

IN THE MATTER OF
MALLORY CLOTHES, INC.

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

Docket 2197. Complaint, June 13, 1934—Decision, Feb. 13, 1935

Where a corporation engaged in the sale of men's clothing direct to wearer, through salesmen or solicitors compensated by receipt as their commission of the customer's down payment with his order—

- (a) Represented in advertising for such salesmen in trade journals and other papers and publications that it was in the business of making clothing to measure and stated in letters to prospective salesmen, that it had "been making shipments of clothing and selling it direct to the wearer for many years", facts being that the great bulk of its business consisted in selling ready-made clothes which it kept in stock and used in filling customers' orders, and only a very small percentage of its clothing was made to measure; with tendency and capacity to mislead many persons engaged in the business of taking orders for clothing, and with intent and effect of so doing, and enticing persons to enter its employ and sell its clothing, and represent in reliance upon said statements and inducements that all of the clothing sold by them for it was tailor made by it for the individual purchaser and to his measurement;
- (b) Set forth upon cards supplied its said agents or salesmen and bearing the name of the particular agent that it had "representatives in all principal cities", and factories in Brooklyn, Newark, and New York, facts being that it had no such representatives other than the casual or itinerant salesmen or agents working on a commission basis, or such factories, and its aforesaid ready-made clothing was made in factories neither owned nor controlled by it, and the small percentage of its clothing actually made to measure, was made by certain tailors engaged by it from time to time for such purpose; with intent of creating in the minds of prospective purchasers the belief that its business was of such proportions that it maintained representatives and places of business in all of the principal cities of the United States, and that it owned and maintained factories in which it manufactured the cloth and material out of which its clothing was made, as added inducements to prospective purchasers and the public;

With effect of diverting trade from competitors to it through such false and misleading advertising and agents' statements, and with tendency so to do: *Held*, That such acts and things were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hildrop for the Commission.

Mr. Ralph Nathan, of New York City, 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, a New York corporation engaged in the sale of men's clothing direct to wearer through solicitors or agents, and with office and principal place of business in New York City, with advertising falsely or misleadingly as to business status, 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, in advertising for such agents or solicitors, and in letters sent prospective agents, falsely represents that its business is making clothing to measure, and that it has been making men's clothing and selling it direct for many years, and represents through advertising cards supplied its agents, with the agent's name thereon, that it has factories in several large cities and agents in all the principal cities, facts being it buys most of its clothing ready made, and has no such factories, or representatives;¹ with intent of persuading agents to enter its employ and effect of causing them, in reliance upon such representations, to sell its said clothing as made to measure, and with intent and effect of inducing purchase of said garments in such belief, and as made by a concern of such proportions that it has representatives in principal cities, and by a concern which owns and maintains factories making the cloth and material out of which its clothing is made; to the injury and prejudice of the public and competitors from whom trade is thereby diverted.

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 the respondent, Mallory Clothes, Inc., a corporation, charging the said respondent with the use of unfair methods of competition in interstate commerce, in violation of the provisions of the said act. Respondent filed its answer to the said complaint and hearings were had before an examiner of the Commission, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint, as well as testimony for the respondent. Thereupon this proceeding came on for final hearing on the briefs of the Commission and of respondent and oral argument

¹ A more comprehensive idea of the allegations of the complaint may be had from the findings, which follow them closely.

of counsel for the Commission, respondent having been duly notified and no attorney appearing for respondent to present oral argument. The Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That said respondent, Mallory Clothes, Inc., is a corporation chartered under the laws of the State of New York, and has its office and principal place of business in the City of New York, State of New York.

PAR. 2. That the capital stock of said corporation is \$1,000, the majority of which is owned by one Louis Goldstein. In fact all of the capital stock is owned by said Louis Goldstein except the number of shares necessary, under the laws of the State of New York, to qualify the necessary directors. Said Louis Goldstein is president of the respondent corporation and his wife is secretary thereof. It does not appear that said corporation has, or ever had, a vice president or treasurer. The said Louis Goldstein and wife have the sole and exclusive charge of the management of the affairs of respondent corporation, and are in full and complete charge of its principal office and the conduct of its business.

PAR. 3. That said respondent is now, and has been at all times since its incorporation, engaged in the business of selling suits of clothing for men in interstate commerce, shipping its said clothing from its place of business in New York City to various other States of the United States, and is in competition with other firms, individuals, and corporations doing an interstate business similar to the business of respondent.

