

IN THE MATTER OF
B. M. ZIEVE AND ISRAEL DUKES, INDIVIDUALLY AND
AS COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF DIAMOND PAPER & BOX COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914.

Docket 2137. Complaint, Dec. 18, 1933—Decision, Jan. 16, 1935

Where a firm engaged in purchase of fiber board "clothing boxes", and in the sale thereof to manufacturers and shippers of clothing, in competition with persons and concerns located without the state in which so engaged, and who, as manufacturers or dealers as the case might be, offered and sold similar products within said state—

Caused the box maker's certificate, required by the railroads' classification committee to entitle shipment to substantially lower charges than otherwise effective, and containing its name and address as the maker, to be stamped on its said boxes, notwithstanding fact it was not the maker thereof, such certificate by other than the maker did not entitle shipment to the lower charges, and a substantial number of purchasers prefer, to a substantial extent, to buy such boxes direct from the maker rather than the jobber or dealer;

With capacity and tendency to mislead purchasers to believe it to be the maker of said products, and that they conformed to all the requirements and specifications of said committee and would, therefore, take the lower rates, and thereby unfairly divert business to it from competitors who make their boxes, and from those who do not do so, or thus represent themselves:

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

Mr. Robt. N. McMillen for the Commission.

Mr. I. Emanuel Sauder, of Philadelphia, Pa., 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 B. M. Zieve and Israel Dukes, individually and as copartners trading under the name and style of Diamond Paper & Box Company, 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 said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals doing business as copartners under the name and style Diamond Paper & Box Company

Complaint

and have their principal office and place of business in the City of Philadelphia, State of Pennsylvania. They have for more than three years last past been engaged in the sale and distribution in interstate commerce of wrapping paper, twine, corrugated paper and fiber boxes. Said merchandise is sold and distributed to retail and wholesale merchants for the use of such purchasers and not primarily for resale. Respondents sell their merchandise by means of advertisements inserted in trade publications having an interstate circulation, by means of circulars and by means of salesmen. When orders are received, respondents forward the merchandise so ordered to the purchasers thereof at their respective points of location. Such merchandise is shipped from respondents' place of business in the State of Pennsylvania into and through other States of the United States. Respondents are in competition with other partnerships, corporations, firms, and individuals engaged in the sale and distribution in interstate commerce of like articles of merchandise, and, in the sale and distribution of such merchandise, are also in competition with the manufacturers thereof.

PAR. 2. The interstate railway companies of the United States have an organization known as the Consolidated Classification Committee. This committee has adopted certain rules regarding the containers used in interstate shipments of merchandise, and the common carriers have filed copies of such rules with the Interstate Commerce Commission. One of such rules requires that a certification be placed upon each box by the actual manufacturer thereof. Respondents place on their corrugated paper and fiber boxes the following inscription in concentric circles:

DIAMOND PAPER AND BOX CO.
PHILADELPHIA, PA.
CERTIFICATE OF BOX MAKER

THIS BOX CONFORMS TO ALL CONSTRUCTION
REQUIREMENTS OF CONSOLIDATED FREIGHT CLASSIFICATION

The above certification or statement is false and misleading. The respondents are not the manufacturers thereof but purchase the said boxes from the manufacturer and then cause the said inscription to be placed thereon.

PAR. 3. The false and misleading representation in paragraph 2 hereof has the capacity and tendency to mislead and deceive the purchasing public and the users of corrugated paper and fiber boxes and to induce them to purchase from respondents in and on account of their belief in the truth of said representation. Many purchasers

desire to purchase such boxes from the manufacturer thereof and not through a dealer or jobber, and said representation has the capacity and tendency and effect of diverting a substantial amount of trade to respondents from other dealers or jobbers and from manufacturers.

PAR. 4. The use by respondents of the false and misleading and deceptive representation, as hereinabove set forth, constitutes practices or methods of competition which tend to and do prejudice and injure the public, unfairly divert trade from and otherwise prejudice and injure respondents' competitors, and acts as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of selling and distributing corrugated paper and fiber boxes.

PAR. 5. Said false, misleading, and deceptive practices and methods of respondents, under the circumstances and conditions hereinabove alleged, are unlawful and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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."

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 its complaint upon the respondents, B. M. Zieve and Israel Dukes, individually and as partners doing business under the name and style of Diamond Paper & Box Company, charging them with the use of unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of said act.

The respondents having entered their appearances and filed answers, hearings were had before a duly qualified examiner of the Commission, at which respondents were represented by Israel Dukes and by counsel, evidence was introduced by the attorney for the Commission in support of the complaint and respondents' counsel announced that they had no evidence to offer.

Thereafter this proceeding came on for final hearing before the Commission on the record and the brief of the attorney for the Commission, respondents having failed to file brief within the time prescribed by the Commission's rules of practice and waived oral argument. And the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, B. M. Zieve and Israel Dukes, are, and have been for more than four years last past, partners doing business under the name of Diamond Paper & Box Company, with their place of business in the City of Philadelphia, in the State of Pennsylvania. They have been, and now are, engaged in the sale, among other things, of fiber-board boxes suitable and used for the packing of clothing for shipment, known and generally referred to as "clothing boxes." Sales of these boxes are made by respondent direct to the users thereof, manufacturers and shippers of clothing.

