

Syllabus

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IN THE MATTER OF

HENRY ROSS, DOING BUSINESS UNDER THE NAMES
AND STYLES OF TIVOLI CLOTHES, BREWSTER
CLOTHES, GOOD WILL CLOTHES, WINDSOR WOOLEN
COMPANY AND UNITED WOOLEN COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2535. Complaint, Aug. 30, 1935—Order, Oct. 30, 1935*

Consent order requiring respondent, doing business as aforesaid and as an individual, and his agents, etc., in connection with the sale and offer in commerce among the several States and in the District of Columbia, of suits of clothing for men, to cease and desist from—

- (a) Advertising or representing in any way to the purchasing public or to prospective agents the character and quality of the garments sold by him through use of such words or phrases as "all wool", "the best woolens", "distinctive woolens", "trimmed with silk serge lining"; until and unless such garments are actually manufactured from the quality of woolen and other materials represented and in the manner or at the place represented;
- (b) Advertising, etc., that he buys woolens and other materials in large quantities and at close prices, and owns or operates a manufacturing plant or plants, with resulting prices lower than those of comparable competitive merchandise, through such statements as "Windsor's tremendous buying and manufacturing facilities make these prices possible", "We have purchased a large quantity of woolens and linings of every number in the sample outfit; this has enabled us to price our line considerably lower than the present market price", or "The lowest priced quality line on the market", or advertising or representing in any way that he has dealers in principal cities, until and unless he actually owns, operates, or controls manufacturing facilities of sufficient size and purchases woolens and other materials in sufficient quantities to enable him actually to secure closer prices on all of said merchandise than are secured by others selling merchandise of competitive quality, or has such dealers, other than itinerant vendors, as aforesaid claimed;
- (c) Advertising, promising, or in any way representing to the purchasing public that satisfaction is guaranteed with respect to his garments, which are guaranteed to fit and satisfy and to be exactly as represented by the swatches of the various sample books, and that he has the ability, resources, and willingness to make adjustments as represented, until and unless such representations are in fact true; or
- (d) Placing in the hands of salesmen and other representatives sample books containing swatches of cloth that do not truthfully illustrate or depict the design or quality of the cloth from which the garments sold by respondent are made, or using or placing in the hands of agents and representatives for use in taking orders from customers, order books containing the statement, "We cut from first choice, if possible", or words of similar import indicating that the garment delivered is actually tailored for the purchaser in conformity with the measurements set out on said order blank, or adver-

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tising or in any way representing or advising prospective purchasers that the garment is either an exceptional value or has been tailored to the customer's own measurements, until and unless the garment has in fact been tailored and aforesaid statements are true in fact.

Mr. John W. Hilldrop for the Commission.

Mr. Harold Baer, 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 Henry Ross, trading and doing business under the names and styles of Tivoli Clothes, Brewster Clothes, Good Will Clothes, Windsor Woolen Company, and United Woolen Company, and as an individual 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 thereof would be to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The said respondent; Henry Ross, is an individual residing and doing business in the city of New York, State of New York, and respondent is now and since the year 1927 has been doing business under the names and styles of Tivoli Clothes, Brewster Clothes, Good Will Clothes, Windsor Woolen Company, and United Woolen Company, and has been maintaining his office and principal place of business in said city of New York.

PAR. 2. The said respondent is now, and has been engaged, since the year 1927, in the business of selling suits of clothing for men, in interstate commerce; shipping his said clothing from his place of business in New York, N. Y., to various other States of the United States of America, and is in competition with other firms, individuals, and corporations doing an interstate business similar to the business of respondent.

