

Syllabus

IN THE MATTER OF
ABRAHAM PLATELL, DOING BUSINESS AS PLATELL
SHOE COMPANY

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

Docket 2505. Complaint, July 31, 1935—Decision, June 23, 1936

Where an individual, engaged in the sale of shoes at wholesale, and neither a doctor, nor with medical or other such degree—

- (a) Caused the words "Dr. Florence Scientific Shoe" to be imprinted across the sole of a certain brand sold by him, and on the sock lining of said shoes the words "Dr. Florence Scientific Arch Support," and packed and shipped the same in cartons upon which appeared said last-named words and "Reg. U. S. Pat. Off.," and used as an advertising medium a counter card upon which appeared "Sole agency for Dr. Florence Scientific Arch Support Shoes, Reg. U. S. Pat. Off.," and more recently used said various words with "Dr." changed to "Dr.,"

Facts being said shoes were designed by said individual and there was no doctor employed by him, nor in any way connected with his said business, and his said shoes marked as above and sold as "Dr." or "Doctor" shoes were not made in accordance with design or under the supervision of a doctor and did not contain special scientific or orthopedic features which were the result of medical advice or services, and were not designed or constructed to correct or alleviate any foot troubles or weakness;

With capacity and tendency to mislead many among the trade and consuming public into the belief that said shoes had been made or designed by doctors or others with special orthopedic knowledge or contained at least some feature or features not common to the ordinary line of footwear, and designed or intended to correct some foot ailment or weakness or at least afford some relief therefrom, and with effect of causing such public to purchase said shoes in such belief, and of unfairly diverting trade from and otherwise injuring competitors; and

- (b) Included in his correspondence and on his invoices, letterheads, or stationery, along with his name, the words "Manufacturing Wholesalers of Shoes", notwithstanding fact he neither owned, operated, nor controlled any factory or place at which his shoes, made for, and as specified by, him, were manufactured;

With capacity and tendency to divert trade to him from competitors; to the substantial injury of competition throughout the States:

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. John L. Hornor*, trial examiner.

Mr. Morton Nesmith for the Commission.

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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 Abraham Platell, doing business under the trade name and style of Platell Shoe Co., 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Abraham Platell is an individual trading and doing business under the name and style of Platell Shoe Co., with his principal place of business at 158 Duane St., in the city of New York, State of New York. Said respondent is now and for more than 12 years last past has been engaged in the sale of shoes, being a wholesaler thereof, between and among the different States of the United States. He has caused and still causes said shoes when sold to be shipped from his place of business in the city of New York, State of New York, to purchasers thereof located in States other than the State of New York.

In the course and conduct of his business as aforesaid, the respondent is in competition with other individuals, partnerships, and corporations likewise engaged in the sale and distribution of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., in the course and conduct of his business as aforesaid, in soliciting the sale of and selling his shoes in interstate commerce, for a period of 12 years prior to October 1933, caused the words

Dr. Florence
Scientific
Arch Support

to be stamped on or across the sole of a certain brand of shoes sold by him.

Said respondent also during the said period of time caused said shoes to be packed and shipped in cartons on which the said words "Dr. Florence Scientific Arch Support" were conspicuously displayed.

Said respondent also during the said period of time furnished and distributed to his customers an agency sign upon which the words "Dr. Florence Scientific Arch Support Shoes" conspicuously ap-

peared, together with a depiction of certain features of a shoe claimed by respondent to be orthopedic in character.

Said respondent also during said period of time on a few occasions paid a portion of the advertising expenses of his customers or dealers when they advertised his "Dr. Florence" shoes.

PAR. 3. Subsequent to October 1933, said respondent Abraham Platell, doing business under the trade name and style of Platell Shoe Co., discontinued the practice of causing said brand of shoes to be advertised or labelled as "Dr. Florence" by deleting the "r" from the "Dr." and inserting in lieu thereof "i."

Said respondent since October 1933 has caused and still causes this brand of shoes so sold by him in interstate commerce to be marked, labelled, and advertised as "Di. Florence Shoes."

PAR. 4. The respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., in the course and conduct of his business as aforesaid, caused and still causes letterheads and invoices to be printed for him and distributed in interstate commerce on which appeared the following words "Platell Shoe Company—Manufacturing Wholesalers of Shoes—158 Duane Street."

