

IN THE MATTER OF

UNITED TAILORING COMPANY, INC., CURTIS CLOTHING CORPORATION, AND VICTOR KLEIN, HERBERT KLEIN, AND ARTHUR KLEIN, DOING BUSINESS UNDER TRADE NAME AND STYLE OF CONTINENTAL TAILORING COMPANY

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

Docket 1947. Complaint, May 8, 1931—Decision, June 3, 1932

Where a corporation, several subsidiaries, and three individuals engaged in sale of men's ready-made clothing direct to public through said various companies, which they owned, officered, controlled, and operated, together with an unincorporated business, as part of a common enterprise, but held out to the public under their different corporate and trade names as separate and independent,

- (a) Represented through their various agents or solicitors that garments furnished pursuant to orders would be tailored to the individual's measurements, and supplied, for their agents' use and display, order blanks with provision for measurements necessary for a made-to-order suit, and stated through printed receipt forms that clothes would be cut on the block system and adjusted to measurements called for, facts being they filled orders either by selecting from their common stock, a ready-made garment which in a general way came near the measurements concerned, or, lacking such, by supplying clothes with no regard therefor, and thus supplied short men with clothes for tall men, and thin men with those for stout men, and vice versa, and thereby grotesquely outfitted purchasers carefully measured and ordered for; with effect of misleading and deceiving public into believing garments in question were tailor made in accordance with individual measurements of the purchaser, and of diverting trade to them from competitors offering the consuming public through agents or otherwise, suits of greatly superior quality, at similar prices, and in fact so made, and cut according to the block system as commonly understood, and with capacity and tendency so to do;
- (b) Represented through their solicitors that suits ordered by purchaser would be made out of cloth corresponding with the sample selected by latter, facts being garments were made of cheaper and inferior cloth and in many instances of such poor quality that purchasers were unable and unwilling to use them and necessarily sustained loss of money paid, with no return; with effect of misleading and deceiving public, and of diverting trade to them from competitors in fact making garments in accordance with purchaser's selection or designation, and with capacity and tendency so to do;
- (c) Falsely represented through their solicitors that alterations would be made at a new store about to be opened; with effect of misleading and deceiving public into believing that needed fittings and alterations could

and would be made at branch places in said purchaser's localities, and of diverting trade to them from competitors offering as inducement to purchase, the making of needed alterations in branches in fact maintained by said competitors in the localities concerned, and in which branches such fittings and alterations were in fact made in accordance with representations of said competitor's agents, and with capacity and tendency so to do; and

- (d) Represented through their said agents or solicitors that a special price would be made and two suits of clothes furnished for the price of one, or one be given free, as a special advertising offer, facts being cost of additional suit was included in purchase price so as to yield a profit on the transaction as a whole, and supposed special offer was their regular price in the usual course of business; with effect of misleading and deceiving public into believing clothes in question were being sold at special introductory prices, and bringing about their purchase in reliance on such erroneous belief, and with capacity and tendency so to do:

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

Mr. James M. Brinson for the Commission.

Mr. Thomas F. Frawley and *Zimmerman & Zimmerman*, of New York City, and *Mr. John Walsh* and *Mr. L. A. Spiess*, of Washington, D. C., 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 United Tailoring Co., a New York corporation with principal place of business in New York City; respondent Curtis Clothing Corporation, a New York corporation and subsidiary of said first named respondent; and individual respondents Victor, Herbert, and Arthur Klein, (a) conducting under the trade name Continental Tailoring Co., a business likewise owned and controlled by said first named respondent, and (b) respectively president, vice president, and secretary-treasurer of aforesaid corporations, and unincorporated company, which they owned, dominated, controlled and directed;¹ variously engaged in the sale and distribution of

