

Complaint

IN THE MATTER OF

SAMUEL HOROWITZ, TRADING AS COMMERCIAL SILK MILLS

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

Docket 2572. Complaint, Oct. 8, 1935—Decision, Apr. 24, 1936

Where an individual engaged in the sale and distribution of silk greige goods or silks in the unfinished state, and of finished silk, continually included word "Mills" in his trade name in soliciting sale of his products, and displayed such name on his letterheads and billheads and since on or about 1913 included on his letterheads words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." and words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa." on billheads circulated to customers, notwithstanding fact that at no time since said year had he ever made the products dealt in by him or owned or absolutely controlled any mill or factory, but products sold by him were made by individuals or concerns over which he had no control; with result that customers were led to believe that he was a mill operator or manufacturer and with capacity and tendency to mislead and deceive purchasers of his products into belief that in buying from him they were dealing with a manufacturer or operator of established business standing and thereby gaining an advantage by saving the middleman's profit, in accordance with common belief among such class of purchasers, that through such direct purchases considerable savings, more favorable terms, and a more uniform line of goods may be had, and with tendency to or with effect of diverting trade to him from competitors, among whom there are manufacturers and distributors of similar products and similarly engaged jobbers who do not misrepresent their status as manufacturers or mill operators; to their substantial injury and prejudice:

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

Mr. T. H. Kennedy for the Commission.

DuBroff & DuBroff, 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 Samuel Horowitz, an individual trading as Commercial Silk Mills, hereinafter called the 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

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is Samuel Horowitz, an individual trading under the name and style of Commercial Silk Mills, with his principal place of business located in the city of New York, State of New York. He is and for more than 1 year last past has been engaged in the sale and distribution of undyed woven silk material in commerce between and among the various States of the United States, causing the same when sold to be shipped from his place of business in the State of New York or other State of origin to purchasers thereof located in various States of the United States other than the State of New York or other States of origin. In the course and conduct of his business, said respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, said respondent adopted as and for his trade name the words Commercial Silk Mills under which to carry on his business, and which trade name, containing the word "Mills", he has used continuously since in or about 1913 and is now using in soliciting the sale of and selling his said products in interstate commerce. He has caused said trade name "Commercial Silk Mills" to appear on his letterheads distributed in interstate commerce, together with the words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." His billheads also featured said trade name, together with the words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa.", when in truth and in fact the said respondent does not make or manufacture the products sold by him which he has sold and distributed in interstate commerce; he does not own or control mills at either Allentown, Pa., or Paterson, N. J., nor does he own or operate or directly and absolutely control any mill or mills at either of the places named or elsewhere and wherein the products sold by him are made or manufactured, but on the contrary respondent has filled orders with products made or manufactured in a mill or mills which he does not own, operate or control.

PAR. 3. There is a preference on the part of certain of the retail merchants in the different States of the United States for goods, wares, and merchandise to be resold by retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with a mill owner or manufacturer they can buy goods at a cheaper price and on more favorable terms

than they can from jobbers or corporations, associations, individuals, firms, and partnerships not manufacturing goods, wares, and merchandise they sell to such retail dealers by eliminating the profit of the middleman, and that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The use by the respondent of the word "Mills" in his trade name and the word "Mills" in connection or conjunction with the words "Allentown, Pa." or "Paterson, N. J.", or the word "manufacturers" in respondent's letterheads, stationery, or otherwise, has a tendency and capacity to mislead and deceive purchasers who are customers and prospective customers of respondent by causing them to believe that respondent actually owns and operates or directly and absolutely controls the mill or mills in which said products are made or manufactured, or that respondent himself makes or manufactures his products, and that thereby such customers or prospective customers save or will save the middleman's profit and the said respondent in the use of the word "mills", and "mills" in connection or conjunction with the words "Allentown, Pa." or "Paterson, N. J.", or "manufacturers" has a tendency and capacity unfairly to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships who are actually manufacturing products similar to the products of respondent for sale and distribution in interstate commerce, and those competitors of respondent who do not manufacture similar or like products to those of respondent for sale and distribution in interstate commerce, but who truthfully advertise and label same and who do not claim and represent themselves to be manufacturers.

