

Complaint

IN THE MATTER OF

CRESCENT SHOE COMPANY, INC.

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

Docket 2518. Complaint, Aug. 15, 1935—Order, Oct. 28, 1935

Consent order requiring respondent corporation in connection with soliciting the sale of and selling shoes in interstate commerce, to cease and desist from—

- (a) 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 way 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 shoes 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 trouble or weakness of the feet, when such is not the fact; or
- (b) Using or causing to be used the word "manufacturers" or words or abbreviations of similar import in connection or in conjunction with any word or words or in any way as a trade name or designation on its shoes, or for the shoes of others, or in advertising said shoes, or any way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that said shoes are made or manufactured by said respondent, when such is not the fact, and until said respondent actually owns or operates or directly and absolutely controls the factory or other producing, making, or manufacturing equipment and facilities used in the manufacture or production of all such shoes sold and distributed by respondent under said representations.

Mr. Morton Nesmith for the Commission.

Mr. Henry L. Burkitt, 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 the Crescent 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. The respondent, Crescent Shoe Company, Inc., is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of New York, with its principal place of business at 133 Duane Street, city of New York in said State. Said respondent, the Crescent Shoe Company, Inc., has for the past three years been and still is engaged in the business of selling shoes, being a wholesaler thereof between and among the different States of the United States. Said respondent has caused and still causes its shoes when sold to be shipped from its place of business in the State of New York, to purchasers thereof located in States other than the State of New York.

In the course and conduct of its business as aforesaid, the respondent is and has been in competition with other individuals, partnerships, corporations, and associations likewise engaged in the business of wholesaling shoes and distributing said shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, Crescent Shoe Company, Inc., in the course and conduct of its business as aforesaid, in soliciting the sale of and selling its shoes in interstate commerce, for the past three years caused the words:

DR. COPLAND'S ARCH-OF-AIR

Trade Mark Reg. A Scientific Shoe

to be stamped on or across the sole of a certain brand of shoes sold by it.

Said respondent for several years during said period also furnished or aided its retail customers in the procurement of a neon sign upon which were the following words:

DR. COPLAND'S ARCH-OF-AIR SHOES

together with a small depiction of a shoe, which was used by said dealers in advertising respondent's shoes.

Said respondent in the course and conduct of its business as aforesaid, and for several years last past, has caused a brand of shoes to be manufactured for it and by it sold in interstate commerce, across or upon the sole of which appeared the following words:

DR. COPLAND'S LIGHT-WEIGHT SHOES

Said respondent during said last named period of time has caused certain cartons to be printed for it in which these last named shoes were packed and shipped, upon which the words "Dr. Copland's Light-Weight Shoes" were conspicuously displayed.

Said respondent during said last named period of time has caused certain cartons to be printed for it in which these last named shoes were packed and shipped, upon which the words "Dr. Copland's Light-Weight 'De Luxe'" were conspicuously displayed.

Said respondent in the course and conduct of its business as aforesaid, further furnished to its retail customers display cards upon which the words "Dr. Copland's Arch-Of-Air, Trade Mark Reg. A Scientific Shoe" were conspicuously displayed.

Said respondent in the course and conduct of its business as aforesaid, also caused an inside silk label to be placed in certain of its shoes upon which appeared the following words:

DR. COPLAND'S LIGHT-WEIGHT SHOES

PAR. 3. The respondent, in the course and conduct of its business as aforesaid, caused and still causes certain invoices, stationery, and billheads to be printed for it upon which appear the words "Manufacturers—Distributors" and upon its billheads appear the words "Manufacturers—Distributors—Women's Novelty Shoes—Dr. Copland's and Dr. Gibb's Arch Shoes".

PAR. 4. In truth and in fact the shoes so marked, stamped, labelled, branded, advertised, and sold as described in paragraph 2 thereof were not made in accordance with the design of 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, or the result of the advice or services of anyone skilled with a special orthopedic knowledge, nor was or is such footwear designed or constructed for the purpose of correcting or alleviating any particular kind of foot trouble, all of which has the tendency and capacity to mislead many among the aforesaid trade and many among the consuming public into the belief that said shoes were fashioned and designed by a doctor or others with special orthopedic knowledge.

PAR. 5. In truth and in fact the respondent, Crescent Shoe Company, Inc., is not a manufacturer of shoes, nor does it own, operate, or control any factory wherein its products are made, manufactured, or constructed. Said representation made by respondent on its billheads and invoices that it is a manufacturer is false and misleading and has the tendency and capacity to mislead and deceive purchasers of respondent's products into the belief that when purchasing from respondent they are dealing with a manufacturer, thereby gaining an advantage and saving the middleman's profit.