PAR. 3. The respondent conducts his said business and sells and distributes clothes as hereinbefore stated, advertising for salesmen in the different trade journals and other papers and publications to sell his clothing by personal solicitation and to the wearer. The respondent compensates his salesmen 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

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down payment constitutes and is the commission of the salesman taking the order. For the remainder of the purchase price of the suit of clothes, the purchaser signs a form of written order promulgated by respondent and by him furnished his 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. 4. In order to obtain salesmen in the various States of the United States to sell the clothing of respondent, he, the said respondent, advertises in "Specialty Salesman", "How to Sell", "Opportunity", and other like publications having an interstate circulation, and also by personal letters directed to various agents whose names respondent obtains from lists which he buys from Guild Company of New York, which company specializes in the business of selling lists of prospective salesmen for the different types of selling activities. To these agents and salesmen who answer the advertisements of respondent in said publications, and to those agents and salesmen whose names respondent obtains as aforesaid from Guild Company, and as an inducement for them to enter the employ of respondent and sell his clothing, respondent makes the following false, exaggerated, and misleading statements: That the garments are "all wool"; that they are "fashion tailored to fit", that they are "trimmed with silk serge lining", and that "satisfaction is guaranteed". In truth and in fact, the garments sold by respondent through his agents and salesmen are not "all wool"; they are not "fashion tailored to fit"; they are not "trimmed with silk serge lining"; and satisfaction is not guaranteed to the customers of respondent, but to the contrary a large number of respondent's customers who buy his clothing become and remain dissatisfied with the clothing shipped them by respondent, as being made of different material and inferior to the material ordered and as not fitting the customer, and seldom if ever does respondent make any effort to satisfy his customers in this respect.

Respondent supplies his agents and salesmen with order blanks, directions for measurements, tapelines, and cards, on which cards there appear the following statements: "The lowest priced quality line on the market"; "fashion tailored to fit"; "Windsor's tremendous buying and manufacturing facilities make these prices possible." In truth and in fact, the clothes sold by respondent are of an inferior quality and are not priced to the customer lower than goods of similar material sold in interstate commerce by various competitors of respondent; they are not "fashion tailored to fit", but to the contrary are not tailored at all, and are not made to the measure of the individual customer, but are taken from a small stock of ready-to-wear

clothes which respondent keeps at all times in his place of business, and which are sent to his customers in interstate commerce when orders are received, without reference to the measurements of the particular customer; respondent, trading as Windsor Woolen Company, or under any other trade name, or as an individual, has no "tremendous buying facilities", but to the contrary operates a small business in a very small storeroom, and does not manufacture any of the clothing he sells, and has no interest or control, financial or otherwise, in any factory or factories making clothes; respondent's said cards, which he furnishes to his agents and salesmen, have prominently displayed thereon the following:

"United Woolen Company", "Satisfaction guaranteed", and "Dealers in the following large cities", following which there appear the names of twenty or more large cities, when in truth and in fact "United Woolen Company" is not a company, but is one of the trade names adopted by respondent, Henry Ross, and by which he conceals the fact that he is trading as an individual, and he has no dealers in the large cities named on said cards, but only has itinerant agents soliciting therein.

PAR. 5. Respondent likewise furnishes to his agents and salesmen a book which contains samples of cloth, different models of suits, and the price of garments, and in such book so furnished respondent's said agents and salesmen for the spring and summer of 1935, the trade name of respondent, to wit, "Windsor Woolen Company", prominently appears in many places, along with such phrases as, "lined with silk serge", "the best woolens", "fashion tailored to fit", "satisfaction guaranteed", "dealers in principal cities", and "tailored on Fifth Avenue."

The respondent, under another of his trade names, to wit, "United Woolen Company", has supplied his agents and salesmen with a certain sample book for the spring and summer of 1935, in which the following statements appear: "Every garment fashion tailored to fit", "lined with silk serge", "guaranteed to fit and satisfy", "we guarantee all United merchandise to be exactly as represented in the sample book", "the best woolens", "every garment tailored by experts", "every garment guaranteed by our many years' experience in the manufacture of cloth", "satisfaction guaranteed", "dealers in principal cities", and "tailored on Fifth Avenue."

