

Syllabus

IN THE MATTER OF
THE BLIND WEAVERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2358. Complaint, Apr. 9, 1935—Decision, Jan. 31, 1936*

Where a corporation which included six blind persons among its employees and words "Blind Weavers" in its corporate name, and was engaged as a private commercial enterprise in the sale direct to purchasers through agents or salesmen of standard woven rugs manufactured by it and of machine-made chenille rugs which it did not manufacture but purchased in the open market—

Represented itself as a charitable institution for the blind through portrayal of portion of its said corporate name in labels, tags, advertising circulars, stationery, mailing matter and literature and supplied its said agents, salesmen and representatives with credentials and certificates of identification designed to hold them out falsely as representatives of such an institution or association and the products sold by them as made by the blind inmates or members thereof, and furnished its said agents, etc., with instructions so prepared as to create in the minds of the prospective customer the false impression that all said rugs were made by the blind;

The facts being that its sales of said machine-made chenille rugs constituted from 65% to 70% of its total sales during the past three years, and that in preparation of said chenille rugs for shipment to purchasers it employed a force of shipping clerks and assistants in addition to the six blind and two other employees used in making standard woven rugs, and used said blind persons on preparation of chenille rugs in "fringe tying" only, cost of which process was proportionally negligible;

With effect of deceiving a substantial portion of the purchasing public into the erroneous belief that rugs sold by it as aforesaid were produced in their entirety by the labor of blind people in charitable institutions, and with capacity and tendency so to do and to induce purchasers thereof to buy the same in such belief and divert trade from the producers of truthfully marked rugs who sold products on their merits rather than the basis of sympathy for the blind and from charitable institutions and associations whose blind residents and members weave rug products for sale to the public; to the substantial injury of substantial competition in interstate commerce:

Held, That such acts and 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. W. W. Sheppard, trial examiner.

Mr. P. C. Kolinski for the Commission.

Mr. Erwin W. Roemer of *Gardner, Carton & Douglas*, of Chicago, Ill., for respondent.

Complaint

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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 The Blind Weavers, Inc., hereinafter referred to as respondent, has been and now is 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, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized for profit, existing and doing business under, and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago in said State. It was incorporated on February 25, 1928, with an authorized capital stock of \$1,000. It is engaged in the manufacture, purchase, and sale, in commerce, of rugs, and causes said rugs, when sold by it in the manner hereinafter described, to be transported from its place of business in the State of Illinois, into and through other States of the United States, to the purchasers thereof located in such States. In the course of conduct of its said business, respondent is in substantial competition with other individuals, partnerships, corporations and eleemosynary institutions, also engaged in the manufacture of rugs and the sale of same, in commerce, between and among various States of the United States.

PAR. 2. In the conduct of its said business, respondent manufactures in its place of business standard woven rugs, employing eight persons, six of whom are blind. In addition to such rug manufacturing, respondent employs a force of shipping clerks and assistants for the preparation for shipment of machine-made chenille rugs not manufactured by respondent, but purchased in the open market. In the preparation of said machine-made chenille rugs for shipment to purchasers, respondent employs said blind persons in the process known as "fringe-tying", the cost of which fringe-tying constitutes a negligible proportion of the total cost to respondent of said machine-made chenille rugs.

PAR. 3. Respondent sells all of its rug products, including the rugs woven in its own plant, as well as the machine-made chenille rugs purchased in the open market, by the method of direct selling to purchasers, employing as high as one hundred agents, salesmen and representatives for that purpose. The respondent's average an-

nual sales for the past three years of said machine-made chenille rugs have constituted from 65% to 70% of the total sales made by respondent during said years. Respondent in connection with such sales, uses labels, tags, advertising circulars, stationery, mailing matter, and literature portraying a portion of its corporate name so designed as to misrepresent itself as a charitable institution for the blind. Respondent supplies its said agents, salesmen and representatives with credentials and certificates of identification designed to falsely represent said agents, salesmen and representatives as the representatives of a charitable institution or association of the blind, and that the products they sell are manufactured by the blind inmates or members of such institutions or associations. Respondent furnishes its agents, salesmen and representatives with instructions so prepared as to create in the minds of prospective customers the false impression that all rugs offered for sale by such representatives are manufactured by the blind. Respondent's agents, salesmen, and representatives, in the sale of respondent's rugs, have continued and continue to mislead and deceive purchasers and prospective purchasers into the belief that they are purchasing the product of blind people located in charitable institutions instead of the product of a private commercial enterprise.

PAR. 4. The use by respondent of its aforesaid corporate name, and of the advertising and sales methods in the sale of its woven and machine-made chenille rugs as set forth in paragraph 3 hereof, has the capacity and tendency to, and does deceive a substantial portion of the purchasing public into the erroneous belief that said rugs sold by respondent as aforesaid are produced in their entirety by the labor of blind people in charitable institutions; to induce purchasers thereof to purchase the same in that belief; to divert trade from the producers of truthfully marked rugs who sell their products on their merits rather than upon the basis of sympathy for the blind; and to divert trade from charitable institutions and associations whose blind residents and members weave such rug products for sale to the public. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. 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 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.

