

IN THE MATTER OF
THE SINCLAIR MANUFACTURING CO. AND PACKARD
SHIRT MANUFACTURING CO.

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

Docket 2062. Complaint, July 20, 1932—Decision, Oct. 10, 1932

Where a corporation engaged in sale of men's shirts not made by it, directly to consuming public through house-to-house canvassers.

- (a) Included word "Manufacturing" in its corporate name and represented itself through booklets and other advertising and verbally through its salesmen as a manufacturer making the shirts sold by it, causing depictions of large buildings, with its name thereon conspicuously to be exhibited to purchasers and prospective purchasers as its factories, and also photographs of purported interiors of said buildings, showing shirt-manufacturing operations in process;
- (b) Represented in connection therewith that it was the exclusive manufacturer of the shirts in question, and that "A large factory output" made it possible for it to offer "the greatest assortment of exclusive patterns and styles" to the members of the public, the users and wearers thereof, "at factory prices, the lowest prices possible", and that purchasers in buying shirts in question from it were thereby saved a middleman's profit; and

Where said corporation, and a manufacturing concern, maker of the shirts in question, which were ready made, and not made to order, in selling same directly to the consuming public through canvassers as aforesaid,

- (c) Represented that said shirts would be tailored or custom made, or made to the measure of the particular purchaser and supplied their salesmen and agents with order blanks with spaces for recording various measurements of the respective purchasers as purportedly necessary for making to order the shirts in question, and so constructed and worded as to signify and imply to the purchasers to whom they were displayed, that shirts purchased would be made to order in accordance with the measurements of the particular purchaser;

With tendency and capacity to deceive and mislead purchasing public into believing that same were made to their order and measure, and that said corporation was the manufacturer thereof and purchaser from it saved a middleman's profit, and with effect of causing members of the public to buy shirts from them in reliance on such erroneous belief in preference to competitive products and thereby divert trade from them to competitors, and with capacity and tendency so to do:

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

Mr. Edward E. Reardon for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent, Sinclair Manufacturing Co., an Illinois corporation engaged in the sale of men's clothing, including shirts, underwear and neckwear, and with place of business in Terre Haute, Ind., and respondent Packard Shirt Manufacturing Co., an Indiana corporation engaged in the manufacture and sale of the aforesaid products, and with place of business also in said city, with misrepresenting nature of manufacture of product, and misrepresenting business status or advantages, and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting use of unfair methods of competition in interstate commerce.

Respondents, engaged in the sale of the products made by said respondent, Packard Shirt Manufacturing Co., through agents and salesmen, as charged, make it their practice to represent shirts ordered by purchasers, and furnished to them by respondents in pursuance of orders given to their agents and salesmen, will be tailored or custom-made, i.e., made to the measure of the purchaser, and furnish their said salesmen and agents, for their use, order blanks with spaces for recording the various measurements purportedly necessary for making custom-made shirts, and so constructed and worded as to signify and imply to purchasers that shirts ordered by them will be made to their order in accordance with their measurements; the fact being that the shirts in question, made by aforesaid respondent, Packard Shirt Manufacturing Co., are not tailored or custom-made shirts, but "ready-made" shirts in various standard sizes for stock.

Respondent, Sinclair Manufacturing Co., as charged, makes it its practice to represent in booklets and other advertising and verbally through its agents and salesmen, that it is a manufacturing company and manufacturer of the shirts sold by it, causing photographs of large buildings to be exhibited to purchasers and prospective purchasers as its factory or factories, with large signs displayed in the photographs at the top of the buildings, with its name thereon in large letters, and setting forth in circulars or folders, depictions of interiors showing employees engaged in certain shirt manufacturing operations, together with statements describing it as "exclusive manufacturers" of the shirts sold by it, emphasizing its "large factory output" as making it possible for it "to offer the greatest assortment of exclusive patterns and styles", with the resulting advantage to its agents of selling to the people in their communities, "the highest quality tailored shirts, with just the right neckband, sleeve length, and chest measurement", together with choice of "this great factory's output of materials and fabrics of every description * * * at factory prices, the lowest prices

possible", and other statements of similar tenor emphasizes such prices and the saving to the purchaser of the middleman's profit; notwithstanding the fact that such company is not and was not the manufacturer of shirts or of any other products.