PAR. 4. The practices of respondent described in paragraph 2 hereof are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in interstate commerce in violation of the provisions 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."

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 October 8, 1935, issued and served its complaint in this proceeding upon the respondent, Samuel Horowitz, an individual trading as Commercial Silk Mills, charging him

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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, a statement of facts was agreed upon by the chief counsel for the Commission, subject to the approval of the Commission, and by the respondent, to be taken in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and said statement provided that the Commission might proceed upon said statement of facts and make its report stating its findings as to the facts including inferences which it might draw from said stipulated facts and its conclusion based thereon, and it was further provided in said statement of facts that the Commission might enter its order disposing of the proceeding without presentation of argument or the filing of briefs.

Thereafter the proceeding came on regularly for final hearing before the Commission on the said complaint, the answer and the statement of facts above referred to, and the Commission having approved the aforesaid stipulation as to the facts and 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

Since in or about 1913 the respondent, Samuel Horowitz, has been and is engaged as an individual trading as "Commercial Silk Mills." Since said time the respondent has maintained his principal place of business in the city of New York, State of New York. He is now located at that place and during all of said time has been engaged in the sale and distribution of silk greige goods and finished silk. Silk greige goods are silks in the unfinished state. During all of this time the respondent has sold his products to various firms, persons, association, or corporations located not only in the State of New York but in other States of the United States and in the District of Columbia, and after sales have been consummated the respondent has shipped the purchased goods or caused the goods to be shipped from his place of business in the State of New York or from other places in the United States to purchasers thereof located in States other than the State of New York or State of origin of the shipment.

During all of the time that respondent has been engaged in the foregoing business there have been other firms, associations, partnerships, or corporations engaged in similar business to that of respondent to wit: The sale and distribution of silk greige goods and finished silk in interstate commerce. The respondent during all of the aforesaid time was and still is in competition in commerce in the sale of

said products with other individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in interstate commerce.

In soliciting the sale of his products respondent has continuously included the word "Mills" in his trade name. This trade name "Commercial Silk Mills" has appeared on respondent's letterheads and billheads in all of his dealings wherein such printed matter was used by the respondent.

Since in or about 1913 the respondent has also carried on his letterheads, which have been distributed in interstate commerce, the words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." Respondent has also circulated billheads to his customers containing, in addition to the trade name of respondent hereinabove referred to, the words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa."

As a matter of fact at no time since 1913 has the respondent ever made or manufactured the products which he has sold, nor has he ever owned or absolutely controlled any mill or factory during such period of time. He has not owned or controlled mills or factories at either Allentown, Pa., or Paterson, N. J., nor does he now own or control any mill or factory where the products sold by him and shipped by him in interstate commerce have been made or manufactured. However, respondent has at all times since 1913 sold products which have been made or manufactured by persons, firms, or corporations over which he has no control.

The representations above referred to which have been made by respondent by the use of the words "Mills" and "Broad Silk Manufacturers" and "Mill: Allentown, Pa." and "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa." have been made in such a way that his customers or prospective customers are led to believe that the respondent is a mill operator or manufacturer.

It is the common belief among purchasers of respondent's products located in various States of the United States and District of Columbia that products above referred to can be purchased directly from a manufacturer or mill operator at a considerable saving in price. Said purchasers or prospective purchasers also believe that more favorable terms can be secured from mill owners or manufacturers than can be secured from jobbers or persons who do not manufacture the goods that they sell. Said purchasers and prospective purchasers also believe that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The representations made by respondent above referred to have the capacity and tendency to mislead and deceive the

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purchasers of respondent's products into the belief that when purchasing said products from respondent they are dealing with a manufacturer or mill operator of established business standing and thereby are gaining an advantage by saving the middleman's profit.

The representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer or mill operator and to purchase respondent's products in such erroneous belief.

There are among the competitors of respondent, manufacturers and distributors of products similar to those sold by respondent in interstate commerce, who do not misrepresent their status as manufacturers or mill operators, who likewise sell and distribute products similar to those sold and distributed by respondent in various States of the United States, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be mill owners or operators. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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

This matter coming on to be heard by the Commission upon the complaint filed herein on October 8, 1935, and upon the answer to said complaint filed October 29, 1935, by Samuel Horowitz, an individual, trading as Commercial Silk Mills, and upon a stipulation of facts entered into by and between W. T. Kelley, Chief Counsel of the Commission, and Samuel Horowitz, respondent herein, said stipulation of facts having been approved by the Commission; and the Commission having made its findings as to the facts and its conclusion that the 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."

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Order

It is ordered, That the respondent, Samuel Horowitz, individually and trading as Commercial Silk Mills, and his agents, representatives, servants, and employees, in connection with the offering for sale and sale of silk greige goods and finished silk in interstate commerce, cease and desist:

From representing, directly or indirectly, through and by the use of his trade name, through letter heads, circulars, advertising literature, or in any other manner, that he is a manufacturer, mill operator, or mill owner.

It is further ordered, That the respondent above named, within 30 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with.

IN THE MATTER OF
W. A. SHEAFFER PEN COMPANY

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

Docket 2158. Complaint, Jan. 25, 1934—Decision, Apr. 27, 1936

Where a corporation engaged in the manufacture of fountain pens, automatic pencils, ink or writing fluid, and desk sets and adhesives and in the sale and distribution thereof through some 18,000 retailers including stationers, druggists, jewelers, opticians, and gift shops and in some cases department stores, and also, in case of a small number of consumptive items, through a limited number of wholesale outlets, but not to or through chain stores, cigar stores or other cut-price stores;

In pursuance of a policy directed to maintenance of the resale prices fixed by it for sale of products sold by it under its name, including its leading line of "Lifetime" pens, under which, aggressively and successfully pursued and enforced by it and its agents and employees, it attached such prices to its various products and made same known to customers or prospective customers, advised same and trade locally that it would discontinue dealing with price cutters, and did so discontinue and made known to trade its action in so doing, and under which policy it did not sell its said products to any dealer without explaining and emphasizing its aforesaid policy and practice thereunder and satisfying itself as to said dealers favorable reaction thereto, though professing not to desire any undertaking, and rejecting, in form, any agreement to maintain its said prices and cautioning its salesmen or employees not to solicit or accept such undertaking—

- (a) Made use of a so-called "Non-jobbing agreement" with thousands of its retail dealer customers under which they were bound to resell its said products to consumers only and not for resale, under penalty of repossession of the products by it, and payment of liquidation damages by the dealer, and which agreement was understood by some as directed to or requiring observance of its said prices, and made it known to its said wholesalers that they would be cut off for sales to price cutters, and entered into advertising agreements with its said retailers under which latter bound themselves not to advertise its said products at cut prices and placed upon its "do not ship" list and discontinued shipments to and systematically and continually cut off supplies of, dealers ascertained by it, as a result of dealer reports investigated, and use of serial numbers placed by it on its said pens, or otherwise, to be price cutters;
- (b) Solicited and secured assurances, and agreements or promises from customers and prospective customers through its salesmen, instructed to avoid the same, while charged with the responsibility of seeing that dealers in their respective territories observed its said resale prices, and with duty to "sell" the dealer its resale price policy, and accepted accounts and filled orders following satisfactory assurances, and, frequently, promises, which dealer was informed could not be accepted, and, in price cutting cases, similarly treated old customers following assurances of cooperation;

With effect that tacit understandings inevitably resulted, and, under the continuing threat involved in the constant publicizing by it through literature,