¹ As alleged in the complaint, "they have created, formed, instituted, and have maintained and directed the policies, methods, and practices of said respondent corporations and of said Continental Tailoring Co., and of each of them, and have at all times hereinafter mentioned, dominated, controlled, and directed the representations, transactions, sales, and other activities of said respondent corporations and of the Continental Tailoring Co. and of each of them, in their commerce among or between the various States of the United States. The said corporate respondents and the said respondent Continental Tailoring Co., under the direction and control of respondents Victor Klein, Herbert Klein, and Arthur Klein, have cooperated with each other and in the course and conduct of their

Complaint

16 F. T. C.

men's ready-made clothes in commerce among the various States through salesmen or agents employed by them to solicit orders directly from members of the consuming public; with misrepresenting nature of product offered, offering samples not conforming to product supplied on orders pursuant thereto, misrepresenting prices or free product, and misrepresenting circumstances incident to completion of transaction, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, have made it their practice in soliciting orders through their agents, falsely to represent that—

The suits would be custom tailored or made to measure, furnishing order blanks setting forth various measurements purporting to be necessary for such a suit (and so worded as to signify that clothes ordered would be made to order), for the use of their said agents, who used and displayed such blanks in soliciting and receiving orders, facts being suits supplied pursuant to orders thus taken were of the "ready made" variety altered in accordance with the measurements set forth;

Suits ordered by purchaser would be made out of cloth represented by or corresponding to sample exhibited by agent and selected by purchaser, facts being suits supplied did not so conform;

A special price was being or would be made, or two suits would be furnished for one, or one suit was or would be given free to the purchaser of a suit, as a special advertising offer, facts being offer made was the usual offer in the usual course of business, affording the particular respondent a profit on the entire transaction;

Alterations of suits purchased could be made at a new store or stores of respondents, opened or about to be opened within a short time by the particular respondent represented, in the particular locality convenient for the prospective purchaser, facts being no such stores were opened or contemplated.

"The above acts and practices of respondent," as alleged, "have had, and have and each of them has had and has the capacity and

several businesses, and by concert of action have reflected the policies and effectuated the purposes of said individual respondents Victor Klein, Herbert Klein, and Arthur Klein, and have maintained, and now maintain, close and intimate relationships, connections, and in interdependence, by and through which, without disclosure of their subordination to, or control by, said Victor Klein, Herbert Klein, and Arthur Klein, or of the relationship or connection between the several respondents, they have been and are enabled to act, and do act, in conjunction with each other, in use of the methods and in employment of the practices hereinafter set forth."

tendency to mislead and deceive the purchasing public into the belief, and to induce purchase of their products in reliance on such erroneous belief, that suits of clothes ordered from respondents, or either or any of them by or through their agents and solicitors, would be 'custom tailored' or 'made to order' from, and out of cloth represented by, and corresponding to the sample thereof selected by customers from samples of cloth exhibited to them by salesmen or agents of the particular soliciting respondent; that two suits of clothes would be furnished at the price of one as a special advertising offer, and that any alterations desired by the purchaser of the suit or suits furnished by respondent could or would be made at branch places of business thereafter shortly to be established by respondents or the particular soliciting respondent within easy reach of the purchaser," and said "acts and practices," as charged, "have had, and have and each of them has had and has the capacity and tendency to divert trade to respondents from competitors selling suits of men's clothes in interstate commerce by fair and truthful representation"; all to the prejudice of competitors and the public.

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," the Federal Trade Commission issued and served a complaint upon United Tailoring Co., Inc., a corporation, and Curtis Clothing Corporation, a corporation, and Victor Klein, Herbert Klein, and Arthur Klein, doing business under the trade name and style of Continental Tailoring Co., charging them and each of them with unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered their appearance and filed answer, testimony and documentary evidence were received, duly recorded, and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and evidence and brief in support of the complaint by counsel for the Commission, respondents having submitted no brief or argument, and the Commission having duly considered the same now makes this its report in writing, and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