PAR. 6. The respondent, the Crescent Shoe Company, Inc., in the sale of its shoes as aforesaid, ships and distributes to its retail dealers, and said retail dealers resell the shoes so labelled and branded to the consuming public.

PAR. 7. There are among the competitors of the respondent many persons, firms, corporations, and associations who manufacture and

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sell at wholesale shoes which contain special features designed to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent many persons, firms, associations, and corporations who manufacture and sell at wholesale shoes manufactured along standard lines, over standard lasts and for which no special feature representation or claims are made, and the use by the respondent of the abbreviation "Dr." in connection or conjunction with the name, brand or designation of its shoes or in the advertisement of same, together with other special feature representations, and the further representation by respondent that it is a manufacturer when it is not, has the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 8. 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 the respondent in interstate commerce, 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 coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding, and pursuant to paragraph 2 of Rule V of the Rules of Practice of the Commission, as amended and revised, consents that the Commission may make, enter, and serve upon the respondent without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

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

(1) 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 way 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 pur-

chasers into the belief that said shoes 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 trouble or weakness of the feet, when such is not the fact.

(2) Directly or indirectly using or causing to be used the word "manufacturers" or words or abbreviations of similar import in connection or in conjunction with any word or words or in any way as a trade name or designation on its shoes, or for the shoes of others, or in advertising said shoes, or any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said shoes are made or manufactured by said respondent, when such is not the fact, and until said respondent actually owns or operates or directly and absolutely controls the factory or other producing, making, or manufacturing equipment and facilities used in the manufacture or production of all such shoes sold and distributed by respondent under said representations.

It is further ordered, That the respondent, Crescent Shoe Company, Inc., a corporation, shall within 60 days after 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 insofar as its advertising matter is concerned and insofar as the use of the word "manufacturer" is concerned.

It is further ordered, That the respondent, Crescent Shoe Company, Inc., shall within 90 days after service upon it of a copy of this order file with the Commission a partial report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist insofar as the stamp or label for its shoes are concerned.

It is further ordered, That the respondent, Crescent Shoe Company, Inc., shall within 180 days after service upon it of a copy of this order, file with the Federal Trade Commission a final and complete 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.

Syllabus

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IN THE MATTER OF

UNITED ARTISTS AND ENGRAVERS GUILD, INC.

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

Docket 2482. Complaint, June 29, 1935—Decision, Oct. 29, 1935

Where a corporation engaged in designing, selling, and distributing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products—

- (a) Included the word "Engravers" in its corporate name and featured and made use of the same and such words as "Process Engraved" and "Engraving" in newspaper and magazine advertisements, on price lists, sample books, catalogs, pamphlets, and trade literature distributed to its representatives and agents for display to, and use in soliciting the general public and in general business correspondence, through such statements on sample books, catalogs, and samples as "United Artists and Engravers Guild", "De Luxe Process Engraved Stationery", or "Genuine Steel Dye Engraved Stationery", "Our Process Engraving Plant", notwithstanding fact raised letter effect on its said stationery, which so closely resembled genuine engraving that inexperienced persons could not distinguish between the two, did not constitute genuine engraving, i. e., stationery with words or designs raised from the general plane of the surface through application thereto under pressure of inked metal plates, upon which had been engraved or incised said words, etc., but was produced through a process involving application of chemical and heat to flat, wet printing, and it was not engaged in the business of engraving and was not an engraver as understood by trade and public generally;
- (b) Used word "Manufacturers" in referring to itself through such statements in its said advertising and trade literature as "Designers and Manufacturers", "Our * * * Plant", "World's Largest Producers", and set forth upon such trade literature depiction of a large factory or manufacturing plant with its said corporate name across the entire front thereof, notwithstanding fact that it did not own or operate any plant or machinery for manufacture of stationery products produced by its aforesaid method, or own or occupy the building depicted to such an extent or in such a manner as to justify use of said depiction, but caused its said products to be produced for it, on a cost plus basis, by two plants under oral contracts and arrangements under which, among other things, it sometimes paid certain of the expenses of the producing plant, designed the copy, supervised actual production, and exercised control over process of manufacture by such plants, which, however, supplied and controlled employees, and owned all or most of equipment used, and more than half of the output of which was for others;

With tendency and capacity to mislead and deceive trade and substantial portion of the purchasing public, many of whom decidedly prefer the much more costly genuine engraved stationery to that produced by the above described process, or prefer to deal directly with the manufacturer rather than with selling agency or middleman and especially in case of such special order products as herein concerned, in the belief that in so dealing they secure closer prices and superior quality, and to induce purchase by them of a sub-