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 9, 1935, issued and served its complaint in this proceeding upon respondent, The Blind Weavers, Inc., 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, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Erwin W. Roemer, attorney for 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. The respondent is a corporation organized for profit, existing and doing business under, and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago in said State. It was incorporated on February 25, 1928, with an authorized capital stock of \$1,000. It is engaged in the manufacture, purchase, and sale, in commerce, of rugs, and causes said rugs, when sold by it in the manner hereinafter described, to be transported from its place of business in the State of Illinois, into and through other States of the United States, to the purchasers thereof located in such States. In the course of conduct of its said business, respondent is in substantial competition with other individuals, partnerships, corporations, and eleemosynary institutions, also engaged in the manufacture of rugs and the sale of same, in commerce, between and among various States of the United States.

PAR. 2. In the conduct of its said business, respondent manufactures in its place of business standard woven rugs, employing eight

persons, six of whom are blind. In addition to such rug manufacturing respondent employs a force of shipping clerks and assistants for the preparation for shipment of machine-made chenille rugs not manufactured by respondent, but purchased in the open market. In the preparation of said machine-made chenille rugs for shipment to purchasers, respondent employs said blind persons in the process known as "fringe-tying", the cost of which fringe-tying constitutes a negligible proportion of the total cost to respondent of said machine-made chenille rugs.

PAR. 3. Respondent sells all of its rug products, including the rugs woven in its own plant, as well as the machine-made chenille rugs purchased in the open market, by the method of direct selling to purchasers, employing as high as one hundred agents, salesmen, and representatives for that purpose. The respondent's average annual sales for the past three years of said machine-made chenille rugs have constituted from 65% to 70% of the total sales made by respondent during said years. Respondent in connection with such sales, uses labels, tags, advertising circulars, stationery, mailing matter, and literature portraying a portion of its corporate name so designed as to misrepresent itself as a charitable institution for the blind. Respondent supplies its said agents, salesmen, and representatives with credentials and certificates of identification designed to falsely represent said agents, salesmen and representatives as the representatives of a charitable institution or association of the blind, and that the products they sell are manufactured by the blind inmates or members of such institutions or associations. Respondent furnishes its agents, salesmen and representatives with instructions so prepared as to create in the minds of prospective customers the false impression that all rugs offered for sale by such representatives are manufactured by the blind. Respondent's agents, salesmen, and representatives, in the sale of respondent's rugs, have continued and continue to mislead and deceive purchasers and prospective purchasers into the belief that they are purchasing the product of blind people located in charitable institutions instead of the product of a private commercial enterprise.

PAR. 4. The use by respondent of said advertising and sales methods in the sale of its woven and machine-made chenille rugs has the capacity and tendency to, and does deceive a substantial portion of the purchasing public into the erroneous belief that said rugs sold by respondent as aforesaid are produced in their entirety by the labor of blind people in charitable institutions; to induce purchasers thereof to purchase the same in that belief; to divert trade from the producers of truthfully marked rugs who sell their

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products on their merits rather than upon the basis of sympathy for the blind; and to divert trade from charitable institutions and associations whose blind residents and members weave such rug products for sale to the public. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

CONCLUSION

The acts and practices of respondent, The Blind Weavers, Inc., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and 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."

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 W. W. Sheppard, 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 arguments by P. C. Kolinski, counsel for the Commission, and by Erwin W. Roemer, 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, The Blind Weavers, Inc., its officers, agents, representatives and employees, in connection with the sale of or offering for sale or distribution in interstate commerce of hand woven and machine-made chenille rugs, cease and desist directly or indirectly, from:

(1) Using labels, tags, stationery, advertising circulars, and mailing matter representing respondent as a charitable institution for the blind.

(2) Representing to purchasers of respondent's products that they are purchasing the product of blind people located in charitable institutions, instead of the product of a private commercial enterprise.

(3) Advertising for sale machine-made chenille rugs without a statement in such advertising in clear, prominent and legible type that such machine-made rugs are not made or woven by the blind.

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(4) Selling machine-made chenille rugs without a tag affixed to each such rug bearing the statement that such rug was not made or woven by the blind; provided that where such machine-made chenille rugs bear a fringe which has been attached or tied to the rug by blind workers, such fact may be so stated on said tags.

It is further ordered, That respondent shall within 60 days after service of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with and conformed to the order to cease and desist as above set forth by the Commission.

Complaint

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IN THE MATTER OF
UNION PENCIL COMPANY, INC.

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

Docket 2584. Complaint Oct. 16, 1935—Order, Feb. 4, 1936

Consent order requiring respondent, its officers, etc., in connection with the offer for sale or sale in interstate commerce of pencils to cease and desist from representing through advertising, letterheads or other stationery or in any manner whatsoever that it holds and possesses a certificate of merit, its said pencils have been tested by the Bureau of Standards or have been tested for comparison with competitive products by an independent and unbiased agency, or will outlast other brands in the same price range three or four times or that it holds a medal of honor for the highest possible award for advertising pencils.

Before *Mr. John L. Hornor*, trial examiner.
Mr. William L. Pencke for the Commission.

COMPLAINT

Acting in the public interest 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 charges that Union Pencil Company, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Union Pencil 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 located at 305 Broadway, in the city of New York, in the State of New York. Respondent is now and for several years last past has been engaged in the sale, offering for sale, and distribution of imprinted and advertising pencils in commerce among and between the various States of the United States, and in the District of Columbia, in the course and conduct of which respondent has caused its said pencil products, when sold, to be transported from its place of business in the city of New York, in the State of New York, to purchasers thereof located in various States of the United States other than the State of New York, and to purchasers in the District of Columbia, and in the course and conduct of which business respondent