deceive the purchasing public into the belief that in purchasing from retailers of respondent's Swiss watches, jewelry, and diamonds they are saving the profit of a wholesaler and thus to injure substantial competition to a substantial extent.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice and injury of the competitors of the respondent and of the public 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.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings 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 on the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, and a brief in support of the allegations of the complaint (respondent having waived the offering of testimony in defense of the allegations of the complaint, and having waived the service of a brief in support of the charges of the complaint, waived the filing of a brief in defense of the allegations of the complaint and oral argument) and the Commission having made its findings as to the facts, with its 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 hereby ordered, That the respondent, Joseph Sculler, his representatives, agents, servants, and employees forthwith cease and

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desist, in connection with the sale and distribution of jewelry in interstate commerce, from representing in any way whatsoever that he, the said respondent, is a manufacturing jeweler, until and unless he becomes actually engaged in the regular course of his business in the manufacture of jewelry.

It is hereby further ordered, That the respondent, Joseph Sculler, his representatives, agents, servants, and employees forthwith cease and desist, in connection with the sale and distribution of diamonds in interstate commerce, from representing in any way whatsoever that he, the said respondent, is an importer of diamonds, until and unless he becomes actually engaged in the regular course of his business in the importing of diamonds.

And it is hereby further ordered, That the respondent, Joseph Sculler, his representatives, agents, servants, and employees forthwith cease and desist, in connection with the sale and distribution of Swiss watches in interstate commerce, from representing in any way whatsoever that he, the said respondent, is an importer of Swiss watches, until and unless he becomes actually engaged in the regular course of his business in the importation of Swiss watches.

And it is hereby further ordered, That the respondent, Joseph Sculler, within 30 days after the date of service upon him of this order, shall file with this Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

MACDONALD T. GREENE AND WALTER T. GREENE,
COPARTNERS, TRADING UNDER THE FIRM NAME
AND STYLE "DAKOTA ALFALFA GROWERS"

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

Docket 1967. Complaint, Aug. 28, 1931—Order, Jan. 29, 1932

Consent order requiring respondent partners, engaged as "Dakota Alfalfa Growers," in purchase of "Grimm," "Cossack," and "Common (Dakota No. 12)" alfalfa seed from Dakota Growers Finance Association, and in sale of said seed to seed houses, farmers' elevator and grain companies, etc., for resale to consumers, to cease and desist, as in said order set forth, from (1) using words "U. S. Registry" misleadingly on their containers; (2) falsely representing (a) said seed as coming to consumer direct from grower, or growers' cooperative, or place of production, with but one profit, or as grown from specially selected fields, and (b) themselves or their said vendor as a State sponsored cooperative improvement association; and (3) from attaching to their containers tags falsely indicating through colors employed, quality, variety, and official inspection and certification of seed therein contained.

Mr. PGad B. Morehouse for the Commission.

Morgan & Eastman, of Mitchell, S. Dak., for respondents.

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 MacDonald T. Greene and Walter T. Greene, copartners trading under the firm name and style Dakota Alfalfa Growers, hereinafter referred to as respondents, have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, MacDonald T. Greene and Walter T. Greene, are copartners, trading under the firm name and style Dakota Alfalfa Growers, with principal place of business at the city of Mitchell, in the State of South Dakota, and are at the same time executive officers of Dakota Growers Finance Association, a cooperative marketing association, incorporated November 8, 1926, under the laws