

Complaint

IN THE MATTER OF

SAM FISHER, TRADING AS HOLLYWOOD SHIRT
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2583. Complaint, Oct. 16, 1935—Decision, July 11, 1936

Where an individual engaged in the sale of shirts at retail and by mail order, chiefly, with some 1,500 or 2,000 agents soliciting orders in response to which merchandise was shipped; in advertising his said merchandise and soliciting agents in newspapers and trade periodicals in competition with others similarly engaged—

- (a) Represented, in advertisements and circulars sent to prospective agents and purchasers, that his said shirts were made of the "finest sanforized lustrous broadcloth" and offered as a "sales leader" a particular shirt for 57 cents as made from first quality genuine broadcloth, notwithstanding fact lowest construction of "single" broadcloth is 108 warp yarns per inch and 60 filling yarns, while construction of particular cloth thus advertised was 104 warp yarns and 58 filling yarns;
- (b) Employed word "manufacturer" in said advertising and stressed fact that shirts were being sold "directly from manufacturer to wearer," and that there were no middleman's profits, and shirts had not passed through many hands, and that because of the direct transaction of shipping said articles from manufacturer to wearer money saved would inure to the benefit of the ultimate consumer, facts being he neither owned nor was interested in any way in a shirt factory, but purchased his said products from independent manufacturer thereof and filled orders from the stock thus purchased as they came in, and there was included not only wholesaler's profit but agent's commission, and the direct to wearer savings claims were untrue;
- With tendency and capacity to divert business from competitors who truthfully advertise their products:

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

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 Sam Fisher, an individual trading as Hollywood Shirt Co., hereinafter referred to as the respondent, has been and is using unfair

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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, Sam Fisher, is an individual trading as Hollywood Shirt Co., with his principal place of business located at No. 8 Allen Street, in the city of New York, in the State of New York. Respondent is now, and for a considerable time immediately heretofore has been, engaged in the selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, manufactured products described as broadcloth shirts, in the course and conduct of which said respondent has caused and causes its said shirt products, when sold, to be transported from his 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 the said respondent has been, and is now, engaged in substantial competition with corporations, firms, partnerships, and other individuals engaged in like commerce.

PAR. 2. Respondent has offered for sale and now offers for sale his shirt products in interstate commerce, as set forth in paragraph 1 hereof, by use of the mails, by use of interstate carriers and other channels of interstate commerce, by means of advertising in newspapers and other periodicals and advertising literature which have and have had a circulation in and through the various States of the United States and the District of Columbia, and by means of agents and solicitors taking purchase orders for delivery of shirts in and among the various States of the United States and in the District of Columbia, in the course and conduct of which said respondent has made, and now makes, false and misleading statements and representations, to the injury of the public and to the injury of respondent's competitors.

PAR. 3. In the course and conduct of the business of the said respondent, as aforesaid, and in the course of the advertising and promotion of said business, as aforesaid, respondent has made and now makes the following statements and representations, among others, to wit:

Broadcloth
SELL SHIRTS AT 57¢

Don't lose sales because of high phane wrapped shirts! This is not a prices. Now you can actually quote wholesale price but INCLUDES your a RETAIL price of as low as 57¢ for commission! Sensational low prices on first quality, genuine broadcloth Cello- quality shirts, including finest Sanfor-

ized lustrous broadcloth will swamp you with orders. Just show complete kit furnished you free, write orders, pocket liberal advance cash commission. We deliver direct to customer on absolute money-back guarantee. Hollywood shirts will be replaced or money refunded even months after wearing if not 100% satisfactory. Write today for your free outfit.

FREE OUTFIT

No investment or experience required. Pay no money. No red tape or delays. A postal card will bring you sample-shirt fabrics, order books and full instructions. We have no circulars or bunk to send you. If you want to make real money write quick before supply of outfits is gone.

HOLLYWOOD SHIRT COMPANY

Dept. F.

8 Allen St.,

New York.

If you could see how our shirts are cut and how up to 30 yards of cloth is used in cutting one dozen whereas on cheap shirts as little as 24 yards could be used. We repeat, if you actually knew all these things as matters of fact, then you would really have the enthusiasm and confidence that a salesman must have in his product in order to successfully sell it.

The customer buys direct. Shirts have NOT passed through many hands, have not been on shelves for many months. They are shipped direct from manufacturer to wearer. Length of time from actual production to delivery is a matter of days instead of months and even years. Time will spoil wearing apparel even if not worn.