PAR. 2. Other persons, firms, and corporations, with their places of business located outside the State of Pennsylvania, are engaged in selling and offering for sale similar boxes, suitable and used for the packing of clothing for shipment, to customers located within the State of Pennsylvania and pursuant to such sales shipping said boxes into said State from without. With such other persons, firms, and corporations respondents are in substantial competition. Some of said competitors are manufacturers of the boxes they sell, others are wholesalers or dealers only,

PAR. 3. The Official Classification Committee is an organization of the railroads engaged in the carriage of freight among the States in the eastern part of the United States. It is the duty and function of this committee to compile and file with the Interstate Commerce Commission and similar Commissions of the various States, tariffs which are the basis of freight rates to be charged, and charged, by said railroads. For a number of years and at the present time, a part of said tariffs has been and is rule 41 of said committee, which governs the rates of charges for goods, wares, and merchandise tendered for shipment and shipped in said fiber-board boxes. Section 1 of said rule 41 provides that goods tendered in fiber-board boxes which do not conform to all the requirements and specifications of said rule 41, shall take a substantially higher rate, to wit: 20 percent if in less than carload lots and 10 percent if in carload lots over and above the charge applying to merchandise shipped in such boxes which do conform to the requirements and specifications of said rule. Section 8 of said rule provides, as one of the requirements, that all such fiber boxes must bear a certificate of the boxmaker, labeled, printed, or stamped in ink, clearly showing that the boxes do conform to the requirements and specifications of said rule, and sets out the form such certificate shall take, as follows:

Conclusion

20 F. T. C.

Circular in form; inside the outer rim the name and address of the boxmaker; within the circle the words "Certificate of boxmaker. This box conforms to all construction requirements of consolidated freight classification. Resistance (bursting test) — pounds per square inch. Dimension limit — inches. Gross weight limit — pounds."

It is and has been the interpretation and application by the committee of this rule 41 that goods tendered or shipped in boxes bearing said certificate but not in the name of the actual boxmaker, take and have taken the higher rates.

PAR. 4. Respondents are not the manufacturers or makers of the clothing boxes which they sell but they are purchased by respondents from the makers thereof. Nevertheless, upon all such boxes respondent causes said certificate in the form and words prescribed by said section 8 of rule 41, to be stamped with their said business name and address in that part of the form which is to bear the boxmaker's name and address.

PAR. 5. A substantial number of, and to a substantial extent, purchasers of such boxes prefer to purchase direct from the manufacturer, rather than from jobber, wholesaler, or dealer.

PAR. 6. The said practice of respondents of stamping their business name and address upon said boxes as the manufacturers thereof has the capacity and tendency to mislead and deceive purchasers into the belief that respondents are the manufacturers of the fiber board boxes which they sell, and to deceive and mislead them into the belief that said boxes conform to all the requirements and specifications of rule 41 of the Official Classification Committee and will, therefore, take the lower rates for carriage; and thus unfairly to divert business to respondents from competitors who make the boxes they sell and from competitors who do not make the boxes they sell and do not in any way represent themselves to be the makers thereof.

CONCLUSION

The said acts and practices of respondents, under the circumstances and conditions set forth in the foregoing findings, are to the prejudice of the public and of respondents' competitors 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."

ORDER TO CEASE AND DESIST

This proceeding being before the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the evidence and the brief of the attorney for the Commission, respondents having failed to file briefs and having waived oral argument, and the Commission having considered the record and having made its findings as to the facts and its conclusion that 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 respondents, B. M. Zieve and Israel Dukes, individually and as partners, their agents, representatives, and employees, in connection with the sale of fiber-board boxes in interstate commerce, or in connection with their sale in competition with other persons, firms and corporations selling and shipping fiber-board boxes into Pennsylvania from without said State, forthwith cease and desist from stamping, labeling, printing, or stenciling upon boxes not manufactured by them the certificate prescribed by rule 41 of the Official Classification Committee, as set out in the findings herein, or in any other manner representing that they are the makers of boxes not made by them, or causing said certificate in their names or their business name to be so placed thereon.

It is further ordered, That said respondents shall within 30 days from and after the date of the service upon them of this order file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
PREFERRED TOILETRIES, INC., AND
HENRY SCHLACTUS

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

Docket 2173. Complaint, Apr. 27, 1934—Decision, Jan. 16, 1935

Where a corporation engaged in the sale of perfumes, cosmetics and other toilet articles; and its president, responsible for the methods employed by it in marketing its products;

Advertised and offered at 98 cents, plus postage, two combinations of toilet preparations, including such items as vanishing cream, shampoo, toilet water, etc., to each of which combinations it gave an aggregate value of \$11.50, through addition of the pretended "regular" prices assigned to the eleven items making up the same, together with the assertion that "most any item included in this sensational offer of 11 pieces alone would cost you what we are asking for the 11 alluring beauty needs pictured and described here";

The facts being the price asked constituted the usual price for which articles of the same grade were sold by competitors, the items included in said combination were never sold separately by them at any price, and the prices assigned said items were fictitious, and inflated over the items' true values, and did not represent prices intended by them for the sale of said items in the usual course of their business, aggregate purchase price for the combination sets did not exceed 39 cents, and the Gardenia perfume included as "regularly priced at \$3", was a synthetic preparation which sold at 10 cents retail;

With capacity and tendency to mislead and deceive the purchasing public into the belief that the regular combined selling price of said articles was \$11.50, and with effect of so doing, and of inducing purchase thereof in reliance on such belief, and unfairly diverting trade to them from competitors, to latter's injury and prejudice:

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

Mr. Morton Nesmith 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, Preferred Toiletries, Inc., a New York corporation engaged in the sale of perfumes, cosmetics, and other toilet articles, to purchasers in other States, and with principal office and place of business in said State, and respondent Henry Schlactus,