PAR. 5. In truth and in fact the shoes so marked, stamped, labelled, advertised, and sold as described in paragraph 2 hereof were not made in accordance with design of or under the supervision of a doctor, and did not contain special scientific or orthopedic features which were the result of medical advice or services, or anyone skilled in the science of orthopedics, nor was such footwear designed or constructed for the purpose of correcting or alleviating any particular kind of foot trouble, except to the extent that the arch in the shoes so branded was purported to correct or support ailing arches, all of which has the capacity and tendency to mislead many among the aforesaid trade and many among the consuming public into the belief that said shoes were fashioned and designed by a doctor or others with special orthopedic knowledge.

In truth and in fact the trade name for the shoes so marked, stamped, labelled, branded, advertised, and sold as described in paragraph 3 hereof closely simulates the trade name described in paragraph 2 hereof, and said shoes are not made in accordance with or under the supervision of a doctor and do not contain special scientific or orthopedic features which are the result of medical advice or services, or anyone skilled in the science of orthopedics, nor is such footwear designed or constructed for the purpose of correcting or alleviating any particular kind of foot trouble, except to the extent that the arch in the shoes so branded is purported to correct or support ailing arches, all of which has the capacity and tendency to mislead many among the aforesaid trade and many among the con-

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suming public into the belief that said shoes are fashioned and designed by a doctor or others with special orthopedic knowledge.

PAR. 6. In truth and in fact the respondent, Abraham Platell, doing business as Platell Shoe Co., is not a manufacturer of shoes nor a manufacturing wholesaler, nor does he own, operate, or control any factory wherein the shoes which he sells and distributes in interstate commerce as aforesaid are made, manufactured, or constructed. Said representations made by respondent are false and misleading, and have the tendency and capacity to mislead and deceive the purchasers of respondent's shoes into the belief that when purchasing from respondent, they are dealing with the manufacturer or his direct wholesaler, thereby gaining an advantage by saving the middleman's profits.

PAR. 7. The respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., in the sale of his shoes as aforesaid, ships and distributes to retail dealers, and said retail dealers resell the shoes so labelled and branded to the consuming public.

PAR. 8. There are among the competitors of the respondent referred to in paragraph 1 hereof many persons, firms, and corporations who manufacture and sell at wholesale shoes which contain special features designed to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent, persons, firms, and corporations who manufacture and sell at wholesale shoes manufactured along standard lines, over standard lasts, and for which no special featured claims or representations are made, and the use by the respondent of the abbreviation "Dr." or the simulation thereof "Di." in connection or in conjunction with the name or with any other word or words, or in any way as a trade name, brand, or designation for his shoes, or in the advertisement of his shoes, together with other special feature representations, and the representation by the respondent that he is a manufacturing wholesaler, have the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 9. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate 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.

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 1, 1935, issued and served its complaint in this proceeding upon respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., 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 Morton Nesmith, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by respondent without counsel; and said testimony and evidence were 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, testimony and evidence and brief 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. The respondent, Abraham Platell, is an individual doing business under the trade name and style of Platell Shoe Co., with his principal place of business at 158 Duane St., New York City. Said respondent is now, and has been for several years last past, engaged in the business of selling shoes at wholesale and has sold the same during said time between and among the several States of the United States. Respondent has sold, and still causes the articles in which he deals to be sold and transported from his place of business into and through other States of the United States to various retail dealers located at points in the different States of the United States other than the State of New York. In the course and conduct of his business, respondent has been, and is, in competition with other jobbers and wholesalers, engaged in the sale and transportation of shoes at wholesale, in interstate commerce.

PAR. 2. Respondent, in the course and conduct of his business in soliciting the sale of and selling his shoes in interstate commerce, did cause the words, "Dr. Florence Scientific Shoe," to be imprinted on and across the sole of a certain brand of shoes sold by him. Respondent, in the course and conduct of his business, also caused to

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be stamped on the sock lining of said shoes the words, "Dr. Florence Scientific Arch Support." Said shoes were, until sometime in the year 1933, packed and shipped in cartons on which appeared a label, "Dr. Florence Scientific Arch Support, Reg. U. S. Pat. Off."

In the course and conduct of his business, respondent used as an advertising medium, a counter card upon which appeared the following: "Sole agency for Dr. Florence Scientific Arch Support Shoes, Reg. U. S. Pat. Off."

In 1933, respondent changed his labels and advertising, deleting the "r" and using the letter "i" so that it read "Di. Florence."

PAR. 3. Respondent used in his correspondence, and for invoicing his products, letterheads or stationery upon which appeared the following: "Platell Shoe Company, Manufacturing Wholesalers of shoes, 158 Duane Street, New York, New York." Respondent does not own, operate, or control any factory, business, or place of business at which his shoes are manufactured. All shoes are manufactured for him in accordance with his specifications.

