

Complaint

IN THE MATTER OF
CHARLES E. MORRISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2367. Complaint, Apr. 15, 1935—Decision, Jan. 14, 1936*

Where an individual engaged in the sale at retail of fur coats and other fur garments at prices substantially the same as those usually charged for comparable products by retailers, falsely represented through letters and other trade literature and through radio broadcasts, advertisements in periodicals and in other ways, that he was a "reliable wholesale fur house backed by responsibility and confidence", selling to stores from "coast to coast," that his place of business was "the * * * Fur Coat Show Room," a "wholesale show room," and not a store, that he was a "wholesale manufacturing furrier" and offered said fur garments at "strictly wholesale prices", and that fur coats could be purchased from him at one-third to one-half less than at retail stores; with capacity and tendency to mislead and deceive the purchasing public into the belief that his representations were true, and into purchasing said garments from him in such belief, and with result of diverting trade to him from competitors, who do not make such false representations; to the substantial injury of substantial competition in commerce:

Held, That such 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. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

Mr. Hilliard L. Bernstein, 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 Charles E. Morris, 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Charles E. Morris, is now and for more than two years last past has been engaged under and by his name and under and by the trade name Charles E. Morris Show Room in the city of New York, State of New York, in the business of sell-

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ing fur coats and other fur garments which he has caused and still causes when sold, to be shipped from his place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in the sale of such fur coats and other fur garments between and among the various States of the United States. In the course and conduct of his said business, respondent is now and for more than two years last past has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale of fur coats and other fur garments between and among the various States of the United States.

PAR. 2. In the sale by the respondent and in the offering for sale by the respondent of fur coats and other fur garments, as set out in paragraph 1 hereof, respondent by means of letters and other trade literature mailed to customers and prospective customers, through the medium of radio broadcasts, advertisements printed in newspapers of interstate circulation, and in other ways, has made and still makes the following statements and representations and other representations of similar tenor, effect and substance, to wit:

(a) That the prices at which the fur garments are sold by him are "strictly wholesale prices" and "practically wholesale prices";

(b) That he is a "reliable Wholesale Fur House, backed by responsibility and confidence", that he sells to stores from "coast to coast", that his place of business is the "Morris Fur Coat Show Room", and "Remember, this is not a store, this is a Wholesale Show Room";

(c) That he is a "Wholesale Manufacturing Furrier" and has a factory showroom;

(d) That fur coats can be purchased from him at from one-third to one-half less than prices charged for the same at retail stores.

PAR. 3. In truth and in fact:

(1) The prices at which respondent sells his fur coats and fur garments are not wholesale prices or practically wholesale prices but are considerably in excess of wholesale prices;

(2) Respondent is not a wholesale fur house;

(3) Respondent does not sell to stores dealing in fur coats and other fur garments;

(4) Respondent's place of business is not a fur coat showroom or a wholesale showroom but a retail establishment for the selling of fur coats and of other fur garments at retail;

(5) Respondent does not operate, own or have any interest in any wholesale fur coat or other wholesale garment establishment;

(6) He is not a wholesale furrier nor a manufacturing furrier, does not have a factory showroom in which fur coats or other fur garments are manufactured or shown for sale;

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(7) He does not sell the fur coats and other fur garments dealt in by him at prices ranging from one-third to one-half less than retail stores charge for the same by the prices charged by him for the fur coats and other fur garments dealt in by him are the prices at which such fur coats and other fur garments are usually sold by retail dealers at retail.

PAR. 4. The representations made by the respondent as mentioned in paragraph 2 hereof have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true, and to purchase fur coats and other fur garments from respondent in such belief. Thereby trade is diverted to respondent from his competitors who do not make the false representations made by the respondent as hereinbefore set out. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

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, on April 15, 1935, issued and served its complaint in this proceeding upon respondent, Charles E. Morris, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Hilliard L. Bernstein, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto; 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, Charles E. Morris, is now and for more than two years last past has been engaged under and by his name and under and by the trade name of Charles E. Morris Show Room in the city of New York, State of New York, in the business of

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selling fur coats and other fur garments which he has caused and still causes when sold, to be shipped from his place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in the sale of such fur coats and other fur garments between and among the various States of the United States. In the course and conduct of his said business, respondent is now and for more than two years last past has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale of fur coats and other fur garments between and among the various States of the United States.