In truth and in fact, the statements, representations, advertisements and inducements set out in this paragraph are false and misleading, in that in addition to the false and misleading statements set out in prior paragraphs herein, the garments of respondent are not "lined with silk serge"; they are not "tailored on Fifth Avenue",

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but are bought from a wholesaler in a part of the city of New York remote from Fifth Avenue; they are not composed of "the best woolens"; every garment is not "tailored by experts", but to the contrary the garments are factory made and carried in stock as ready made suits; and respondent has not had "many years' experience in the manufacture of clothing", but to the contrary has for many years been a dealer in ready made suits for men.

PAR. 6. Respondent, when sending his said agents and salesmen the said order book and other supplies, also sends a circular along therewith, in which the following statement is made:

We have purchased a large quantity of woolens and linings of each number in the sample outfit. This has enabled us to price our line considerably lower than the present market price. These low prices will also enable you to out-value any competition, and help you get the orders.

In truth and in fact, respondent had not purchased large quantities of woolens and linings, but to the contrary, as hereinbefore set out, he buys the suits of clothing, which he ships to his customers in the various States of the United States, already manufactured, and carries them in stock in his said place of business in the city of New York.

PAR. 7. The false and misleading statements and inducements held out to actual and prospective agents and salesmen of respondent have a tendency and capacity to and do mislead and deceive such agents and salesmen and induce them to enter the employ of respondent; and the false and misleading statements and representations contained in the sample books of respondent, as set out in paragraphs 5 and 6 hereof, are, by the salesmen and agents of respondent, exhibited and shown to customers and prospective customers of respondent, and have a tendency and capacity to deceive the buying public and to cause it to buy the goods of respondent, and such advertisements and representations contained in the said sample books of respondent constitute an instrumentality whereby the agents and salesmen of respondent may and do mislead and deceive the buying public.

PAR. 8. Respondent furnishes to his agents and salesmen certain order blanks which contain blank spaces to be filled out by the agent or salesman, with the measurements of every part of the anatomy of the customer, and this order blank is displayed to the customer, and the agent or salesman takes certain measurements of the customer and likewise fills in the said blank spaces, all of which has a tendency and capacity to and does create in the mind of the customer the impression that the suit of clothes ordered will be made and tailored from the selected fabric, to the measurements of such customer when in truth and in fact, as aforesaid, respondent makes or tailors none

of the clothes he sells, but sends such customer a suit of clothes ready made and taken out of the stock carried by respondent in his place of business in New York, N. Y.

In like manner, when a dissatisfied customer will, as frequently happens, return the clothing to respondent, respondent will send such customer a printed postal card on which the following statement prominently appears: "This garment has been made especially for you, and is an exceptional value", when in truth and in fact the said garment was not made especially for such customer, and is not an exceptional value.

PAR. 9. The foregoing false and misleading statements, advertisements, inducements, and representations of the respondent, as hereinbefore set out, all have the tendency and capacity to, and do, mislead and deceive the buying public, and likewise have the tendency and capacity to, and do, unfairly divert trade to respondent from those individuals, corporations, associations and firms doing a like and similar business in interstate commerce and who truthfully and correctly advertise, represent, and label the clothing sold by them.

PAR. 10. 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 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

Henry Ross, trading and doing business under the names and styles of Tivoli Clothes, Brewster Clothes, Good Will Clothes, Windsor Woolen Company, and United Woolen Company, and as an individual, the respondent herein, having filed his answer to the complaint in this proceeding, in which answer he states that he desires to waive hearing on the charges set forth in the complaint herein and not to contest the proceeding, consenting in and by his said answer that, as provided in paragraph (b) of Rule V of the Commission's Rules of Practice, the Commission may, without trial, without evidence and without findings as to the facts, or other intervening procedure, make, enter and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint.

