

IN THE MATTER OF
MAURICE SMOOKE, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF STANDARD HANDKER-
CHIEF MANUFACTURING COMPANY

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

Docket 2204. Complaint, June 28, 1934—Decision, Mar. 9, 1935

Where an individual engaged in sale and distribution of handkerchiefs to wholesalers and retailers—

- (a) Included word "manufacturing" in his trade name and set forth on his letterheads the words "Factories, Brooklyn, N. Y., New York, N. Y., Newark, N. J.";
- (b) Made such statements in his advertising as "We were lucky in placing our orders for raw cotton in early April", notwithstanding fact he bought no raw cotton; and
- (c) Advertised "price—always right—low overhead—quality product—large distribution and personal ownership—management assures of the lowest possible price at all times";

Notwithstanding fact he neither owned, operated or controlled any factory or machinery engaged in the manufacture of said articles; and

- (d) Advertised an ordinary handkerchief of domestic manufacture, labeled "London Kerchief":

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

Mr. John W. Hildrop for the Commission.

Mr. Nathaniel Phillips, of New York City, for respondent.

COMPLAINT

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, having reason to believe that Maurice Smooke, doing business under the trade name and style of Standard Handkerchief Manufacturing Company, hereinafter called respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Maurice Smooke, is an individual who is, and for the past four years has been, doing business as hereinafter described, under the trade name and style of Standard Handkerchief

Manufacturing Company, with his place of business at 491 Broadway, New York, N. Y.

PAR. 2. The said business of respondent is the selling of handkerchiefs by wholesale to retail merchants, jobbers and chain stores, and respondent also sells handkerchiefs by retail by means of certain vending machines which respondent owns and operates, and in which handkerchiefs are placed and the vending machines put in public places, and in which the purchaser places a coin in a slot provided for the purpose and extracts a handkerchief from said vending machine. .

PAR. 3. Respondent does not manufacture any of the handkerchiefs he sells either by wholesale or retail. In some cases respondent buys silk handkerchiefs from importers and resells them to the trade, and sometimes respondent buys cotton and linen handkerchiefs from manufacturers. He also purchases cotton and linen piece goods from converters and sends them to independent contractors who cut them up and finish the cut goods into handkerchiefs.

PAR. 4. Respondent does not own, operate, control, or have any financial or other interests in any factory or place where handkerchiefs are made. In his place of business, at 491 Broadway, New York City, there is no machinery of any kind and the only persons working therein are the respondent and three or four girls engaged in packing handkerchiefs in boxes.

PAR. 5. Respondent is, and has been for some years past, engaged in selling handkerchiefs in interstate commerce, and shipping handkerchiefs to various jobbers and retailers from his place of business in the City of New York, State of New York, in various of the other States of the United States of America, and said respondent is doing business in competition with divers other individuals, firms and corporations doing a similar and like business to that conducted by respondent, and with various individuals, firms and corporations engaged in the manufacture and sale of handkerchiefs to the trade.

PAR. 6. Respondent is now, and has been for a long time past, using false and misleading advertisements and representations in the conduct of his said business by way of letters and circulars sent through the United States mail to various retail dealers and jobbers in the several States of the United States of America, and by advertisements inserted in newspapers and trade journals, wherein respondent advertises that he manufactures the handkerchiefs he sells to the trade and advertises that he has factories in Brooklyn, N. Y., and Newark, N. J., when, as a matter of fact, said respondent has no factory nor financial or other interest in any factory, nor is any factory for the manufacture of handkerchiefs directly or indi-

Complaint

20 F. T. C.

rectly under his control. One circular sent out by respondent through the mails, as aforesaid, as an inducement for the retail stores and jobbers to buy handkerchiefs from him, stated as follows:

Prices always right. A low overhead quantity production. Large distribution and personal ownership management assure you of the lowest possible price at all times. Made and guaranteed. Standard Handkerchief Manufacturing Company.

