

IN THE MATTER OF
MID WEST MILLS, INC.

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

Docket 2526. Complaint, Aug. 21, 1935—Decision, May 18, 1936

Where a corporation, engaged in the business of a jobber of upholstering fabrics, wooden frames, padding, felt, springs, and other materials having to do with construction of furniture, and in soliciting orders from customers comprised mostly of retailers, dealers, furniture manufacturers, and furniture repair men, by mailing out samples of its upholstering material,—

Adopted and used as a corporate and trade name with which to carry on its said business, a name which included word "Mills" and displayed same on tabs attached to samples sent out by it as aforesaid, and upon circular letters enclosing such samples, and upon envelopes and business cards, shipping tags, invoice blanks, billheads, and price lists, together with words in smaller print, upon such various stationery (excepting its envelopes, upon which they did not appear), "Jobbers and Converters", and supplied its said salesmen with aforesaid samples and tabs displaying its said corporate name, for display by them in soliciting orders;

The facts being it was not engaged in the manufacture of merchandise sold by it, but purchased same in job lots at sales or from the manufacturers thereof, and it did not own, operate or control any plant, mill, or factory making such merchandise or own any interest therein, but filled orders with products purchased by it and made in mills or plants which it neither owned, operated, nor controlled;

With effect of deceiving customers and prospective customers into the belief that its said products were made by it and that, in buying from it as a manufacturer of the merchandise sold by it, they were eliminating and saving the middleman's profit and obtaining better terms and prices and merchandise of better quality and later style, and that as both manufacturer and jobber of its said products, it was engaged in selling output of its own mills, and with result that trade was diverted to it from competitors similarly engaged in sale of such products and those engaged in manufacture thereof and who, respectively, do not in any way misrepresent their status as manufacturers of the products which they sell; to the substantial injury of substantial competition in 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. William C. Reeves*, trial examiner.

Mr. George Foulkes for the Commission.

Kamfner, Halligan & Marks, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

566

Complaint

mission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Mid West Mills, 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, 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 is and has been since the year 1923, or thereabouts, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business and office in the city of Chicago, in said State. It is now and has been since the year 1923, or thereabouts, engaged as a jobber and wholesaler of upholstering fabrics, wooden frames, padding, felt, springs, and all such material relative to the construction of furniture. In the course and conduct of its business the respondent sells through salesmen or representatives appointed by it as agents in its behalf to customers, some located in the State of Illinois and others in other States of the United States, and pursuant to such sales shipments are made from respondent's place of business in Illinois to such customers. In the course and conduct of its business, respondent is in substantial competition with other corporations, partnerships, firms, and persons engaged in the sale of like articles of merchandise between and among the various States in the United States.

PAR. 2. The respondent in the course and conduct of its business as aforesaid, in soliciting the sale of and selling of upholstering fabrics, wooden frames, padding, felts, springs, and all such material relative to the construction of furniture, as described in paragraph 1 hereof, adopted about the year 1923 as and for its corporate and trade name the words "Mid West Mills, Inc.", under which to carry on its business, which name it now uses and has used continuously since the aforesaid date. Salesmen in the employ of the said respondent are equipped with and use samples of products in soliciting orders from customers. Tabs affixed to said samples bear the words "Mid West Mills, Inc." together with the address of the said concern. Envelopes distributed in interstate commerce also contain the said corporate name and address. Letterheads, invoices, and other printed material used by the said corporation feature the corporate name containing the word "Mills."

PAR. 3. In truth and in fact, the respondent is not and has not been engaged in the manufacture of the upholstering fabrics, wooden

Complaint

22 F. T. C.

frames, padding, felt, springs, and other similar products, described in paragraph 1 hereof, nor does it own, nor has it owned and operated or controlled any mill, plant, or factory wherein such merchandise is being or has been manufactured, but, on the contrary, orders are filled and have been filled with merchandise manufactured in a mill, plant, or factory which it neither owns, operates nor controls.

PAR. 4. There are among the competitors of the respondent, described in paragraph 1 hereof, corporations, partnerships, firms and persons who are engaged in the business of selling, as wholesalers and jobbers, products similar to the products of the respondent, who truthfully represent and denominate themselves as being jobbers and wholesalers and do not claim to be manufacturers; and there are also among such competitors of the respondent, corporations, partnerships, firms, and persons who are engaged in the manufacture of products similar to the products sold by the respondent, who truthfully represent and denominate themselves as being manufacturers.

