

Complaint

IN THE MATTER OF

MORRIS SHOE COMPANY, INC.

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

Docket 2217. Complaint, Aug. 13, 1934—Order, Oct. 21, 1935

Where a corporation engaged in the sale of shoes at wholesale labeled the shoes thus dealt in by him with such names as "Dr. Morris High-Grade Shoes", "Dr. Chester's Foot Form Shoes", "Dr. Hafer—Approved by Dr. Hafer", and featured said "Dr." designation on the cartons in which he sold such shoes and set forth the same upon his printed order blanks and in a trade journal of interstate circulation, notwithstanding fact that no doctor of the aforesaid names or any other name was connected with its business or advised with it as to the manufacture of said shoes, which contained no special scientific or orthopedic features and were not designed or constructed to correct or alleviate any foot trouble or weakness; with capacity and tendency to mislead many among the trade and consuming public into the belief that such shoes had been made or designed by doctors or others with special orthopedic knowledge or at least contained some feature not common to ordinary footwear, designed or intended to correct some foot ailment or weakness or afford some relief therefrom, and to cause such public to purchase said shoes in such belief, and with effect of unfairly diverting trade from and otherwise injuring competitors and with capacity and tendency so to do, to the substantial injury of substantial competition throughout the various States:

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.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Morton Nesmith for the Commission.

Hornidge & Dowd and *Mr. Ludwig M. Wilson*, 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 Morris Shoe Company, Inc., hereinafter referred to as respondent, has been or 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. Morris Shoe Company, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal place of business at 143 Duane Street,

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city of New York in said State. Said respondent, Morris Shoe Company, Inc., is now and since its incorporation in, to wit, 1933, has been engaged in the sale of shoes, being a wholesaler thereof between and among the different States of the United States. It has sold, and has caused and still causes, the said articles in which it deals, to be transported from its said place of business into and through other States of the United States to various jobbers and retailers located at points in different States of the United States. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, Morris Shoe Company, Inc., in the course of the conduct of its business as aforesaid, in soliciting the sale of and selling its products in interstate commerce, caused and still causes the words "Dr. Morris High Grade Shoes" to be stamped on or across the sole of a certain brand of the shoes sold by it in interstate commerce. Said respondent also caused and still causes a label to be affixed to said shoes on which appears "Dr. Morris High Grade Shoes". Said respondent also caused and still causes said shoes to be packed and shipped in cartons on which the said words "Dr. Morris High Grade Shoes" were conspicuously displayed. Said respondent caused and still causes certain order blanks to be distributed to various jobbers and retailers in the different States of the United States on which appeared said words "Dr. Morris High Grade Shoes." Said respondent further caused certain advertisements to be placed in a certain trade journal having interstate circulation in which the said words "Dr. Morris High Grade Shoes" and the further words "Dr. Hafer Grade" appeared over the trade name "Dr. Morris Shoe Co., Inc.", the address under which corresponds with that of the respondent corporation, viz, 143 Duane Street, New York City.

That said respondent, Morris Shoe Company, Inc., in the course and conduct of its business as aforesaid, has caused and still causes certain other of its shoes to be sold to various jobbers and retailers, which said shoes respondent plainly labels or designates as:

1. Dr. Chester's Foot Form Shoes.
2. Dr. Britt's Foot Mold Shoes.
3. Dr. Best's Health Shoes.
4. Dr. Best's Scientifically Constructed Health Shoes.
5. Dr. Hafer—Approved by Dr. Hafer.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold, as described in paragraph 2, were not made in accordance with the design and/or under the supervision of a

doctor and did not contain special scientific, or orthopedic features which were the result of medical advice or services, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes had been fashioned or designed by doctors or others with a knowledge of orthopedics or at least had some feature or features not common to the ordinary run of footwear, which feature or features were designated or intended to correct some foot ailment or weakness, or at least afford some relief therefrom.

PAR. 4. The respondent, Morris Shoe Company, Inc., in the sale of its said products as aforesaid, ships and delivers to its jobber and retail customers its products so labeled and branded and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondent, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms, and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand, or designation for its products or in its advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 6. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and 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, the Federal Trade Commission issued a complaint on August 15, 1934,¹ upon the respondent, Morris Shoe Company,

¹ Date of service.