PAR. 2. In the sale by the respondent and in the offering for sale by the respondent of fur coats and other fur garments, as set out in paragraph 1 hereof, respondent by means of letters and other trade literature mailed to customers and prospective customers, through the medium of radio broadcasts, advertisements printed in newspapers of interstate circulation, and in other ways, has made and still makes the following statements and representations and other representations of similar tenor, effect and substance, to wit:

(a) That the prices at which the fur garments are sold by him are "strictly wholesale prices" and "practically wholesale prices";

(b) That he is a "reliable Wholesale Fur House, backed by responsibility and confidence", that he sells to stores from "coast to coast", that his place of business is the "Morris Fur Coat Show Room", and "Remember, this is not a store, this is a Wholesale Show Room";

(c) That he is a "Wholesale Manufacturing Furrier" and has a factory showroom;

(d) That fur coats can be purchased from him at from one-third to one-half less than prices charged for the same at retail stores.

PAR. 3 In truth and in fact:

(1) The prices at which respondent sells his fur coats and fur garments are not wholesale prices or practically wholesale prices but are considerably in excess of wholesale prices;

(2) Respondent is not a wholesale fur house;

(3) Respondent does not sell to stores dealing in fur coats and other fur garments;

(4) Respondent's place of business is not a fur coat showroom or a wholesale showroom, but a retail establishment for the selling of fur coats and of other fur garments at retail;

(5) Respondent does not operate, own or have any interest in any wholesale fur coat or other wholesale garment establishment;

(6) He is not a wholesale furrier nor a manufacturing furrier, does not have a factory showroom in which fur coats or other fur garments are manufactured or shown for sale;

(7) He does not sell the fur coats and other fur garments dealt in by him at prices ranging from one-third to one-half less than retail stores charge for the same but the prices charged by him for the fur coats and other fur garments dealt in by him are the prices at which such fur coats and other fur garments are usually sold by retail dealers at retail.

PAR. 4. The representations made by the respondent as mentioned in paragraph 2 hereof have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true, and to purchase fur coats and other fur garments from respondent in such belief. Thereby trade is diverted to respondent from his competitors who do not make the false representations made by the respondent as hereinbefore set out. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent, Charles E. Morris, under the conditions and circumstances set forth in the foregoing findings of fact, are each and all to the prejudice of the public and to the competitors of the respondent, 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", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral argument having been waived by counsel for the Commission and counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated 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",

It is ordered, That respondent, Charles E. Morris, in the advertising, sale, and distribution in commerce of his product, to wit, fur coats and other fur garments, cease and desist from:

(1) Advertising and representing, by letters and other trade literature mailed to customers and prospective customers, through the

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medium of radio broadcasts, advertisements printed in newspapers of interstate circulation, or by any other manner, means, methods or devices:

(a) That the prices at which fur garments are sold by respondent are "strictly wholesale prices", or "practically wholesale prices";

(b) That respondent is a "reliable Wholesale Fur House, backed by responsibility and confidence", that he sells to stores from "coast to coast", that his place of business is the "Morris Fur Coat Show Room", and that his said place of business is a "Wholesale Show Room";

(c) That respondent is a wholesale manufacturing furrier, and that he has a factory showroom;

(d) That fur coats and other fur garments can be purchased from respondent at from one-third to one-half less than prices charged for the same at retail stores, or that respondent sells such fur coats and other fur garments at a price or prices materially cheaper than other retail stores sell fur garments of the same grade and value.

And it is hereby further ordered, That the said respondent, Charles E. Morris, trading under and by his name and under and by the trade name Charles E. Morris Show Room, shall within 60 days after the service upon him of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which he shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
C. R. ACFIELD, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2643. Complaint, Dec 5, 1935—Order, Jan. 14, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the offer for sale and sale in interstate commerce and in the District of Columbia of devices or appliances known and designated as "Perfection Toe Spring" and "Bentoe Splint", to cease and desist from directly or indirectly advertising, describing, designating or otherwise representing its said "Toe Spring" is a cure for bunions or will remove the actual cause thereof, or that its said "Splint" is a correction for or will straighten hammer-toe, and from making any other similar statements or representations in any manner whatsoever which may have the tendency or capacity to confuse, mislead or deceive purchasers in any material respect with reference to the results to be expected from the use of said appliances.

Mr. Marshall Morgan for the Commission.

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 C. R. Acfield, Inc., a corporation, hereinafter referred to as 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. C. R. Acfield, 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 office and place of business located at 36 West Thirty-fourth Street, New York City. Respondent is now, and for more than two years last past, has been engaged, as hereinafter described, in the business of manufacturing alleged remedies for foot ailments, including the "Perfection Toe Spring" for bunions, and a "Bentoe Splint" for hammer-toe, and selling the same to foot specialists, chiropodists, retail stores, and individuals in various parts of the United States other than the State of New York. Respondent's said products and appliances are manufactured at its place of business in New York City, where they are branded, labeled, and packed by respondent for sale and distribution to the purchasing and consuming public of the United States. In connection with the