PAR. 5. There is a preference on the part of certain customers in different States of the United States for goods, wares and merchandise bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said customers that by dealing directly with a mill owner or manufacturer, they can eliminate the profit of the middleman and that they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or corporations, partnerships, firms and persons not manufacturing goods, wares, merchandise, that sell to such customers.

PAR. 6. The use by the respondent of the words "Mid West Mills", as aforesaid, has had and still has the tendency and capacity to deceive, has deceived and still deceives customers and prospective customers into the belief that said products of respondent are manufactured by it and that by buying from the respondent, such customers and prospective customers will eliminate and save the middleman's profit, and to purchase said products from respondent in such erroneous belief. By the use of such corporate title and trade name by respondent, as set forth in paragraph 2 hereof, trade is diverted by respondent from its competitors, and thereby substantial injury has been done and is being done to substantial competition in interstate commerce.

PAR. 7. 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 August 21, 1935, issued and served its complaint in this proceeding on respondent, Mid West Mills, 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 George Foulkes, attorney for the Commission, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by Edwin A. Halligan, 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, and briefs in support of the complaint; 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, Mid West Mills, Inc., is a corporation organized under the laws of the State of Illinois. Respondent's principal office and place of business is at 1726-28 Arcade Place, in Chicago, in said State.

In or about the year 1922, Harry P. Strasberg, president of the respondent corporation, purchased the assets and good will of a defunct corporation, organized under the laws of the State of Illinois, bearing the corporate name Mid West Mills, Inc. This purchase was made from Edwin C. Buhl, trustee appointed by the court in a proceeding then pending in the Eastern Division of the United States District Court of the Northern District of the State of Illinois.

Mr. Strasberg then caused to be organized under the laws of the State of Illinois another corporation with the corporate name of Mid West Mills Supply, Inc., which corporation took over the assets

and good will of said defunct corporation, as stated. In May 1927, the name of said corporation was changed from Mid West Mills Supply, Inc., to Mid West Mills, Inc., which name has been used, and is now used, as and for respondent's corporate name.

Mr. Strasberg became the president of the corporation so organized, which since its organization has been engaged in the business of a jobber of upholstering fabrics, wooden frames, padding, felt, springs, and other materials relative to the construction of furniture.

Respondent has eight salesmen who have their headquarters at respondent's place of business in Chicago and who solicit orders for and sell respondent's merchandise throughout the United States. When orders are received by such salesmen, they are filled by respondent from its place of business in Chicago and shipped by respondent to customers some of whom reside in the State of Illinois and others in other States of the United States.

In the year 1934 the respondent did a gross business of approximately \$525,000, and for the year 1935 a gross business of approximately \$550,000.

In the course and conduct of its business respondent is in substantial competition with other corporations, partnerships, firms and persons engaged in the sale of like articles of merchandise between and among the various States of the United States.

PAR. 2. The respondent, in the course and conduct of its business, has adopted and now uses, and has used as described in paragraph 1 hereof, as and for its corporate and trade name the words "Mid West Mills, Inc." with which to carry on its business.

Respondent has solicited, and now solicits, orders from customers comprised for the most part of retailers, dealers, furniture manufacturers, and furniture repairmen by mailing out samples of its upholstery material in order that prospective customers may ascertain the quality of the product offered for sale. To such samples are attached small tabs on which are printed the words "Mid West Mills, Inc., 1726 Arcade Pl., Chicago, Illinois." With such samples to which tabs, marked as aforesaid, are attached, respondent encloses a circular letter written on stationery used by respondent concern in the conduct of its business, the letterhead on said letter being as follows:

UPHOLSTERY DRAPERY AUTOMOBILE FABRICS COTTON GOODS

Telephone Seeley 6340

MID WEST MILLS, INC.

—Jobbers and Converters—

1722-1728 Arcade Place

CHICAGO

566

Findings

Respondent has been using the words "Jobbers and Converters" along with its corporate title and name, as aforesaid, since the year 1932 and is now using the same in the conduct of its said business.