Under date of May 25, 1933, and at various times since that date, respondent has sent out to the trade and his customers a letter, through the United States mails, containing the following, which is printed across the top of the letterhead used by respondent:

STANDARD HANDKERCHIEF MANUFACTURING COMPANY

The effect of which was to mislead the customers of respondent, and prospective customers and the trade generally, and to make them believe that respondent manufactured the handkerchiefs sold and offered for sale by him, and that in buying from respondent they would be dealing with the manufacturer of the handkerchiefs, thus assuring both quality and prices.

The said letter or circular also contained the following misleading advertisement and representation:

WE WERE LUCKY IN PLACING OUR ORDERS FOR RAW COTTON IN EARLY APRIL

The effect of the foregoing was, to cause the buying public to believe that the cotton handkerchiefs sold and advertised by respondent were actually manufactured by him and that respondent had been able to obtain raw cotton at a low price and was therefore able to give and would give to the buying public and the trade the benefit of this low-price cotton in the way of cheaper prices, when, as a matter of fact, respondent had not bought any raw cotton in April or at any other time, and he did not, nor does he now, manufacture any of the handkerchiefs advertised and sold by him.

On the outside of the boxes and cartons in which handkerchiefs were packed and shipped by respondent in interstate commerce, there was printed as an advertisement, the following, to wit:

London Kerchief
(Trade mark reg.)
1 for 10 cents
The World's Best
Made and guaranteed by
Standard Handkerchief Manufacturing Company
New York, U. S. A.
Sanitarilly packed.

The effect of the foregoing false and misleading advertisements and representations of respondent, is to mislead the retail merchants and jobbers in the several States, by causing them to believe that respondent is conducting a business much larger in size and scope than it is; that respondent owns and operates factories in Brooklyn, N. Y., and Newark, N. J., wherein he manufactures the handkerchiefs he sells or offers for sale to said retail merchants and jobbers, and that when they buy handkerchiefs from respondent they are dealing directly with the factory thus assuring quality and that when they buy from respondent they are saving a "middleman's profit" for themselves and the public who may purchase such handkerchiefs from said retail merchants and jobbers. All of the foregoing is an added inducement for customers and prospective customers to buy handkerchiefs from respondent and has a tendency and capacity to and does divert trade from competitors of respondent engaged in a like or similar business, to respondent.

PAR. 7. The above acts and things done by respondent have a tendency to and do mislead and deceive jobbers and retailers of handkerchiefs, and these false and misleading representations have a tendency to and do divert business from other corporations, individuals and firms engaged in the manufacture and sale of handkerchiefs and those engaged in a similar or like business to that conducted by respondent.

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate commerce, within the 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.

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 its complaint upon the respondent, Maurice Smooke, an individual trading as Standard Handkerchief Manufacturing Company, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of provisions of Section 5 of said Act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition

thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and the Commission having duly considered the record, and being 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, Maurice Smooke, is an individual trading as Standard Handkerchief Manufacturing Company, with his office and principal place of business at 491 Broadway, in the City of New York, State of New York.

PAR. 2. The respondent is now and has been for several years past engaged in the sale and distribution of handkerchiefs in interstate commerce in and among the various States of the United States to wholesalers and retailers. Respondent in the course and conduct of his said business causes the said handkerchiefs to be transported in interstate commerce from his place of business in the City of New York, in the State of New York, to, into and through States of the United States other than the State of New York to various and numerous wholesalers and retailers.

PAR. 3. During the time the said respondent has been engaged in the sale and distribution of handkerchiefs, other individuals, firms and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of similar and like handkerchiefs. Such said individuals, partnerships, and corporations have caused their said handkerchiefs to be sold and distributed to, into and through the various States of the United States and to, into and through States other than the State of origin of the shipment thereof. Respondent has been during the aforesaid time in competition in interstate commerce in the sale of said handkerchiefs with such other individuals, firms and corporations.

PAR. 4. The respondent, an individual trading under the name and style of Standard Handkerchief Manufacturing Company, holds himself out to wholesalers and retailers and others who purchase his merchandise as a manufacturer of handkerchiefs. The fact is that respondent does not own a factory for the manufacture of handkerchiefs, does not own any machinery in any factory, and does not own, operate or control any individual undertaking, partnership or corporation engaged in the manufacture of handkerchiefs, and does not manufacture any of his handkerchiefs in any way whatsoever.