PAR. 4. The shoes sold by respondent were designed by the respondent himself and there is not, nor has there ever been, a Dr. Florence employed by the respondent, nor any other doctor in respondent's employ, or in any way connected with his business. "Florence" is the given name of respondent's sister, and this appellation was given his brand of shoes for that reason. Respondent is not a doctor and has no medical or other degree of that character.

PAR. 5. The members of the public are and were of the opinion and belief that a shoe which is labeled or marked "Dr." is one which has been designed or constructed on the advice of a doctor, or one having a special scientific knowledge about the formation of the foot, bones, etc.; that a doctor would know more about the functions of the foot, bones of the foot, and have a better idea of how to build shoes than an ordinary shoemaker, and that when a shoe is marked or labeled with a "Dr." brand their belief would be that it is an orthopedic shoe expected to correct imperfections in feet which were causing trouble.

PAR. 6. In truth and in fact the shoes so marked, stamped, branded, or labeled and sold as "Dr." or "Doctor" shoes, as described in paragraph 2 hereof, were not made in accordance with the design or under the supervision of a doctor, and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor was such footwear designed or constructed for the purpose of correcting or alleviating any foot troubles or weakness of the feet, all of which has a capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been made or were manufactured or designed by doctors or others with special orthopedic knowledge, or at

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least contain some feature or features not common to the ordinary line of footwear which feature or features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom and caused said public to purchase respondent's shoes under this belief, all of which unfairly diverts trade from and otherwise injures respondent's competitors in interstate commerce.

PAR. 7. The aforesaid advertisements, representations, and statements made by the respondent as set forth in the foregoing paragraphs hereof, have had the capacity and tendency to divert trade to said respondent from competitors. Competition throughout the various States of the United States has been substantially injured by said respondent through the use of or by means of such representations and statements.

CONCLUSION

The aforesaid acts and practices of respondent 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 complaint of the Commission, and testimony and evidence taken before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provision 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, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., his agents, servants, and employees, in connection with soliciting the sale of or selling his shoes in interstate commerce, cease and desist from:

(1) Representing, directly or indirectly, through advertisements or on labels, stationery, invoices, and other printed matter, or in any other manner, that his shoes are made in accordance with the design or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

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(2) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name in the advertising or designation of his shoes; or in any way which may have the tendency and capacity to confuse, mislead, or deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

(3) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name, brand, label, or designation on his shoes; or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

(4) Directly or indirectly using or causing to be used the abbreviation "Di." or any other abbreviation simulating the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name in the advertising or designation of his shoes; or in any way which may have the tendency and capacity to confuse, mislead, or deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

(5) Directly or indirectly representing that he is a manufacturer through the use of the word "manufacturing" or any other word or words of similar import and effect, when he does not absolutely own, operate, or control a factory wherein said shoes are made or manufactured.

It is further ordered, That the respondent shall, within 60 days after the service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

DAVID RUBENSTEIN AND HERMAN SCHWARTZ DOING
BUSINESS AS NU-WAY SHOE CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2560. Complaint, Sept. 26, 1935—Decision, June 23, 1936*

Where a firm engaged in sale of shoes at wholesale—

- (a) Stamped or printed upon boxes, cartons, invoices, and other printed matter used by them in the sale of certain brands of their said product, labels or titles "Dr. Carol's Health Shoes," "Dr. Martin's Walk-O-Pedic", and "Dr. Rubenshaw's Supreme Stout," and caused such labels and titles to be affixed and sewn into the interlining of said products, facts being said shoes, were not made in accordance with design, or under supervision of, a doctor, and there was no such doctor employed by or connected with them as indicated by aforesaid fictitious names; with capacity and tendency to mislead some of the trade and many ultimate consumers into the belief that said shoes were or had been fashioned or designed by a doctor; and
- (b) Caused word "Manufacturers" to be printed on certain invoices, stationery and billheads, and other printed matter used by them in the course and conduct of their business, notwithstanding fact they neither owned, operated, nor controlled any factory in which their shoes were made; with capacity and tendency to mislead and deceive purchasers of their said products into the belief that in buying from them they were dealing with manufacturers and thereby gaining an advantage in saving the middleman's profit; and

With capacity and tendency unfairly to divert trade from or otherwise injure and prejudice competitors, among whom there are those who manufacture and sell at wholesale shoes which do contain special features designed to correct and alleviate certain foot ailments and weaknesses, and those who similarly sell shoes made along standard lines and over standard lasts and for which no special feature representations or claims are made, and among whom are also many manufacturers who rightfully call themselves such; to the substantial injury of competition throughout the various States:

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. Robert S. Hall*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Alexander Bicks, of New York City, for respondents.

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,"