

IN THE MATTER OF
JACOB STEIN, TRADING AS CLIMAX RUBBER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2303. Complaint, Feb. 20, 1935—Order, Jan. 16, 1936

Where an individual engaged in offer for sale and sale of certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets; Falsely represented - on labels and in printed advertisements thereof and otherwise, that said products were made of rubber with antiseptic and anti-acid properties and powers which actually killed bacteria and neutralized perspiration and other body wastes, completely deodorizing all odors;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said representations were true and to induce the public, because of such erroneous belief, to purchase said products, and with result of furnishing dealers therein with the means of misleading and deceiving the public and inducing purchase of said articles in such erroneous belief and with tendency and capacity to divert trade from competitors to himself and to dealers in his said products:

Held, That such practices were all 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. Nathaniel Phillips, of New York City, for respondent.

COMPLAINT ¹

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 Jacob Stein, an individual, trading under the name and style of Climax Rubber Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery 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:

¹ Published as amended Dec. 4, 1935.

Complaint

Count I

PARAGRAPH 1. Respondent, Jacob Stein, is an individual trading and doing business under the name and style of Climax Rubber Company, with his office and principal place of business in the city of Brooklyn in the State of New York. Respondent has been and is engaged in offering for sale and selling to dealers therein and to other persons located at various places in the several States of the United States certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets. Respondent, when said products are sold, causes the same to be transported from his said place of business in the city of Brooklyn, N. Y., to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such products between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is in competition with other persons, firms, associations or corporations who are likewise engaged in offering for sale and selling the same, like, or competitive products in commerce between and among the several States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his said business as described in paragraph 1 hereof, and in connection with and aid of so offering for sale and selling his said products, and as an inducement to the purchase thereof, advertises said products above specifically mentioned upon labels thereon, in printed advertisements and otherwise as being made of rubber that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, said rubber and said articles made therefrom do not have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other wastes, completely deodorizing all odors. Said rubber and said articles made therefrom do not have any antiseptic or anti-acid qualities of value, nor have they qualities and powers to neutralize acid perspiration.

PAR. 3. The use by respondent of said method and the false and misleading statements and representations so made by respondent have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent furnish to dealers in respondent's said products the means of misleading and

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deceiving the purchasing public into the erroneous belief that said statements are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent have the tendency and capacity to divert trade from the aforesaid competitors of respondent to the respondent and to dealers in respondent's said products.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and of 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", approved September 26, 1914.

Count II

PARAGRAPH 1. Respondent, Jacob Stein, is an individual trading and doing business under the name and style of Climax Rubber Company, with his office and principal place of business in the city of Brooklyn in the State of New York. Respondent has been and is engaged in offering for sale and selling to dealers therein and to other persons located at various places in the several States of the United States certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets. Respondent, when said products are sold, causes the same to be transported from his said place of business in the city of Brooklyn, N. Y., to the purchasers thereof located at points in the State of New York and at points in various other States of the United States and causes said products when so sold to be transported from his principal place of business in the city of Brooklyn, N. Y., to the purchasers thereof in the State of New York and to other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such products in the State of New York and between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is in competition with other persons, firms, associations or corporations who are likewise engaged in offering for sale and selling the same, like, or competitive products in commerce between and among the several States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his said business as described in paragraph 1 hereof, and in connection with and in aid of so offering for sale and selling his said products, and as an

inducement to the purchase thereof, advertises said products above specifically mentioned upon labels thereon, in printed advertisements and otherwise as being made of rubber that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, said rubber and said articles made therefrom do not have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. Said rubber and said articles made therefrom do not have any antiseptic or anti-acid qualities of value, nor have they qualities and powers to neutralize acid perspiration.

PAR. 3. The use by respondent of said method and the false and misleading statements and representations so made by respondent have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent furnish to dealers in respondent's said products the means of misleading and deceiving the purchasing public into the erroneous belief that said statements are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent have the tendency and capacity to divert trade from the aforesaid competitors of respondent to the respondent and to dealers in respondent's said products.