Findings

16 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Victor Klein, Herbert Klein, and Arthur Klein are brothers who now are, and for many years last past have been, engaged in the clothing business in the City and State of New York. In 1928 they acquired the control of respondent Curtis Clothing Corporation, a corporation organized and existing under the laws of the State of New York with its principal office and place of business in the City of New York in said State, and in the same year was organized respondent United Tailoring Co., Inc., under and by virtue of the laws of the State of New York by one Nathan E. Gellens. Respondent Herbert Klein became president and Nathan E. Gellens secretary and treasurer of respondent United Tailoring Co., Inc., which positions they occupied until June 19, 1930, when respondents Victor Klein, Herbert Klein, and Arthur Klein acquired the entire ownership and complete control. Such respondent company also acquired, owned, and controlled respondent Curtis Clothing Corporation. Respondents Herbert Klein, Victor Klein, and Arthur Klein have controlled and directed the affairs of respondent United Tailoring Co., Inc., from the time when they first became interested therein or associated therewith, and ever since have controlled and now control and direct the policies, methods, and practices of said respondent United Tailoring Co., Inc., and of the respondent Curtis Clothing Corporation, and its activities and the activities of any other subsidiary or agency of respondent United Tailoring Co., Inc.

Respondents Victor Klein, Herbert Klein, and Arthur Klein have also engaged in business under the trade name and style of Continental Tailoring Co., and in 1931 said respondents caused to be organized as one of their corporate agencies or facilities the Biltmore Woolen Corporation and later changed the name to that of the Cortland Clothing Corporation. The stock of both of these corporations was, and is, owned by respondent United Tailoring Co., Inc.

PAR. 2. Respondents United Tailoring Co., Inc., and its subsidiary the Curtis Clothing Corporation under the control and direction of the individual respondents Victor Klein, Herbert Klein, and Arthur Klein, and such individual respondents under the trade name and style of Continental Tailoring Co. have been engaged since 1928 in the sale and distribution of men's clothes in commerce among and between the various States of the United States, and they have caused such clothes when sold to be transported from their place of business in the City of New York and State of New

York purchasers located in the various other States than the State of New York. In 1931 the individual respondents caused their corporate agency, to wit, respondent United Tailoring Co., Inc., to use the Biltmore Woolen Corporation or Cortland Woolen Corporation as a subsidiary in its business instead of respondent Curtis Clothing Corporation and the trade name Continental Tailoring Co. Respondent Curtis Clothing Corporation is still available for use of said individual respondents whenever they may so desire.

In the course and conduct of their business respondents have been, were at all times hereinafter mentioned, and now are, engaged in competition with individuals, partnerships and corporations selling men's clothes in interstate commerce as will hereinafter appear.

Respondents Victor Klein, Herbert Klein, and Arthur Klein have been and are respectively president, vice president, and secretary-treasurer of respondent corporations United Tailoring Co., Inc., Curtis Clothing Corporation and the unincorporated company Continental Tailoring Co. They have owned, dominated, controlled, and directed, and still own, dominate, control, and direct said respondent corporations, and said Continental Tailoring Co. They have created, formed, instituted, and have maintained and directed the policies, methods, and practices of said respondent corporations and of said Continental Tailoring Co. and of each of them, and have, at all times hereinafter mentioned, dominated, controlled, and directed the representations, transactions, sales, and other activities of said respondent corporations and of the Continental Tailoring Co. and of each of them. The said corporate respondents and the said respondent Continental Tailoring Co. under the direction and control of respondents Victor Klein, Herbert Klein, and Arthur Klein have been and are agencies or facilities by means of which said individual respondents have been and are enabled to conduct and operate their business under and by means of the methods of competition hereinafter described. They have been and are able to conduct and do conduct such corporate and other agencies as one unit, each operating in conjunction with the other or others while at the same time they have been and are held out to the purchasing public as separate, distinct, and independent units without any connection with each other or with said individual respondents.