PAR. 4. That the manner in which respondent conducts its said business and sells its said clothes, is, in substance, as follows:

It advertises for salesmen in the different trade journals and other papers and publications, to sell its clothing by personal solicitation and to the wearer. The method by which respondent compensates its salesmen is as follows:

When the purchaser of a suit of clothes from respondent's salesmen gives an order therefor, he makes a deposit or down payment to the salesman taking the order, the size of such deposit or down payment varying according to the price of the suit ordered. This deposit or down payment constitutes and is the commission of the salesman taking the order. For the remainder of the purchase price of such suit of clothes, the purchaser signs a form of written order

promulgated by respondent and by it furnished its salesmen, wherein the purchaser agrees that the suit of clothes may be sent him C. O. D. for the balance of the purchase price due and unpaid. Almost all of these C. O. D. shipments are sent through the United States mails.

PAR. 5. That the respondent corporation advertises in trade journals and other publications for salesmen to sell its clothing and, as an inducement to prospective salesmen to enter the employ of respondent and sell its clothing, it represents to them that it is in the business of making clothing to measure, and in its letters to prospective salesmen who have answered its advertisements and which letters are sent through the United States mail, respondent writes as follows:

We have been making men's clothing and selling it direct to the wearer for many years.

As a matter of fact none of the clothing sold by respondent is "made" by it, and a very small percentage of the clothing sold by respondent is made to the measure of its customers, but the great bulk of its business consists in selling ready-made clothes which it keeps in stock and which it uses in filling the orders of customers sent in by salesmen and agents.

Respondent has never since its incorporation, except for a short time in 1934, made any clothes of any kind or description but, to the contrary, as before stated, the great bulk of its orders are filled out of a ready-made stock, which respondent keeps at its place of business but does not manufacture, for the purpose of filling orders sent in as aforesaid by its agents and salesmen. These misrepresentations and false statements in advertisements for salesmen have a tendency and capacity to, and do, mislead many persons who engage in the business of taking orders for clothing by leading them to believe that the clothes sold by respondent are tailor-made and that same are manufactured or tailor-made by respondent, which statements are not true and were known to respondent and its officers not to be true and were made for the purpose of persuading and enticing persons to enter its employ and sell its clothing. The salesmen, thus misled by respondent and having a right to rely upon the statements and inducements in writing held out to them by respondent and, relying thereon, represent to the buying public that all of the clothing they sell for respondent are tailor-made clothes made by respondent especially for the individual purchaser and to his measurement.

PAR. 6. Respondent supplies its agents or salesmen with advertising cards bearing the name of such agent or salesman and to be

Findings

20 F. T. C.

by such agent or salesman distributed among prospective customers and the public generally for the purpose of advertising the business of respondent. Said cards contain the following false and misleading statements:

SUITS—TOPCOATS—OVERCOATS

REPRESENTATIVES IN ALL PRINCIPAL CITIES

MALLORY CLOTHES, INC.
BUILT TO A STANDARD
15 West 17th Street, New York

Factory Salesman

Factories:

Brooklyn, Newark, New York

The statements contained in the foregoing advertisements of respondent are false, misleading and unfair, and were known by the respondent corporation and its officers to be false, misleading and unfair, in the following particulars, to wit:

(a) The respondent has no representatives in "all principal cities" or in any city except its place of business in the City of New York, other than casual or itinerant salesmen or agents working on a commission basis. The purpose of this false and misleading advertising is to create in the minds of a prospective purchaser that respondent's business is of such proportions that it maintains representatives and places of business in all the principal cities of the United States, and therefore it is an added inducement used in persuading prospective customers to sign orders for clothing from respondent.

(b) The respondent has no factory in Brooklyn, Newark, New York, or elsewhere, but, to the contrary, has its ready-made clothing which it keeps in stock in its place of business in New York and from which it, as aforesaid, fills most of the orders sent in to it for tailor-made clothing, manufactured in other factories which respondent neither owns nor over which it has any control, and the small percentage of its clothing sent to customers actually made to measure is not made by respondent but by certain tailors in the City of New York who are from time to time engaged by respondent to make suits of clothing for it.

The purpose of these false and misleading statements is to create in the minds of the public the impression that respondent owns and maintains factories in which it manufactures the cloth and material

154

Order

out of which its clothing is made, and as an inducement held out to prospective purchasers, and the public to sign orders for and buy the clothing of respondent.