And the Commission having considered the said answer and being fully advised in the premises—

It is now ordered, That the respondent, Henry Ross, doing business under the names and styles of Tivoli Clothes, Brewster Clothes,

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Good Will Clothes, Windsor Woolen Company, and United Woolen Company, and as an individual, and his agents, servants, representatives and employees, in connection with the sale, and offering for sale, in commerce between and among the several States of the United States and in the District of Columbia, of suits of clothing for men, cease and desist from:

(1) Advertising or representing in any way to the purchasing public or to prospective agents the character and quality of the garments sold by respondent by use of the following phrases, or words or phrases of similar import: (a) "All Wool"; (b) "The Best Woolens"; (c) "Distinctive Woolens"; (d) "Fashion Tailored to Fit"; (e) "Tailored on Fifth Avenue"; and (f) "Trimmed with Silk Serge Lining", until and unless such garments are actually manufactured from the quality of woolen and other materials represented and in the manner or at the place represented.

(2) Advertising or representing in any way to the purchasing public and prospective agents, by use of the language "Windsor's tremendous buying and manufacturing facilities make these prices possible", "We have purchased a large quantity of woolens and linings of every number in the sample outfit; this has enabled us to price our line considerably lower than the present market price" or "The lowest priced quality line on the market", or language of similar import, that the respondent buys woolens and other materials in large quantities and at close prices and owns or operates a manufacturing plant, or plants, with resulting prices lower than those of competitive merchandise of similar quality, until and unless the respondent actually owns, operates or controls manufacturing facilities of sufficient size and purchases woolens and other materials in sufficient quantities to enable him to actually secure closer prices on all of said merchandise than are secured by others selling merchandise of a competitive quality.

(3) Advertising or representing in any way that he has dealers in principal cities until and unless respondent actually has such dealers, other than itinerant vendors, located in the principal cities of the several States of the United States.

(4) Advertising, promising, or in any way representing to the purchasing public that: (a) Satisfaction is guaranteed with respect to the garments sold by him; (b) said garments are guaranteed to fit and satisfy; (c) said garments when made, are exactly as represented by the swatches in the various sample books; and (d) he has the ability, resources and willingness to make adjustments as represented, until and unless such representations are, in fact, true.

(5) Placing in the hands of salesmen and other representatives sample books containing swatches of cloth that do not truthfully illustrate or depict the design or quality of the cloth from which the garments sold by respondent are made.

(6) Using, or placing in the hands of agents and representatives for use in taking orders from customers, order books containing the statement, "We cut from first choice, if possible", or words of similar import indicating that the garment delivered is actually tailored for the purchaser in conformity with the measurements set out on said order blank, until and unless said garment is actually so tailored to the individual measurements of the customer.

(7) Advertising or in any way representing or advising prospective purchasers that the garment is either an exceptional value or has been tailored to the customer's own measurements, until and unless said statements are true in fact.

It is further ordered, That respondent shall, within 60 days from the date of the service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he has complied with the order herein set forth.

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IN THE MATTER OF

B. F. HUNTLEY FURNITURE COMPANY

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

Docket 2503. Complaint, July 30, 1935—Order, Nov. 1, 1935

Consent order requiring respondent corporation, its agents, etc., in connection with the sale and offer in commerce among the several States and in the District of Columbia of certain household furniture, to cease and desist from—

- (a) Advertising or in any way otherwise representing, directly or by implication, by advertisements, advertising literature, stickers attached to the articles of furniture, or in any manner or by any means whatsoever that articles of furniture manufactured or sold by the respondent and not made from wood derived from the genus *Juglans*, of the tree family known as Walnut or Juglandaceae, are "walnut" or "oriental walnut"; or
- (b) Using the word "walnut" either independently or in connection with the word "oriental", or with any other word or words, in its advertising matter of whatever character, so as to represent, import, imply, or have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said articles of furniture are manufactured, either in whole or in part, from wood derived from trees of the Walnut or Juglandaceae family, when such is not the fact.

Mr. J. T. Welch for the Commission.

Manly, Hendren & Womble, of Winston-Salem, N. C., 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 B. F. Huntley Furniture Company, a corporation, hereinafter designated as respondent, is now, and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, B. F. Huntley Furniture Company, is now, and has been at all times mentioned herein, a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business in the city of Winston-Salem in said State, and is now, and has been at all times mentioned herein, engaged in the business of