PAR. 4. Under and pursuant to the provisions of Section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June 1933, by his executive order in writing appointed Hugh S. Johnson to be the Administrator for Industrial Recovery under Title I of said Act.

Under and pursuant to the provisions of said National Industrial Recovery Act, the Sanitary and Waterproof Specialties and Manufacturing Association, a trade association, as a representative of the Sanitary and Waterproof Specialties Manufacturing Industry, submitted to the President of the United States an application for the approval of a Code of Fair Competition for the Sanitary and Waterproof Specialties Manufacturing Industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had, that on the 17th day of March 1934, said Johnson, as such administrator, submitted a certain Code

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of Fair Competition for the Sanitary and Waterproof Specialties Manufacturing Industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act. The concluding paragraphs of said report are in the following words, to wit:

(c) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

For these reasons the Code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

MARCH 17, 1934.

Thereafter, and on the 17th day of March 1934, said Hugh S. Johnson, acting on behalf of the President of the United States, made and entered a written order wherein and whereby he adopted and approved the report, recommendations and findings of said administrator, and ordered that said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of fair competition for the Sanitary and Waterproof Specialties Manufacturing Industry, and became and still are binding upon every member thereof.

Respondent is a member of said industry and its products hereinabove specifically described are products of said industry and are under and within the scope of said code of fair competition for said industry.

PAR. 5. Article VII, Sections 18 and 20 of said code of fair competition are respectively in the following words, to wit:

18. No member of the industry shall publish advertising (whether printed, radio, display or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including but without limitation its use, trade mark, grade, quality,

quantity, origin, size, substance, character, nature, finish, material, content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

20. No member of the Industry shall brand or mark or pack any goods in any manner which is intended to or does deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods.

Notwithstanding said provisions of said Article VII, Sections 18 and 20 of said code, upon labels placed thereon and in printed advertisements in aid of offering for sale and selling the same, and in other ways, respondent represents that said products above described, to wit: Infant bibs, baby pants, and crib sheets, are made of a certain rubber product that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, as hereinabove specifically alleged, said rubber product and said articles made therefrom do not have said properties or powers or any antiseptic or anti-acid properties or powers of any value, and do not kill bacteria or neutralize perspiration or other body wastes or deodorize odors.

PAR. 6. The above alleged methods, acts and practices of the respondent are, and have been in violation of the standard of fair competition to the Sanitary and Waterproof Specialties Manufacturing Industry and particularly in violation of Article VI, Section 3, of the code for that industry. Such violation of such standard in the aforesaid transactions in interstate commerce and in other transactions which affect interstate commerce in the manner set forth herein, are in violation of Section 3 of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the intent and meaning of said Federal Trade Commission Act, as amended.

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 the 20th day of February 1935, issued and served its complaint in this proceeding upon Climax Rubber Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent, Jacob Stein, filed his answer thereto, in which answer he alleged, among other things, that Climax Rubber Company, proceeded against herein as a corporation, was not a corporation, but that he, the said

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Jacob Stein, was an individual trading under the name and style of Climax Rubber Company; and thereafter, to wit, on the 4th day of December 1935, the Federal Trade Commission made and entered an order in this proceeding, amending its complaint by making Jacob Stein, an individual trading under the name and style of Climax Rubber Company, the respondent herein instead of Climax Rubber Company, a corporation. After the filing of answer by respondent, Jacob Stein, as an individual trading under the name and style of Climax Rubber Company, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hildrop, 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 Nathaniel Phillips, 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 oral arguments of counsel aforesaid; 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. Respondent is an individual trading under the name and style of Climax Rubber Company, with his office and principal place of business in the city of Brooklyn, in the State of New York. Respondent has been and is engaged in offering for sale and selling to dealers therein and to other persons located at various places in the several States of the United States certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets. Respondent, when said products are sold, causes the same to be transported from his said place of business in the city of Brooklyn, N. Y., to purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such products between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is in competition with other persons, firms, associations and corporations who are likewise engaged in offering for sale and selling the same, like, or competitive products in commerce between and among the several States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his said business as described in paragraph 1 hereof, and in connection with and in aid of so offering for sale and selling his said products, and as an inducement to the purchase thereof, advertises said products above specifically mentioned upon labels thereon, in printed advertisements and otherwise, as being made of rubber that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, said rubber and said articles made therefrom do not have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors.