Salesmen in the employ of respondent are equipped with and use said samples of products of upholstery material in soliciting orders from customers. When soliciting such orders respondent's salesmen display said samples to customers, and in many instances no other disclosures are made by said salesmen to customers as to the nature of respondent's business other than the corporate and trade name of respondent printed on the tab attached to said sample.

In the year 1930 and for about two years thereafter the respondent used the following letterhead in the conduct of its business:

MID WEST MILLS, INC.

Jobbers and Liquidators

1726-28 Arcade Place

CHICAGO.

CASH BUYERS OF

Automobile and Upholstering Fabrics, Cotton Goods, Woolens, Silks, Corduroys, Threads, Leather and Imitation Leather, Etc.

The use of the foregoing letterhead was discontinued by respondent in the year 1932.

Envelopes used by respondent in conducting its correspondence, in the sale and offering for sale by respondent of its merchandise, have printed thereon the words—

Mid West Mills, Inc.,

1722-28 Arcade Pl.,

Chicago, Illinois.

On these envelopes respondent does not print the words "Jobbers and Converters".

Since the year 1930 respondent has used letterheads, business cards, shipping tags, invoice blanks, billheads, price lists, and circular letters on which there have been printed, and are now printed, following respondent's corporate name, and in print smaller than the print used for its said corporate name, the words "Jobbers and Converters".

PAR. 3. Respondent is not, and has not been, engaged in the manufacture of merchandise which it sells. All of the upholstery material, drapery, automobile fabrics, wooden frames, padding, felt, springs, and other similar products sold by respondent to its customers, among whom are wholesale and retail dealers as well as the furniture trade and furniture manufacturers, are purchased by respondent in job lots at sales or from the manufacturers thereof.

Findings

22 F. T. C.

Respondent does not own, nor has it owned and operated or controlled any plant, mill, or factory wherein such merchandise is being, or has been manufactured, nor has respondent owned any interest in any such plant, mill, or factory; but on the contrary all of respondent's orders are filled, and have been filled, with merchandise purchased by respondent and manufactured in mills, plants, or factories which respondent neither owns, operates, nor controls.

PAR. 4. There are among the competitors of respondent, described in paragraph 1 hereof, companies, partnerships, firms, and persons who are engaged in the business of selling as wholesalers and jobbers products similar to the products of respondent, who truthfully represent and denominate themselves as being jobbers and wholesalers, and who do not claim to operate mills or to be manufacturers; and there are also among such competitors of respondent corporations, partnerships, firms, and persons who are engaged in the manufacture of products similar to the products sold by the respondent, who truthfully represent and denominate themselves as being manufacturers.

PAR. 5. There is a well developed belief in the business world generally that by buying direct from manufacturers rather than from jobbers a saving in price can thereby be effected, and because of this a preference exists on the part of certain customers in different States of the United States for upholstery material bought directly from the mill or from the manufacturer thereof. Such customers believe that by eliminating the profit of middlemen or jobbers they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or from corporations, partnerships, firms, and persons not manufacturing upholstery materials, wooden frames, padding, felt, springs, and other similar products, who sell to such customers.

There also appears to be a well developed belief in the business world, especially among furniture manufacturers, that preference to buy upholstery material directly from upholstery manufacturers exists because by so doing they can get new materials and new styles of such materials, as well as effect a saving in price.

PAR. 6. The use by the respondent of the words "Mid West Mills, Inc.," as aforesaid, has had, and still has, the tendency and capacity to deceive, has deceived, and still deceives customers and prospective customers into the belief that said products of respondent are manufactured by it and that by buying from the respondent such customers and prospective customers will eliminate and save the middleman's profit, as well as obtain merchandise of better quality and later style, and such customers do purchase said products from respondent in such erroneous belief. The use by respondent of the

Order

words "Mid West Mills" in its corporate name and title, has had, and still has, the tendency and capacity to mislead customers and prospective customers into the belief that the respondent manufactures the merchandise which it sells. By the use of the word "Mills" in the corporate and firm name of the respondent along with the words "Jobbers and Converters" said purchasers and prospective purchasers have been led to believe that the respondent is a manufacturer of its own merchandise as well as a jobber of the same and is engaged in selling the output of its own mills. By the use of such corporate title and trade name, trade is diverted to respondent from its competitors who do not, in any way, misrepresent their status with respect to being a manufacturer of the products sold by them, and thereby substantial injury has been done, and is being done, to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances described in the foregoing findings as to the facts are to the prejudice of the public and of the competitors of respondent, and are unfair methods of competition in commerce within the intent and meaning 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 DESIST¹