"The representation contained in the word 'manufacturing', in the corporate name of the respondent, the Sinclair Manufacturing Co., to the effect that said respondent was engaged in manufacturing and that shirts or other products of said respondent, which were sold by it were manufactured by the Sinclair Manufacturing Co., and the statements and representations of the said respondent, above set forth other than contained in the corporate name of said respondent, to the effect that the shirts or any of them offered for sale and sold by the said respondent were manufactured by the Sinclair Manufacturing Co. and the statements made or caused to be made by the respondents, respectively, that the shirts sold by them were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, were each and all of such representations and statements untrue and had the tendency and capacity to deceive and mislead said members of the public, purchasers of the said shirts into the belief that the respondent, the Sinclair Manufacturing Co., was engaged in manufacturing and was the manufacturer of the shirts sold by it, that the shirts sold by the respondents were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, and that in purchasing the shirts sold by the Sinclair Manufacturing Co. in preference to shirts sold by said respondent's competitors, the purchaser saved a middleman's profit", and "said representations and statements had the further tendency and capacity to cause and did cause members of the public relying on such belief to purchase shirts for use and wear from the respondents, respectively, in preference to shirts sold by respondents' competitors and trade was thereby diverted from respondents' competitors to the respondents"; 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued its complaint against the respondents, the Sinclair Manufacturing Co. and Packard Shirt Manufacturing Co.

charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Pursuant to the provisions of said act the Commission served its complaint upon each of the respondents on July 22, 1932, with notice of hearing on August 26, 1932, on the charges set forth in the complaint, together with a copy of the rules of practice adopted by the Commission with respect to the time within which answer is required to be made by a respondent after service of a complaint and with respect to failure of a respondent to appear or to file answer thereto.

The time of the respondents, respectively, to appear and to file answer to the complaint in accordance with the said rules of practice expired on August 26, 1932, and the respondents, respectively, having failed to appear and to answer the complaint and no extension of time to appear and to answer having been requested or granted and the respondents, respectively, being in default for want of appearance and answer, and the Commission having duly considered the record and being fully advised in the premises, now makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, the Sinclair Manufacturing Co., was organized as a corporation under the laws of the State of Illinois on December 27, 1923, under the name Sinclair Shirt Co. The name of the said respondent was changed to the Sinclair Manufacturing Co. on February 23, 1924. The said respondent has a place of business in Terre Haute, Ind.

PAR. 2. The respondent, Packard Shirt Manufacturing Co., was organized as a corporation under the laws of the State of Indiana on March 8, 1929, and at all times since its organization it has had and now has a place of business in Terre Haute, Ind.

PAR. 3. The respondent, Packard Shirt Manufacturing Co., is and has been since on or about March 8, 1929, engaged in the manufacture of men's clothing, including shirts, underwear and neckwear, and since on or about the last-mentioned date both of the respondents are and have been engaged in the sale and distribution of the products of the Packard Shirt Manufacturing Co. throughout various States of the United States.

PAR. 4. The respondents are and have been at all times since on or about March 8, 1929, engaged in the sale of the above-mentioned products to members of the public residing in States other than Indiana and the respondents have caused the products when so sold

by them to be transported from the respondents' places of business in Indiana or from the State of origin of the shipment to, into and through States other than Indiana or the State of origin of the shipment to the members of the public, the purchasers of the said products.

PAR. 5. During all the times above mentioned other individuals, firms, and corporations hereinafter referred to as sellers, located in various States of the United States, are and have been engaged in the manufacture and sale of men's clothing, including shirts, underwear and neckwear, to members of the public throughout the United States, purchasers and users thereof, and the sellers, respectively, have caused their products when so sold by them to be transported from the State of the seller or from the State of origin of the shipment to, into and through other States to the purchasers.

PAR. 6. During all the times since on or about March 8, 1929, the respondents have been and now are, respectively, in competition in interstate commerce in the sale of the products made by the Packard Shirt Manufacturing Co., including the shirts hereinafter mentioned and referred to, with the other individuals, firms and corporations, the sellers mentioned and referred to in the preceding paragraph hereof.