PAR. 3. It has been the policy and practice of respondents, and of each of them, as will more fully appear in paragraph 4 hereof, including the unincorporated concern Continental Tailoring Corporation and the Biltmore Woolen Corporation or Cortland Woolen Corporation, later subsidiaries of respondent United Tailoring Co., Inc., to offer for sale and sell ready-made clothes by means of direct

Findings

16 F. T. C.

contact with the consuming public through salesmen or agents in the various States of the United States whom respondents have caused to solicit orders for men's clothes from purchasers and prospective purchasers by representing that such clothes will be tailor-made, according to the individual measurements of purchasers, out of cloth selected by purchasers, and that necessary alterations could and would be made in such clothes at a branch place of business which respondents caused their salesmen and agents to represent was about to be, and would be, opened in the locality so solicited by the particular respondent represented by the particular solicitor. Orders so solicited and received by such salesmen or agents of respondents have been and are forwarded to the particular respondent represented by the solicitor or salesman receiving the order, which respondent has thereupon, when filling the order or orders, or purporting or professing to fill them, transported and delivered, or caused to be transported and delivered, clothes to the purchasers in the various States of the United States, in pretended or purported compliance with orders, which have been taken from or out of the common stock of ready-made clothes used by respondent corporations and Continental Tailoring Co. as agencies of the individual respondents Victor Klein, Herbert Klein, and Arthur Klein.

Sometimes respondents have caused their agents to solicit orders for men's clothes in the same communities, at or during the same period of time, in pretended competition with each other. At other times, respondents have solicited orders in one or more communities through one of their corporate or other agencies, while soliciting orders in other communities through another or others of their corporate or other agencies. At times when, by reason of the acts and practices described in paragraph 4 hereof, there have been difficulties or controversies in particular communities with one of the corporate or other agencies of respondents Victor Klein, Herbert Klein, and Arthur Klein, they have caused their clothes to be offered for sale and sold in such communities by means of, or through, one of their other corporate agencies or other agencies which had not theretofore operated in such community or communities.

PAR. 4. The methods of competition mentioned in paragraph 3 hereof as employed by respondents Victor Klein, Herbert Klein, and Arthur Klein individually by means of respondent corporations and other agencies such as Continental Tailoring Co., have been, more particularly, the following, to wit, the representation, through their various agents, salesmen, or solicitors, to purchasers and prospective purchasers that the clothes furnished by them, in purported

or professed pursuance of orders received, would be tailored, or made to measure, the equipment of such salesmen or agents with order blanks setting forth various measurements purporting to be necessary for the making of a tailored suit, the use and display of such order blanks by agents, salesmen, and solicitors of respondents to purchasers and prospective purchasers in soliciting and receiving orders for suits, the equipment of such salesmen or agents with printed forms of receipts to be signed by the salesmen or agents and delivered to the purchasers containing, among other representations, the statement that the clothes to be furnished would be cut on the block system and adjusted to the measurements called for; the representation by respondents, through their agents, that suits ordered by the purchaser would be made from or out of cloth represented by or corresponding with a sample thereof exhibited by agents or salesmen of respondent and selected by the purchase; the representation of respondents, through their agents, salesmen, and solicitors, to purchasers and prospective purchasers, that alterations of suits purchased would be made at a new store of respondents which was about to be opened in the particular locality of the purchaser by the respondent represented by the particular agent, salesman, or solicitor; the representation of respondents, through their agents, that a special price would be made and two suits of clothes would be furnished for the price of one, or that one suit was being given or would be given free to the purchaser of a suit as a special advertising offer.

In truth and in fact clothes for men sold by respondents have not been, and are not, tailor made, have not been, and are not, cut according to the block system, have not been, and are not, made according to the individual measurements of purchasers. The words "block system" signify and mean, and are understood to signify and mean, the system of cutting garments one at a time according to individual measurements, using for the purpose a regular pattern altered for the purpose according to the requirements of each individual case.

