

Complaint

21 F. T. C.

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

manufacturing, distributing and selling household furniture to wholesale and retail dealers in such furniture.

PAR. 2. Said respondent, being engaged in the business of manufacturing, distributing, and selling household furniture as aforesaid, causes said furniture, when sold to wholesale and retail dealers located in various cities in the several States of the United States, to be transported from its principal place of business in the State of North Carolina, to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said household furniture, manufactured, distributed and sold by respondent, between and among the various States of the United States and the District of Columbia.

PAR. 3. Said respondent is, and has been at all times mentioned herein, engaged in substantial competition with other corporations, partnerships, and individuals engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution, and sale of household furniture.

PAR. 4. Respondent, in the course and conduct of its business as detailed in paragraphs 1 to 3, inclusive, is now and has been, manufacturing, offering for sale, and selling, as and for "walnut" or "oriental walnut", certain household furniture made from woods other than walnut wood, but which resemble walnut wood in some characteristics and in general appearance. In advertisements, paper stickers attached to the various articles, circular letters, correspondence with purchasers and prospective purchasers, invoices, price lists, catalogs, and trade literature said respondent has represented, and still represents to said wholesale and retail dealers and the public generally that said household furniture is manufactured or constructed of "walnut" or "oriental walnut" wood, when in truth and in fact, said household furniture is not manufactured or constructed from walnut wood as that term is known, used and understood by the trade and the public generally.

PAR. 5. The word "walnut", when used either independently or in connection or conjunction with the word "oriental" or with any other word or words of similar import, in connection with or descriptive of household furniture means, and the trade and consuming public understand, and for many years have understood, it to mean that the said furniture, so referred to or described, is manufactured or constructed from wood obtained from the genus *Juglans* of the tree family known as "*Juglandaceae*".

PAR. 6. A substantial portion of the purchasing public has indicated, and has, a decided preference for household furniture manu-

Complaint

21 F. T. C.

factured or constructed from genuine walnut wood obtained from the *Juglans* genus of the tree family known as "Juglandaceae" over household furniture manufactured or constructed from other woods resembling walnut wood in certain of its characteristics and general appearance but that cannot properly be designated as "walnut".

PAR. 7. The aforesaid representations made by the respondent, as set out in paragraph 4 hereof, were and are calculated to, and had and now have the tendency and capacity to, and did and now do mislead and deceive a substantial portion of the purchasing public into the belief that the respondent manufactures, distributes, and sells household furniture manufactured or constructed from genuine walnut wood and that all of the furniture manufactured and sold by the respondent under the description and representations above set out is constructed of walnut wood and to purchase said household furniture in such belief.

The aforesaid representations made by the respondent, as set out in paragraph 4 hereof, were and are calculated to, and had and now have the tendency and capacity to, and did and now do mislead and deceive a substantial portion of the wholesale and retail dealers in household furniture into the belief that the respondent manufactures, distributes and sells household furniture manufactured or constructed from genuine walnut wood and to purchase said household furniture manufactured or constructed by the respondent in the belief that the said furniture consists of walnut wood and to resell the said articles of household furniture to the general consuming public as and for furniture manufactured or constructed of walnut wood.

Further, the aforesaid representations, in said advertising literature hereinabove referred to, especially in catalogs, paper stickers attached to the various articles, invoices, price lists and trade literature, and the placing of all of said literature, containing said representations, in the hands of wholesale and retail furniture dealers, enables unscrupulous dealers to mislead and deceive customers into the belief that the furniture products manufactured and sold by the respondent are composed of and constructed from genuine walnut wood.

As a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements and representations of the respondent, as hereinabove detailed, a substantial number of wholesale and retail dealers in furniture and a substantial number of the purchasing public have purchased a substantial volume of respondent's household furniture products, with the result that substantial injury has been done to substantial competition in commerce among the various States of the United States and the District of Columbia.

PAR. 8. There are among the competitors of respondent many who have manufactured, constructed and sold, and who now manufacture, construct and sell, household furniture made of walnut wood and who rightfully and truthfully represent their said household furniture to be made or constructed of walnut wood; and there are among the competitors of respondent many who have manufactured, constructed and sold, and now manufacture, construct and sell household furniture not made of walnut wood, and who rightfully and truthfully represent said household furniture not to be made of walnut wood and rightfully and truthfully represent and designate the wood or woods used in the construction of said household furniture, and the alleged acts, practices and representations of the respondent divert a substantial volume of trade from, and otherwise prejudice and injure a substantial number of said competitors.

PAR. 9. The above and foregoing acts, practices, and representation of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 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 DESIST

B. F. Huntley Furniture Company, the respondent herein, having filed its answer to the complaint in this proceeding and having subsequently made application to withdraw the answer heretofore filed and tendering in lieu thereof a consent answer, in which answer respondent states that it desires to waive hearing and not to contest the proceeding, consenting in and by its 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 complaint and said answers, and being fully advised in the premises—

It is now ordered, That the respondent, B. F. Huntley Furniture Company, be, and it is hereby permitted to withdraw the answer heretofore filed by it and to file consent answer in lieu thereof, and the substituted answer tendered is received and filed. It is also ordered that the respondent, B. F. Huntley Furniture Company, its agents, servants, representatives and employees, in connection with the sale and offering for sale, in commerce among and between the

Order

21 F. T. C.

several States of the United States and in the District of Columbia, of certain household furniture, cease and desist from:

(1) 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".

(2) Using the word "walnut" either independently or in connection or conjunction 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.

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

Complaint

IN THE MATTER OF

HARRY GOTTSAGEN, MAX GOTTSAGEN, MARTIN GOTTSAGEN, ALEXANDER GOTTSAGEN, TRADING AS GOTHAM SALES COMPANY AND AS UNIVERSAL MERCHANDISE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2344. Complaint, Mar. 23, 1935—Decision, Nov. 4, 1935

Where a corporation engaged in the sale and distribution of assorted notions and novelties to the purchasing and consuming public throughout the several States, offered and sold large quantities of shoe laces upon the wrapper of each pair of which appeared in bold type "Mercerized Broadway Brand", notwithstanding fact that said laces, thus labeled, were not mercerized, to wit, laces treated with a caustic solution whereby the tensil strength and microscopic appearance thereof were changed, but were cheap cotton laces imported from Japan;

With capacity and tendency to confuse, mislead and deceive members of the public into the belief that said product was in fact mercerized, and induce purchase thereof in such erroneous belief, and with effect of diverting trade to it from competitors, including those who in nowise misrepresent the quality and kind of their products, and with tendency so to divert, to their substantial injury and prejudice:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Jerome L. Greenberg, of New York City, for respondents.

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 Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, co-partners, trading as Gotham Sales Company and Universal Merchandise Company, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondents, Harry Gottsagen, Max Gottsagen, Martin Gottsagen, Alexander Gottsagen, and Alfred Gottsagen, co-partners, trading as Gotham Sales Company and as Universal Mer-