In buying from you, there is only One commission included in the price, your own commission. There are no profits or expenses taken out for retail stores and jobbers. The result, naturally, is better value. A man does not wear expenses and profits. He wears shirts. If more of his money goes into the actual making of the shirts, he is careful in buying, they make sure they get the most for the money. They even employ high salaried buyers just to make sure they buy right. Why shouldn't an individual buy his personal needs that way? Why not get a better shirt for the same money or a similar shirt for less money?

We do not sacrifice quality for the sake of a few cents difference in price. On the other hand, most shirts sold to stores are sold on a price basis.

PAR. 4. In the course and conduct of the business of the said respondent, as aforesaid, and in the advertising, promotion, selling, and distribution of said product, as aforesaid, respondent has falsely and misleadingly stated, and now falsely and misleadingly states and represents that the shirts offered and sold by said respondent, as aforesaid, are: First quality broadcloth; genuine broadcloth; the finest broadcloth; Sanforized broadcloth; lustrous broadcloth; broadcloth: That the respondent is the manufacturer of the shirts which he sells; that there is but one middle profit between manufacturer and wearer; that respondent's shirts will be replaced or money refunded "even months after wearing" if not 100 percent satisfactory; that said shirts contain the equivalent of 25 percent more yardage than other shirts of similar price; that in respondent's shirts one gets either "a better shirt for the same money," or "a similar shirt

- for less money"; that respondent does not sacrifice quality for price; that "most shirts sold to stores are sold on a price basis," and that stores and agents selling respondent's shirts are afforded large profit possibilities by selling respondent's shirts; whereas, in truth and in fact, respondent's said shirt product is not first-quality broadcloth, is not genuine broadcloth, is not the finest broadcloth, is not Sanforized broadcloth, is not lustrous broadcloth, and is not broadcloth, and whereas, further, in truth and in fact, respondent is not the manufacturer of the shirts which he sells and offers for sale; the customer does not buy direct from the manufacturer of said shirts; there is more than one profit between manufacturer and wearer of said shirts; the respondent's shirts will not be replaced or money refunded even months after wearing or at any time if said shirts are not 100 percent satisfactory; said shirts do not contain the equivalent of 25 percent more yardage than other shirts of similar price; the customer or wearer does not get either a better shirt for the same money or a similar shirt for less money than offered for sale or sold by respondent's competitors; respondent does sacrifice quality for price; most shirts are not sold to stores on a price basis, and stores or agents selling respondent's shirts are without large profit possibilities in selling respondent's shirt.

PAR. 5. The aforesaid false and misleading statements and representations so made by respondent in the course and conduct of his business, as aforesaid, have had and have the tendency and capacity to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of like products of competitors of respondent and the purchasing public into the false and erroneous belief that the said statements and representations are true, thereby causing said customers and prospective customers of competitors of respondent to purchase respondent's shirts in lieu and instead of shirts of respondent's competitors, in consequence of which trade has been and is diverted to respondent from his competitors who do not misrepresent their products, all thereby substantially injuring respondent's competitors and competition in interstate commerce.

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 16, 1935, issued and on October 19, 1935, served its complaint upon respondent, Sam Fisher, trading as Hollywood Shirt Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said

act. Respondent filed no answer to the complaint. Testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it; 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, 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, Sam Fisher, is an individual trading as Hollywood Shirt Co., with his principal place of business located in the city and State of New York. For a number of years prior to the filing of the complaint the respondent has been and now is operating a store and also a mail order business dealing exclusively in shirts. While he sells at retail, the bulk of his business consists of mail orders. He has between 1,500 and 2,000 agents who solicit orders throughout the United States. The orders are mailed in to New York and the merchandise is shipped from respondent's place of business to the various purchasers in States other than the State of New York. Respondent advertises his merchandise and solicits agents in newspapers and trade magazines published in various States. He is in competition with other mail order houses who are likewise selling shirts either by direct delivery to the ultimate consumer, or, as does the respondent, by shipping the merchandise to the respective agents who in turn deliver the goods to the customer, collect the purchase price, and remit the money, less their commissions, to their respective firms.

PAR. 2. In the course and conduct of his business as aforesaid, the respondent up until October 16, 1935, sent out to prospective agents and prospective purchasers advertisements and circulars in which the respondent stressed two things: First, he emphasized the quality of the shirts and the sensationally low prices at which they are sold. He represented that the shirts are manufactured of the "finest sanforized lustrous broadcloth." Second, he employed the word "manufacturer" and stressed the fact that the shirts were being sold "directly from manufacturer to wearer;" that there were no profits to the middleman; that the shirts had not passed through many hands; and that

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because of the direct transaction of shipping the shirts from manufacturer to wearer the money that is saved would inure to the benefit of the ultimate consumer.