PAR. 7. The actions of respondent as hereinbefore set out, are to the prejudice of its competitors in business, for the reason that said false and misleading advertising and the statements made by the agents and salesmen of respondent to the buying public, have a tendency to and do divert trade from such competitors to respondent.

CONCLUSION

The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent 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 by the Commission, upon the complaint of the Commission, the answer of the respondent, the briefs both for the Commission and respondent, and the oral argument of counsel for the Commission, no counsel appearing to make oral argument for the respondent, although due notice was given that this proceeding was set for argument before the Commission on January 9, 1935, and the Commission having made its findings as to the facts and conclusion that the respondent 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, Mallory Clothes, Inc., a corporation, its agents, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of suits of clothing, or trousers, coats, or vests, either as suits or singly and alone, do cease and desist:

(1) From using the words "factory", "factories", "manufacture", "manufacturing", and "factory salesmen", until such time as respondent is the owner or the operator of a factory or factories making the clothes it sells, offers to sell, or distributes in interstate commerce.

(2) From advertising and representing in any manner, either by labels, cards supplied to its salesmen and agents, circular letters, in magazines, newspapers, journals and other publications having an

Order

20 F. T. C.

interstate circulation, or otherwise representing directly or indirectly that the clothing it sells or offers for sale in interstate commerce is made to the order and measure of the purchaser, when in fact the clothing sold by respondent is what is known as "ready made", or made for stock in standard sizes to be later offered for sale and sold, and is not clothing made to fill an order previously obtained from the purchaser, in accordance with the measurements of the purchaser taken before the clothing ordered is manufactured.

(3) From the use of the words "tailor", "tailored", or "tailoring" in connection with its order blanks containing measurements for different portions of the human body and blanks to be filled out when the orders for clothing are taken from the customer by the agents and representatives of respondent, unless it plainly appears on said order blank that the customer is buying a suit to be taken from stock and not to be cut and made to his individual measurements, unless in truth and in fact the respondent shall make the customer clothing cut and fitted to the individual measurements of such customer taken before the clothing is manufactured.

(4) From representing or advertising, in any manner, that it has and maintains "representatives in all principal cities", when in truth and in fact it has not such representatives but only itinerant and transient agents or salesmen soliciting for respondent orders for clothing.

It is further ordered, That the respondent shall within 60 days after the date of service upon it of this order file with this Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist herein set forth by the Commission.

Syllabus

IN THE MATTER OF

NATIONAL ASSOCIATION OF LADIES' HANDBAG MANUFACTURERS, ITS OFFICERS, EXECUTIVE COMMITTEE, AND MEMBERS

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

Docket 2226. Complaint, Aug. 23, 1934—Order, Feb. 20, 1935

Consent order requiring members of respondent association, their respective officers, agents, servants and employees, forthwith to cease and desist from—

- (a) Carrying out a certain agreement, combination, understanding and conspiracy by and through respondent association, its officers, agents and executive committee, by which they fixed and maintained, (1) uniform prices to be exacted by them from purchasers in interstate commerce of their ladies imitation leather handbags, and (2) uniform prices to be exacted by retailers of handbags purchased by said retailers in interstate commerce from them, or from any other person or concern, and resold to the purchasing public; or
- (b) Entering into and carrying out any other agreement, combination, understanding and conspiracy among themselves or with any other manufacturer of retail handbags to (1) fix or maintain uniform prices for said articles sold by them or any other person or concern in interstate commerce, or (2) fix or maintain uniform prices to be exacted by retailers of such articles purchased by said retailers in interstate commerce from them or from any other person or concern, and resold by such retailers to the purchasing public; and

Ordered further, That respondent association and respondent officers, agents and executive committee, and each of them, forthwith cease and desist from assisting respondent members in entering into and carrying out aforesaid agreements, combinations, understandings and conspiracies and from being the means or instrumentality by and through which such, or any similar agreements, combinations, understandings, and conspiracies are entered into.

Mr. Edward L. Smith for the Commission.

Schlesinger & Krinsky, of New York City, for National Association of Ladies' Handbag Manufacturers and various officers and members thereof.

Mr. Archibald Palmer, of New York City, for Morris White Manufacturing Co., Inc., and Style Craft Leather Goods Co.

Mr. Charles W. Newmark, of New York City, for Paragon Bag Co., Inc.

Mr. Maxwell E. Verlin, of Philadelphia, Pa., for Ingber Co.

Mr. Bernard I. Levine, of Boston, Mass., and *Mr. Julian A. Berghoffen*, of New York City, for Geffen-Weene Bag Co.