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Inc., a corporation, organized and doing business under the laws of the State of New York, charging it with the use of unfair methods of competition in commerce, as "commerce" is defined in said act. The respondent, Morris Shoe Company, Inc., through counsel, filed its answer to said complaint, which answer was received by the Commission October 2, 1934. Thereafter testimony and evidence were received, duly recorded, and filed in the office of the Commission, after which the proceeding regularly came on for final hearing before the Commission on the complaint, the answer filed by the respondent, testimony and evidence, briefs of counsel for the Commission and respondent, and on oral argument, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Morris Shoe Company, Inc., is a corporation organized, existing and doing business by virtue of the laws of the State of New York, with its principal place of business at 143 Duane Street, New York City. Said respondent is now, and has been for several years last past, engaged in the business of selling shoes at wholesale and has sold the same during said time between and among the several States of the United States. Respondent has sold, and still causes the articles in which it deals to be sold and transported from its place of business into and through other States of the United States to various retail dealers located at points in the different States of the United States, other than the State of New York. In the course and conduct of its business, as aforesaid, respondent has been and is in competition with other corporations, partnerships, and individuals engaged in the sale and transportation of shoes at wholesale in interstate commerce.

Morris Augenblick, president of respondent corporation, began a wholesale shoe business in New York City in 1920, and did business under the name of Morris Shoe Company. Subsequently, to wit, in 1932, he incorporated said business. Chester Augenblick, son of the said Morris Augenblick, is secretary and vice president of the said corporation, and Lena Augenblick, wife of the said Morris Augenblick, is a director.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, in soliciting the sale of and selling its shoes in interstate commerce, has caused the words "Dr. Morris High Grade Shoes" to be stamped on and across the sole of a certain brand of its shoes.

Respondent in the course and conduct of its business as aforesaid has also caused a label to be affixed to said shoes on which appears "Dr. Morris High Grade Shoes." Said shoes are packed and shipped in cartons on which the words "Dr. Morris High Grade Shoes" are conspicuously displayed. Respondent also uses printed order blanks in the course and conduct of its business as aforesaid upon which appear the words "Dr. Morris High Grade Shoes."

Said respondent also caused other of its shoes to be sold to various dealers as aforesaid, which shoes were plainly labeled and designated as (1) "Dr. Chester's Foot Form Shoes", (2) "Dr. Britt's Foot Mold Shoes", (3) "Dr. Best's Health Shoes", (4) "Dr. Best's Scientifically Constructed Health Shoes", and (5) "Dr. Hafer—Approved by Dr. Hafer."

In the course and conduct of its business as aforesaid respondent caused certain advertisements to be placed in the "Boot and Shoe Recorder", a trade journal having interstate circulation, in which advertisements the words "Dr. Morris High Grade Shoes", and the words "Dr. Hafer" appear over the trade name, "Dr. Morris Shoe Co., Inc."

Respondent in the course and conduct of its business as aforesaid does not furnish the manufacturers of its shoes with any particular design or last, but makes selections of the lasts for the shoes it purchases from the display presented by the manufacturer, or its salesman. Respondent does, however, furnish the manufacturers of its shoes with its labels carrying the word "Dr.", and instructs said manufacturers to sew said labels on the inside lining of the shoes made for it.

Respondent's president, Morris Augenblick, conceived the idea of the "Dr." label after many requests had been made from his customers to furnish them with a "Dr." brand of shoe, whereupon he named a brand of his shoes "Dr. Morris", taking the Morris from his Christian name, "Dr. Chester", after his son Chester Augenblick, "Dr. Britt", for a salesman employed by respondent named Britton, and "Dr. Hafer" from the name of one of the manufacturers of respondent's shoes.

The record shows, however, that neither Morris Augenblick, nor his son, Chester, nor the salesman, Britton, nor the manufacturer, Hafer, are doctors, and there is no Dr. Morris, Dr. Chester, Dr. Britt, or Dr. Hafer connected with respondent's shoe business in any capacity, nor did any doctor by any of these names, or any other name, advise with the respondent as to the manufacture of its shoes.

According to an orthopedic specialist, truly orthopedic shoes have four cardinal principles built into them: (1) the natural shape last; (2) a shank that is sufficiently yielding or flexible to permit free

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activity on the part of the foot muscles (by shank is meant the middle part of the sole); (3) the inside of the heel should be wedged a little to throw the weight naturally to the outside of the foot, which is the strong weight-bearing part; (4) they should have a straight inside line.

An examination of respondent's shoes (children's shoes) introduced in evidence shows no orthopedic principle, corrective or curative, built into the shoes, although some of them do have reasonably natural shaped lasts and straight inside lines, but these qualities are found in all children's shoes, and may be in any shoe that does not claim to have orthopedic features.