Order

PAR. 5. The respondent in the course and conduct of his business has used and still uses such advertising phrases as:

We were lucky in placing our orders for raw cotton in early April.

The fact is the respondent has never purchased any raw cotton.

The respondent has advertised his goods aforesaid as follows:

PRICE—ALWAYS RIGHT—LOW OVERHEAD—QUALITY PRODUCT—
LARGE DISTRIBUTION AND PERSONAL OWNERSHIP—
MANAGEMENT ASSURES OF THE LOWEST POSSIBLE
PRICE AT ALL TIMES

The fact is the respondent does not own, operate or control any factory engaged in the manufacture of handkerchiefs.

On respondent's letterhead appears the statement:

FACTORIES: BROOKLYN, N. Y.
NEW YORK, N. Y.
NEWARK, N. J.

The fact is respondent neither owns, operates, or controls a factory in any of these cities or in any other city.

PAR. 6. The respondent in the course and conduct of his business has for some time past advertised and sold an ordinary handkerchief labeled "London Kerchief." This label has underneath and to the right the phrase "The World's Best." In truth and in fact the handkerchiefs so branded and labeled by respondent are not made in London, but are of domestic manufacture.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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."

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony taken and briefs filed herein, 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

¹ The order is published as modified by the Commission on April 24, 1935, so as to eliminate therefrom paragraph 5 relating to misrepresenting domestic handkerchiefs as "London Kerchiefs".

Order

20 F. T. C.

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, Maurice Smooke, trading as Standard Handkerchief Manufacturing Company, his officers, agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce of handkerchiefs do cease and desist from:

(1) Representing himself or his company by advertisements, advertising literature, radio broadcasts, or by any manner or means whatsoever as a handkerchief manufacturer until he owns, operates or controls the factory or factories in which the said handkerchiefs are manufactured.

(2) Representing by advertisements, advertising literature, sales posters or in any manner whatsoever that he or his company is a purchaser of raw cotton unless and until such is the fact.

(3) Representing in any way by stationery, advertisements, advertising literature or by any manner or means whatsoever that he or his company has handkerchief factories located in Brooklyn, N. Y., New York, N. Y., or Newark, N. J., unless and until such is the fact.

(4) Representing by stationery, advertisements, advertising literature, or by any manner or means that the company's prices are always right, that it has low overhead, and that, due to large distribution and personal ownership and management, purchasers are assured the lowest possible price at all times, unless and until such are the facts.

It is further ordered, That the respondent above named within 60 days after the service upon him of this order shall file with the Commission a report in writing stating further in detail the manner in which the order has been complied with and conformed to.

Complaint

IN THE MATTER OF

H. GORDON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2269. Complaint, Dec. 18, 1934—Decision, Mar. 9, 1935*

Where an individual engaged in conducting a jobbing and wholesale shoe business, caused the words "Dr. Gordon's Healthopedic", or "Fashion Built Healthopedic Combination Last" to be stamped on the soles of certain shoes sold by him, and branded other shoes "Dr. Gray's Style-Fit Health Shoe", and "Dr. Williams' Arch Support"; notwithstanding fact shoes thus stamped or branded were not made in accordance with any design, or under the supervision of a doctor, did not contain special, orthopedic or scientific features that were the result of medical advice, and were not constructed to correct or alleviate any foot trouble or weakness; with capacity and tendency to mislead many among the trading and consuming public into the belief that said products were made or designed by doctors or others with knowledge of orthopedics, or at least contained some feature or features not common to the ordinary line of foot wear, designed or intended to correct some foot ailment or weakness or afford some relief therefrom, and with effect of unfairly diverting trade thereby from competitors and otherwise injuring the same:

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.

Stein & Stein, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that H. Gordon has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. H. Gordon is the sole owner and operator of a jobbing and wholesale business in shoes with his principal place of business at 107 Reed Street, New York City. Said respondent is now, and has been for the past ten years, engaged in the business of selling shoes at wholesale, being a wholesaler thereof between and among the different States of the United States. He has sold and has caused and still causes the said articles in which he deals, to be