PAR. 7. During all the times since on or about March 8, 1929, the respondents, respectively, have caused the said products of the respondent Packard Shirt Manufacturing Co., including the shirts mentioned and referred to herein, to be sold through canvassing salesmen or agents who have personally solicited and received orders for the products from members of the public located in States other than Indiana or the State of origin of the shipment, purchasers, and users thereof. Orders so solicited and received by respondents' salesmen or agents are and have been forwarded by them to the respondents who have thereupon, respectively, caused the articles of clothing so ordered to be transported in interstate commerce as above set forth and delivered to the purchasers.

PAR. 8. It is and has been, during the times since on or about March 8, 1929, the practice of respondents, respectively, in soliciting the orders above mentioned for the said products through their agents and salesmen, to represent to purchasers and prospective purchasers that the shirts ordered by the purchasers and furnished to them by the respondents, respectively, in pursuance of orders given to the respondents' agents and salesmen would be tailored or custom made, or made to the measure of the purchasers, and the respondents, respectively, furnish and have furnished to their salesmen and agents for their use in taking orders, order blanks with spaces provided for

recording among other things various measurements of the respective purchasers of respondents' shirts purporting to be necessary measurements for making tailored or custom made shirts and such order blanks have been and are being used by their agents and salesmen in soliciting and receiving orders for shirts made by the Packard Shirt Manufacturing Co. and have been and are being displayed by such agents and salesmen to purchasers and prospective purchasers. The said order blanks are so constructed and worded as to signify and imply to said purchasers that the shirts ordered by them from the respondents would be made to their order in accordance with the measurements of the purchasers.

The shirts sold by respondents, respectively, as above set forth have not been tailored or custom made shirts, nor have they been made to the measure or order of the said purchasers, but they are and have been shirts made in various standard sizes for stock, commonly known as ready-made shirts, by the Packard Shirt Manufacturing Co.

PAR. 9. In the sale of shirts by the Sinclair Manufacturing Co. as set forth above, it is and has been the practice of the said respondent to represent in booklets and in other printed forms of advertising and verbally through its agents and salesmen that the Sinclair Manufacturing Co. is a manufacturing company and was the manufacturer of the shirts sold by it.

Among other such representations during the said times the said respondent caused photographs of certain large buildings to be exhibited to purchasers and prospective purchasers as the factory or factories of the Sinclair Manufacturing Co., and caused large signs to be represented in the photographs at the top of the buildings extending the entire length and width of the buildings with the name, the Sinclair Manufacturing Co. thereon, printed in large letters.

In circulars or folders exhibited to purchasers containing reproductions of the above photographs the said respondent caused other photographs to be displayed, purporting to be photographs of interior parts of said buildings, showing factory employees engaged in certain manufacturing operations in the manufacture of shirts, together with statements in connection therewith such as the following:

The Sinclair Manufacturing Co. are the exclusive manufacturers of the celebrated Sinclair Comfort Built Shirt;

A large factory output makes it possible for Sinclair to offer the greatest assortment of exclusive patterns and styles;

Suppose we placed our big factory in your town, and gave you the exclusive privilege of selling to the people of your community the highest quality tailored shirts, with just the right neckband, sleeve length, and chest measurement. Then think of giving your customers the choice of this great factory's output of

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materials and fabrics of every description * * * If you were able to offer these exceptional values to your customers at factory prices, the lowest prices possible, without an investment of a single penny on your part, do you think that you could make good?

and other similar statements to the effect that the shirts sold by the Sinclair Manufacturing Co. were offered for sale and sold by the said respondent to the members of the public, the users and wearers thereof, at factory prices, and to the effect that the purchasers in buying the said shirts from the Sinclair Manufacturing Co. thereby saved a middleman's profit.

PAR. 10. The respondent, the Sinclair Manufacturing Co., is not and it has not been during the times above mentioned and referred to engaged in the manufacture of shirts or of any other products.