PAR. 3. The use by respondent of said method and the false and misleading statements and representations so made by respondent have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent furnish to dealers in respondent's said products the means of misleading and deceiving the purchasing public into the erroneous belief that said statements are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent have the tendency and capacity to divert trade from the aforesaid competitors of respondent to the respondent and to dealers in respondent's said products.

CONCLUSION

The above alleged acts and practices of respondent are all to the prejudice of the public and of 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", 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 Commissioner theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by John W. Hildrop, counsel for the Commission, and by Nathaniel Phillips, counsel for the respondent, and

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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 the respondent, his agents, servants and employees, in the advertising, sale and distribution in interstate commerce of his commodities, including infant bibs, baby pants and crib sheets, and other sanitary and waterproof specialties, cease and desist from:

Advertising and representing, by labels, printed advertisements, circulars, hand bills, circular letters, advertisements in newspapers and magazines, through radio broadcasts, and by any other method, manner or device:

(a) That respondent's said commodities have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors.

(b) That respondent's said commodities actually kill bacteria.

(c) That respondent's said commodities neutralize perspiration and other body wastes, completely deodorizing all odors.

(d) That the products of respondent have any antiseptic or anti-acid qualities or powers sufficient to entirely kill bacteria, neutralize perspiration and other body wastes and to completely deodorize all other odors.

It is further ordered, That Count II of the complaint be, and the same is hereby dismissed.

And it is hereby further ordered, That the said respondent, Jacob Stein, an individual trading under the name and style of Climax Rubber Company, 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.

Syllabus

IN THE MATTER OF
WILLIAMS BROS. TAILORING CORP.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2311. Complaint, Mar. 4, 1935—Decision, Jan. 16, 1936*

Where a corporation engaged in the manufacture of men's clothing and in the sale thereof through local agents whom it obtained through advertisements in periodicals and newspapers and supplied with kits consisting of sales instructions, style book, testimonials, sample swatches, order blanks, tape measures, and other things, and with whom, as with its customers solicited by them, it had no personal contact—

- (a) Set forth upon said order blanks detailed instructions for various measurements, for use, purportedly, in ordering clothes made to individual measurements of purchaser, published in trade literature furnished salesmen such statements as "dependably tailored, * * * direct from a famous New York tailoring house, * * * all orders * * * accurately filled, * * * designed, cut and built by expert craftsmen, hand tailored at important points", "that look of quality that only custom tailored garments can give", and "from maker to wearer direct", and in a book supplied agents for purchaser's examination, set forth the words "custom tailored" and such statements as "fashions correctly designed for men and young men", "the very newest models", "the up-to-the-minute style in your * * * suit is needled into it to last for the life of the garment", and the unqualified declaration that the suits were made to the measure of individual, etc.;

The facts being that said clothes were not, for the most part, made to individual measure or custom tailored, but it was its practice to finish 75 per cent of its said garments, except for bottoms of pants and sleeves, and after receipt of orders, to select and alter such ready-made garments according to measurements received, and only 25 per cent, involving unusual or abnormal sizes or higher prices, were made to special orders according to the individual measurements;

- (b) Set forth upon said order blanks upon the same side as called for customer's measurements and signature, its so-called "iron-clad guarantee", stating that garments were made in latest style, were designed, cut and built by expert union craftsmen in modern daylight shops, and all orders were accurately filled; and in a conspicuous place in advertising literature, to be shown by agents to prospective purchasers but not retained by them, stated that, in order "that we may merit your confidence we back your purchase with a \$25,000 guarantee bond binding us to give you a garment that will entirely please you in fabric, fashion, fit and wearing quality or return the money we received";

The facts being that on the reverse of the aforesaid order blank, not mentioned to or seen by customer before signing the order, was a condition denying right to refund for clothes' failure to fit until it had been given a second trial and failed to give satisfaction a second time, and agents and customers found it difficult or impossible to secure satisfactory alterations of