On the contrary, it has been and is the practice of respondents, when professing or attempting to fill orders, to fill them with so-called ready-made clothes. It has been and is their practice, when orders are received, to select, from clothes already made, garments which appear, in a general way, to come near the measurements given in the orders, if they have any such garments, and thereupon to deliver such garments to the purchaser without further regard for, or reference to, the measurements specified in the orders re-

Findings

16 F. T. C.

ceived. If no garments in their ready-made stock correspond with the required measurements, it has been the practice of respondents, as a systematic method of competition, to furnish ready-made clothes to purchasers who have ordered tailor-made clothes in reliance on the authorized representations of respondents' agents, salesmen, or solicitors, without any regard for, or reference to, the specifications or requirements of the orders received. Short men have been furnished clothes that could fit tall men, tall men clothes for short men, stout men clothes for thin men, and thin men clothes for stout men. Instead of clothes cut to the measurements of the purchasers, clothes have been furnished by respondents to purchasers whose measurements have apparently been carefully taken and forwarded to respondents by their agents, salesmen, or solicitors, which have been such misfits as to produce a grotesque appearance when worn, or attempted to be worn, by the purchasers.

It has been and is the practice of respondents to deliver to purchasers ordering clothes from them, suits which have not been and were not and are not made from or out of cloth corresponding with the sample exhibited by respondents' agents or salesmen and selected by the purchasers for suits, but have been made from and out of cheaper and inferior cloth or fabric which, in many instances, has been so cheap and inferior that the purchasers have been unable and unwilling to use the garments, but have been compelled to sustain the loss of the money paid respondents without any return or advantage therefrom.

The offer of two suits for the price of one, or of one suit to be given free to the purchaser of a suit as a special advertising offer has been and was false and misleading. The cost of the suit offered as free has been, was, and is, included by respondents in the purchase price of a single suit, resulting in a profit to respondents from such transactions or sales, and the offer described as a special offer or special price was not a special offer or price but has been, was, and is, the usual offer made by, or on behalf of, respondents in the regular course of their business.

No branch place of business or store has been established or opened by respondents, or any of them, in or at any of the places in which they have sold or offered their clothes for sale, and in connection with such sales or offer to sell they have represented their purpose to open branch places of business.

It has been the policy, method and practice of respondents to refuse to refund any money received as a result of the false and misleading representations of their agents, salesmen and solicitors,

or to consent to any adjustment of complaints or grievances resulting therefrom, except in those cases in which the purchasers have appealed for assistance to their local Better Business Bureau. In such cases, on demand of such Better Business Bureaus, respondents have generally exchanged another suit or other suits for the first suit or suits delivered to the purchasers, but in none of such cases was the purchaser furnished a tailored suit cut to his or their individual measurements or which fitted the purchaser.

PAR. 5. There have been, were and are competitors of respondents offering for sale and selling in interstate commerce, through agents, salesmen, or solicitors by direct contact with the consuming public, garments or suits for men at a price or prices similar to the price or prices at which the clothes of the respondents have been and are offered for sale and sold, who have represented, through their agents in connection with the sale of their clothes or suits for men, that clothes or suits ordered or purchased from them would be tailor-made according to the individual measurements of the purchaser, and such competitors have furnished and do furnish, in accordance with such orders, clothes or suits which have been and are tailored and which have been or are cut according to the block system and made according to measurements of individual purchasers out of cloth selected or designated by them. Such competitors of respondents have also sold and sell, at such price or prices, garments so made consisting of material greatly superior in quality to that used by respondents in the clothes they furnish purchasers from them.

There have been and are competitors of respondents offering, as inducements to the purchase of their clothes needed fitting, or alteration of clothes at branch places of business in the localities in which purchasers reside, and such competitors have maintained, and do maintain in such localities, branch places of business as represented, and have fitted and altered, and do fit and alter, clothes purchased from them as their agents have represented would be done when soliciting and receiving orders therefor.

There have been and are competitors of respondents offering for sale and selling in interstate commerce clothes for men to retail dealers in clothes, and through them to the consuming public, at prices comparable with the prices at which clothes of respondents have been and are sold, which clothes have been and are made from the material or cloth selected or designated by the purchasers and have been and are tailored or cut by the block system, adjusted to individual measurements specified in the order for such clothes.