The representation contained in the word "manufacturing" in the corporate name of the respondent, the Sinclair Manufacturing Co., to the effect that said respondent was engaged in manufacturing and that shirts or other products of said respondent, which were sold by it were manufactured by the Sinclair Manufacturing Co., and the statements and representations of the said respondent, above set forth other than contained in the corporate name of said respondent to the effect that the shirts or any of them offered for sale and sold by the said respondent were manufactured by the Sinclair Manufacturing Co. and the statements made or caused to be made by the respondents, respectively, that the shirts sold by them were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, were each and all of such representations and statements untrue and had the tendency and capacity to deceive and mislead said members of the public, purchasers of the said shirts into the belief that the respondent, the Sinclair Manufacturing Co., was engaged in manufacturing and was the manufacturer of the shirts sold by it, that the shirts sold by the respondents were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, and that in purchasing the shirts sold by the Sinclair Manufacturing Co. in preference to shirts sold by said respondent's competitors, the purchaser saved a middleman's profit.

The said representations and statements had the further tendency and capacity to cause and did cause members of the public relying on such belief to purchase shirts for use and wear from the respondents, respectively, in preference to shirts sold by respondents' competitors and trade was thereby diverted from respondents' competitors to the respondents.

CONCLUSION

PAR. 11. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in interstate 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

This proceeding having been heard and considered by the Federal Trade Commission upon the record, 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 respondents, the Sinclair Manufacturing Co. and Packard Shirt Manufacturing Co., and each of them, their agents, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of shirts or other articles of men's clothing, do cease and desist—

1. From using the word "manufacturing" or word of similar meaning as a part of or in the name of the respondent, the Sinclair Manufacturing Co.; and

2. From representing to purchasers or prospective purchasers, directly or indirectly, by means of signs or otherwise, that any building occupied by the said respondent, the Sinclair Manufacturing Co., is a factory and operated as such by said respondent, or that said respondent is a manufacturer of shirts or other articles of men's clothing offered for sale unless or until such representations are true in fact.

3. From representing that the shirts sold by respondents are tailored or custom made shirts, made to the order and measure of the purchaser, when in fact the shirts sold by respondents are what are known as "ready made" or made for stock in standard sizes to be later offered for sale and sold, and are not shirts made to fill an order previously obtained from a purchaser in accordance with measurements of the purchaser taken before the shirts ordered are manufactured.

4. From representing to purchasers or prospective purchasers, directly or indirectly, that in purchasing shirts or other articles of men's clothing sold by the Sinclair Manufacturing Co. in prefer-

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ence to shirts sold by competitors, that the purchasers are buying the same from a manufacturer and are thereby saving a middleman's profit, unless and until the shirts and other articles of men's clothing being so represented and sold are actually manufactured by the said respondent.

It is further ordered, That the respondents, the Sinclair Manufacturing Co. and Packard Shirt Manufacturing Co. shall within 30 days after the service of this order file with the Commission a report in writing, setting forth in detail the manner and form, respectively, in which they have complied with this order to cease and desist.

Complaint

IN THE MATTER OF
HAVATAMPA CIGAR COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1465. Complaint, June 3, 1927—Order Oct. 11, 1932*

Consent order requiring respondent, its officers, etc., to cease and desist in connection with sale and distribution of cigars in interstate commerce, from (1) using word "Cuba", in brand name or designation "Hoyo de Cuba", for cigars not composed entirely, or in substantial amount, of Cuban tobacco, unless accompanied by equally conspicuous explanatory matter, respectively covering the aforesaid circumstances, as in detail set forth; (2) applying words "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", "Mild Habana Cigar", or any other words of similar import to cigars not composed wholly of Havana or Cuban tobacco; or (3) applying to any cigars not composed of Havana or Cuban tobacco in whole or in part, any other word, name, etc., implying such composition.

Mr. Henry Miller for the Commission.

McMullen, Worth & Draper, of Tampa, Fla., for respondent.

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 Havatampa Cigar Co., a corporation hereinafter referred to as respondent, has been and is 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. Respondent, Havatampa Cigar Co., is a corporation organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business in the city of Tampa, in said State. It is, and for many years last past has been, engaged in the business of manufacturing, selling, and distributing cigars throughout the United States to wholesale and retail dealers and to the consuming public. Respondent causes said cigars when so sold to be transported in commerce from its said place of business in the city of Tampa, Fla., through and into other States of the United States to said vendees at their respective points of location or residence in said other States; and in so carrying on and conducting its said business respondent is and at all times hereinafter mentioned has been engaged in interstate commerce and in