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 William C. Reeves,

¹ Modified order to cease and desist issued by the Commission on July 2, 1937, after reciting in the preamble thereof the fact of the complaint, answer, etc. and the making of the original hereinabove order, and Commission's application to the Court of Appeals for the Seventh Circuit to enforce the same, and opinion of said court on June 15, 1937 in *Federal Trade Commission v. Mid West Mills, Inc.*, 90 F. (2d) 723 that if respondent did not voluntarily strike the word "Mills" from its name it should clearly inform its prospective customers of the true fact, and said court's denial of the Commission's application, without prejudice to Commission order directing the addition of appropriate words which will clearly convey to the public the fact that respondent neither owns nor operates a mill, directs respondent, its officers, etc. as set forth in the original order (and with report of compliance within 30 days as also therein set forth) to—

(1) Cease and desist from the use of the corporate name Mid West Mills, Inc., or any other name of the same or similar import, unless and until there be used, in type of the same size and equally conspicuous, in immediate connection and conjunction with said name, wherever used, whether on stationery, garment labels, tickets, invoices, or other written or printed matter, the words "Jobbers and Converters, Not Mill Owners or Mill Operators"—or

(2) If respondent desires not to use the qualifying and modifying terms set forth in Paragraph (1) hereinabove, that it cease and desist altogether from the use of the word "Mills" either standing alone, or in connection or conjunction with any other word or words, in its corporate name, and on stationery, garment labels, tickets, invoices, or other written or printed matter.

Order

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 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, Mid West Mills, Inc., a corporation, its officers, agents, representatives, servants, and employees, in connection with the offering for sale and sale of upholstering fabrics, wooden frames, padding, felt, springs, and all other such material, relative to the construction of furniture, in interstate commerce, cease and desist from:

Representing, directly or indirectly, through and by use of its corporate or trade name, through letterheads, circulars, advertising literature, or in any other manner, that it is a manufacturer, mill operator, or mill owner.

It is further ordered, That the respondent above named within 30 days after the service upon it 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.

Complaint

IN THE MATTER OF

GENERAL HANDKERCHIEF MFG. COMPANY, INC.

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

Docket 2772. Complaint, Apr. 17, 1936—Decision, May 20, 1936

Where a corporation, engaged in the sale and distribution of handkerchiefs—
Included in its corporate name the letters "Mfg." and displayed said name on
circulars, advertising matter and otherwise in all of its dealings with
customers or prospective customers, and set forth on circulars distributed
to such customers the words "Manufactured exclusively by General Hand-
kerchief Manufacturing Co., Inc. * * * Chicago, Illinois; Factory
* * * Newark, New Jersey. We manufacture * * * and welcome
an opportunity of quoting you * * *", and also distributed, as afore-
said, a circular containing words "We manufacture a complete line
* * *" etc., and printed on its billheads, circulated by it, following its
corporate name, word "Manufacturers", facts being it did not make the
products dealt in by it, nor own or control any factory at Newark, Chi-
cago, or any other place making the same, but sold products made by
persons or concerns other than itself;

With tendency and capacity to confuse, mislead, and deceive a substantial
number of the purchasers of its products into the belief that it was a
manufacturer and to purchase its said products in such erroneous belief,
and in belief that in buying from it they were dealing with a manufacturer
of established business standing and thereby gaining the advantages nor-
mally had by dealing with a manufacturer rather than one not a manu-
facturer, and benefitting, according to common belief among such pur-
chasers, by assurance of more uniform line of goods and greater contract
reliability and greater desirability and advantage of such dealing, and
with effect of diverting trade to it from competitors, among whom there
are those who make and distribute such products dealt in by them, and
similarly engaged jobbers, who respectively do not misrepresent their
status as manufacturers; to the substantial injury and prejudice of
substantial competition:

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

Mr. T. H. Kennedy for the Commission.

Meyers & Lesser, of Newark, N. J., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved Sep-
tember 26, 1914, entitled "An Act to create a Federal Trade Com-
mission, to define its powers and duties, and for other purposes",