

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

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of dress goods and similar fabrics, upon orders received by them by mail, with misrepresenting business status or advantages, misrepresenting quantities, offering products falsely or misleadingly as free, and advertising falsely or misleadingly 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.

Respondents, as charged, engaged as aforesaid, in their advertising represent that their merchandise comes to customers "direct from mills", and constitutes fresh goods "direct from mills", notwithstanding fact that respondents neither own nor operate any mill making such merchandise, but purchase the same from mills or other sources, with tendency and capacity to mislead and deceive purchasers into believing that they are gaining an advantage in buying from them, in saving the middleman's profit, and further, as charged, advertise and offer "dress goods in bundles consisting of varying specified amounts of yardage, thereby by implication stating that the merchandise contains a specified number of yards of material of customary and usual widths of such material as it comes from the mill, whereas it is the custom of respondents upon filling an order to split the material so as to double the lineal yardage."

Respondents further, as charged, in their advertisements "offer to give the customer 10 yards 'free', whereas in truth and in fact no additional yardage is added except when the customer orders more than one bundle of the material, and then such yardage is not given free but the cost thereof is included in the specified price paid for the bundle", and "also 'offer to give the customer a valuable set of notions free with each bundle ordered', whereas in truth and in fact the said notions are not given to the customer free, but their price and value are included in the price specified to be paid by the customer for the bundle."

Such false and misleading representations, as alleged, have "the capacity and tendency to mislead and deceive the purchasing public and to induce them to purchase from respondents in and on account of their belief in the truth of said statements and representations", and "said representations and each of them have the tendency, capacity, and effect of diverting trade to respondents from their competitors to their injury"; 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" (38 Stats. 719), the Federal Trade Commission, on the 9th day of July, 1932, issued and thereafter served its complaint against the respondents, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed an answer to said complaint, 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 decision, 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. Respondent Ben Migdall is now and has been for a number of years last past engaged at Chicago, Ill., under the trade names "Jefferson Dry Goods Company", "Eastern Textile Company" and other trade names, in the business of selling dress goods and similar fabrics upon orders received by him by mail, and in the shipping and transportation of said merchandise on such orders from his principal place of business in Chicago, Ill., into and through States other than Illinois, in interstate commerce, to purchasers thereof at their various points of location throughout the United States. In the course and conduct of said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in selling dress goods and similar fabrics by mail in interstate commerce, and in the shipment and transportation of same to purchasers located throughout the United States.

PAR. 2. Said respondent, Ben Migdall, in the course and conduct of his business and for the purpose of securing orders for his said merchandise, advertises in magazines having national circulation throughout the United States, and also by means of leaflets, cards, form letters and other advertising literature, and in such advertisements and advertising literature said respondent has made and now makes numerous false and misleading representations, among which are the following:

(1) That the merchandise offered for sale by him comes to the customer "direct from mills" and that they are "fresh goods direct from mills", thereby implying that said respondent owns or oper-

ates a mill where such merchandise is manufactured; when in truth and in fact, the said respondent neither owns nor operates any mill where such merchandise is manufactured, nor does any merchandise sold by respondent come direct to respondent or direct to the customers of respondent from a mill or factory. Such representation is false and misleading and has the tendency and capacity to mislead and deceive the customers of respondent into the belief that they are purchasing direct from a mill and thereby gaining an advantage in the saving of a middleman's profit.

(2) Said respondent advertises and offers for sale said dress goods in bundles consisting of varying specified amounts of yardage, thereby, by implication, stating that the merchandise contains a specified number of yards of material of the customary and usual widths of such material as it comes from the mills, whereas it is the custom of said respondent, upon filling an order, to split the material so as to double the lineal yardage.

(3) Said respondent in his advertisements offers to give the customers 10 yards free, whereas in truth and in fact, no additional yardage is added except where the customer orders more than one bundle of the material, and then such yardage is not given "free", but the cost thereof is included in the specified price paid for the bundle.

(4) Said respondent also offers to give the customer "a valuable set of notions free with each bundle ordered", whereas in truth and in fact, the said notions are not given to the customer free, but their price and value are included in the price specified to be paid by the customer for the bundle.

PAR. 3. The various false and misleading representations set forth in paragraph 2 hereof each has the capacity and tendency to mislead and deceive the purchasing public and to induce them to purchase from respondent in and on account of their belief in the truth of said statements and representations.

Said representations and each of them have the tendency, capacity and effect of diverting trade to respondent from his competitors to their injury.

PAR. 4. The respondent Ben Ritholz, alleged in the complaint to have been engaged in the above unfair practices in association with the said respondent Ben Migdall, was not connected at any time with the said business carried on by respondent Migdall.

CONCLUSION

The acts and practices of respondent Ben Migdall, under the conditions and circumstances described in the foregoing findings, are

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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."

This proceeding as against the respondent Ben Ritholz should be dismissed.

ORDER TO CEASE AND DESIST AND ORDER OF DISMISSAL

This proceeding having been heard by the Federal Trade Commission upon the pleadings, the testimony and evidence introduced, and brief of counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the proceeding as against respondent Ritholz should be dismissed, and that the respondent Ben Migdall 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 this proceeding as to the respondent Ben Ritholz be and the same is hereby dismissed.

It is further ordered, That respondent Ben Migdall, in connection with the selling or offering for sale of his merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Advertising or otherwise representing that the merchandise offered for sale by him comes to the customer "direct from the mills."

(2) Offering, in his advertisements or otherwise, to give customers any merchandise free, when the price and value of such offered "free" goods is included in the price specified to be paid by the customer for the merchandise.

(3) Advertising and offering for sale dress goods or fabrics specified to contain a definite amount of yardage, when such yardage has been increased by splitting the material so as to double the lineal yardage, without stating such fact in such offer or advertisement.

It is further ordered, That said respondent, Ben Migdall, shall, within 60 days after the service upon him of a copy of this order, file with the 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

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IN THE MATTER OF
HARRY SHER, TRADING AS ALTOONA MALT CO., ET AL.

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

Docket 2058. Complaint, July 11, 1932—Order, Feb. 27, 1933

Consent order requiring respondent individuals, their agents, etc., in connection with the sale in interstate commerce of malt syrup, to "cease and desist from labeling, naming, or in any other wise designating such malt syrup as Royal Canadian Malt Syrup and/or as Canadian Imperial Malt Syrup unless in immediate conjunction with and as a part of the use of the said names Royal Canadian Malt Syrup and/or Canadian Imperial Malt Syrup it clearly and plainly appears in large, conspicuous type in such naming, labeling and designating that such malt syrup is manufactured in the United States of America from and of ingredients produced in the United States of America."

Mr. Edward L. Smith for the Commission.

Mr. Roy J. Stone, of Columbus, Ohio, 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 Harry Sher, trading as Altoona Malt Company, Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, 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 Harry Sher, for more than one year prior to April 1, 1931, was engaged in the business of selling malt syrup at Altoona, Pa., where he had his principal place of business, which he conducted under the name Altoona Malt Company, and in the cities of York and Bradford, in the State of Pennsylvania, and in the cities of Elmira, Corning, Cornwell, and Jamestown, in the State