

Complaint

IN THE MATTER OF
HELLER MANUFACTURING COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2055. Complaint, July 2, 1932—Decision, Feb. 14, 1933*

Where a corporation engaged in sale of "tackers" to jobbers and retailers, and of staples or tacks for use therewith,

Included word "manufacturing" in its corporate name and displayed said name upon its advertisements, circulars, price lists, billheads, and other business stationery, and upon the labels on its products and the containers thereof, and through said corporate name, advertising, labeling, and orally by agents, represented itself as manufacturer of the products dealt in by it, facts being it neither owned nor operated a factory or plant making the same and was not a manufacturer thereof;

With tendency and capacity to mislead and deceive purchasers of its products into believing that in buying from it they were dealing with the manufacturer of the products purchased and thereby gaining an advantage by saving themselves the profit of the middleman, and with effect of unfairly diverting trade to it from its competitors and with capacity and tendency so to do:

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

Mr. Alfred M. Craven for the Commission.

Mr. Jerome M. Friedlander and Smith, Olds, Thompson & Harris, of Cleveland, 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, an Ohio corporation engaged in the sale of tackers and staples to jobbers and retailers throughout the United States, and with principal place of business in Cleveland, with using misleading corporate name, misrepresenting business status and advertising falsely or misleadingly and misbranding or mislabeling in said respects, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as aforesaid, and neither owning nor operating a plant making the products dealt in by it, which it purchases from the manufacturers thereof, uses a corporate name including the word "manufacturing", and displays the same in its advertising circulars and price lists, and other business stationery, and on labels attached to the containers of its products; with

the tendency and capacity to mislead and deceive purchasers of its products into believing that in buying from it they are dealing with the manufacturer of the products bought, and are thereby gaining an advantage in saving the middleman's profits, and with the further capacity and tendency unfairly to divert, and with the effect of diverting, trade to it from its competitors, to their prejudice.

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" (38 Stat. 719), the Federal Trade Commission on the 9th day of July, 1932, issued and thereafter served its complaint against the respondent charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed an answer to the said complaint, a hearing was had before a trial examiner theretofore duly appointed, and testimony and evidence received in support of the charges set forth in the complaint and in opposition thereto. Thereupon, this proceeding came on regularly for final hearing, and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized and doing business under the laws of the State of Ohio with its principal place of business in the city of Cleveland in said State. It is now, and since its incorporation in 1930 has been, engaged in the business of selling to jobbers and retailers throughout the United States devices sometimes described as tackers for use in driving staples or tacks into various objects, and also engaged in selling to jobbers and retailers the staples or tacks suitable for use in connection with such tackers. It causes said merchandise when sold to be shipped and transported in interstate commerce from its said place of business in Ohio into and through other States of the United States to purchasers thereof at their respective points of location. Respondent since its incorporation has been and now is in competition with many other individuals, firms, and corporations located in the United States and engaged in the sale and distribution in interstate commerce of tackers, staples, and other like products.

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PAR. 2. In the course and conduct of its business respondent in soliciting the sale of and selling its products has carried on its business under its corporate name, Heller Manufacturing Co., and has caused the same to appear in its advertisements, circulars, price lists, billheads, and other business stationery and upon the labels attached to and the containers of its products. For example, on the container of its staples distributed and sold in the course of its business, as above described, respondent has affixed the label as follows:

5,000 Heller Attached Staples

Manufactured in U.S.A.

The Heller Manufacturing Co.

1791 E. 38th Street, Cleveland, Ohio

Respondent in and by its corporate name and in its labeling and advertising and oral representations made through its agents has represented itself throughout the conduct of its business as a manufacturer of the products sold by it when in truth and in fact it neither owns nor operates a factory or plant where its products are manufactured nor does it manufacture its products.

PAR. 3. The representations made by respondent as alleged in paragraph 2 hereof are false and misleading and have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the belief that when purchasing from respondent they are dealing with the manufacturer of the products purchased and thereby gaining an advantage by the saving to them of the middleman's profit. The said false representations also have the capacity and tendency unfairly to divert and do divert trade to the respondent from its competitors.

CONCLUSION

The acts and practices of respondent Heller Manufacturing Co. under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and of respondent's competitors and are unfair methods of competition in interstate 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 upon the pleadings, testimony, and evidence introduced, and the brief of counsel for the Commission, and the Commission hav-

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ing made its findings as to the facts with its conclusion that the respondent Heller Manufacturing Co. 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 now ordered, That the respondent Heller Manufacturing Co., its officers, agents, and employees do cease and desist either in the use of its corporate name or by any other means from representing that the respondent is a manufacturer.

It is further ordered, That the said respondent Heller Manufacturing Co. shall within 90 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
BEN MIGDALL AND BEN RITHOLZCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2057. Complaint, July 9, 1932—Decision, Feb. 14, 1933*

Where an individual engaged in sale of dress goods and similar fabrics by mail order, and neither owning nor operating any mill manufacturing merchandise so dealt in by it; in advertising said products in magazines of national circulation, and leaflets, cards, form letters and other trade literature,

- (a) Falsely represented that merchandise offered came to customer "direct from mills" and constituted "fresh goods direct from mills", facts being said products were neither made by said individual nor came direct from mill or factory; with tendency and capacity to mislead and deceive customers into believing that they were purchasing direct and thereby gaining an advantage in the saving of a middleman's profit;
- (b) Offered dress goods in bundles of various specified yardage, facts being the merchandise supplied did not have customary mill width, due to said individual's practice of splitting material so as to double lineal yardage; and
- (c) Offered to give customers ten yards free, and "a valuable set of notions FREE with each bundle ordered", facts being no additional yardage was added except where more than one bundle was ordered, and neither yardage nor notions were given free, but their cost was included in specified price paid by customer for bundle or bundles;

With capacity and tendency to mislead and deceive the purchasing public and induce their purchases from him on account of their belief in the truth of said statements and representations, and with effect of diverting trade to him from competitors, to their injury, and with tendency and capacity so to do:

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

Mr. Alfred M. Craven for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, engaged at Chicago as Jefferson Dry Goods Co., Eastern Textile Co., and under other trade names, in the sale