PAR. 3. The members of the public are and were of the opinion and belief that a shoe which is labeled or marked "Dr." is one which has been designed or constructed on the advice of a doctor, or one having a special scientific knowledge about the formation of the foot, bones, etc.; that a doctor would know more about the functions of the foot, bones of the foot, and have a better idea of how to build shoes than an ordinary shoemaker, and that when a shoe is marked or labeled with a "Dr." brand their belief would be that it is an orthopedic shoe expected to correct imperfections in feet which were causing trouble.

PAR. 4. In truth and in fact the shoes so marked, stamped, branded, or labeled and sold as "Dr." or "Doctor" shoes, as described in paragraph 2 hereof, were not made in accordance with the design or under the supervision of a doctor, and did not contain special, scientific or orthopedic features which were the result of medical advice or services, nor was such footwear designed or constructed for the purpose of correcting or alleviating any foot troubles or weakness of the feet, all of which has a capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been made or were manufactured or designed by doctors or others with special orthopedic knowledge, or at least contain some feature or features not common to the ordinary line of footwear which feature or features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom and caused said public to purchase respondent's shoes under this belief, all of which unfairly diverts trade from and otherwise injures respondent's competitors in interstate commerce.

PAR. 5. The aforesaid advertisements, representations, and statements as set forth in paragraphs 2, 3, and 4 hereof made by the respondent, have had the capacity and tendency to divert trade to said respondent from competitors and by such representations and

statements substantial competition throughout the various States of the United States has been injured by said respondent to a substantial extent.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's 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

The proceeding coming on for final hearing before the Federal Trade Commission upon the record, including the complaint of the Commission, the answer of the respondent, testimony and evidence, briefs of counsel for the Commission and for the respondent, oral argument and findings as to the facts, and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That the respondent, Morris Shoe Company, Inc., a corporation, in connection with soliciting the sale of and selling its shoes in interstate commerce, cease and desist from:

Directly or indirectly using, or causing to be used, the word "Doctor", or the abbreviation "Dr.", in connection with the name, or with any word or words, or in any wise as a trade name, brand or designation for its shoes or for the shoes of others, manufactured for it; or in advertising said shoes, or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are made in accordance with the design or under the supervision of a doctor; or that said shoes contain special scientific or orthopedic features which are the result of medical advice or services; or that said shoes were designed or constructed for the purpose of correcting or alleviating any foot troubles or weakness of the feet, when such is not the fact.

It is further ordered, That respondent, Morris Shoe Company, Inc., shall, within 30 days after the service upon it of a copy of this order, file with the Federal Trade 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 hereinabove set forth.

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· IN THE MATTER OF

**K & E DELUXE PADDED VAN COMPANY, INC., AND
UNITED VAN SERVICE****COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914***Docket 2501. Complaint, July 19, 1935—Order, Oct. 23, 1935*

Consent order requiring respondent corporations, their officers, etc., in connection with the business of carrying, moving, and transporting household goods and other merchandise for hire in interstate commerce and in the District of Columbia and in connection with the solicitation of such business and the offer of such services, to cease and desist from—

- (a) Advertising, stating, or representing in any form or by any means or medium that they own or possess 1,250, 1,200, or 1,000 vans, trucks, or motor carriers, or that the quantity of equipment or facilities owned or possessed by them is more than they do in fact own or possess;
- (b) Advertising, etc., as above set forth, that they own or possess 600 offices or offices in 250 cities in the United States and Canada, or that they own or possess offices in more cities, or have more agencies or representatives, or that their business or organization is larger, than is the fact; or
- (c) Advertising, etc., as above set forth, that they own or possess all of the equipment and facilities used by them in the course of the performance of their contracts with their customers and do not subcontract or sublet any of their business to other carriers in the course of the performance of their contracts with customers, or that they offer or maintain greater protection or security for the benefit of customers in the movement and transportation of goods and merchandise in interstate commerce, than is the fact.

Mr. Jay L. Jackson for the Commission.

Mr. Harry Tartalsky, of Jersey City, N. J., 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 the K & E Deluxe Padded Van Company, Inc., a corporation, and United Van Service, a corporation, have been, or are, using unfair methods of competition in commerce as "commerce" is defined in such 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. Respondents, K & E Deluxe Padded Van Company, Inc., and United Van Service, are each and both of them corporations organized and existing under and by virtue of the laws of the State