PAR. 3. The statements made in the advertisements as above described did not conform to the true facts. The respondent does not now and never did own a factory, nor is he interested in any way in a shirt factory. All of his shirts are bought by him from an independent corporation which manufactured them; they are placed in stock and he then fills his orders from that stock as they come in. His representations, therefore, that the merchandise is shipped from the manufacturer direct to the wearer, and that the wearer benefits by reason of a saving in expenses, was not true. Not only is there the profit to the wholesaler, but also the commission which is paid to the agent.

PAR. 4. In the course and conduct of his business as aforesaid, respondent advertised and offered for sale as a "sales leader" a particular shirt for 57¢ as being manufactured from first quality, genuine broadcloth, when that was not true. The lowest construction of "single" broadcloth is 108 warp yarns per inch and 60 filling yarns per inch and the Commission so finds to be the fact. The particular cloth advertised by the respondent was 104 warp yarns per inch and 58 filling yarns per inch. It appears that since the filing of the complaint he had abandoned the particular manner of advertising objected to and refrained from representations that the shirts were being sold direct from manufacturer to wearer, and he has, since that time also modified the descriptive language used in the advertisements.

PAR. 5. The Commission finds that the representations and statements made by the respondent were false and misleading and had a tendency and capacity to divert business from competitors of the respondent who truthfully advertise their products.

PAR. 6. The record shows that the advertisements complained of had been discontinued some months prior to the taking of testimony in this case. There is no assurance in sight that respondent, if not prohibited, would not resume and continue his former acts and practices as hereinabove set out.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in commerce and constituted 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before an examiner of the Commission theretofore duly designated by it in support of the charges of said complaint and no evidence being offered in opposition thereto and upon brief filed herein by William L. Pencke, counsel for the Commission, brief of respondent and oral argument having been waived, 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, Sam Fisher, trading as Hollywood Shirt Company, his agents, servants, and employees, in connection with the sale, and the advertising and offering for sale, of shirts in interstate commerce, cease and desist from:

1. Representing, by use of the words "manufacturer" or "direct from manufacturer to wearer," or words of similar meaning, or in any other manner, that the shirts sold by respondent are manufactured by him.

2. Representing, directly or indirectly, that in purchasing shirts from respondent in preference to shirts sold by competitors, the purchasers are buying the same from a manufacturer and are thereby saving a middleman's profit.

3. Representing that any shirts sold by the respondent are manufactured from genuine broadcloth or finest sanforized, lustrous broadcloth unless and until such are the facts.

It is further ordered, That said respondent shall, within 30 days after service upon it 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
GRIFFITH PIANO COMPANY

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

Docket 2674. Complaint, Dec. 30, 1935—Decision, July 11, 1936

Where a corporation engaged in manufacture of a square type of piano sold under trade name "SpinetGrand," featured in colonial designs, mainly, and extensively advertised in newspapers through the United States, and with a reputation of merit because of its excellence of tone and unique design, and usually so advertised and depicted as to show the rectangular shape, short depth, and four legs, and with slogan, always, "Occupies only the space of a lounge"; and thereafter a dealer engaged in sale of its "Colonial Grand" grand piano, of conventional grand piano design in that sounding board or harp was in horizontal position and had shape of a wing or harp, with fifth leg supporting narrow tip end thereof—

- (a) Simulated in newspapers and periodical magazines, advertisements of such "SpinetGrand" by said competitor manufacturer through so photographing its own product that only front part was visible, and impression was given that it was a square piano, and through making illusion complete by erasing fifth leg from depiction, and adopted phrase "Occupies no more space than a lounge or sofa," in imitation of aforesaid competitive slogan, with result that readers were lead into false belief that piano thus advertised by it was that made and sold by aforesaid competitor; and
- (b) Made false and disparaging statements about said competitive product, which it had placed on the floor of its showroom and which had been kept out of tune, through such salesmen's comments as "is merely an antique," and "Do you want a piece of furniture or a piano," and "The tone of this piano is not good and it has the action of the old square piano," and in various ways falsely, misleadingly, and unfairly criticized and disparaged same, including unfavorable and unjust tone comparisons between it and its own product;

With result that prospective purchasers were confused and misled by such false and misleading advertisements, and other such purchasers were diverted from its competitors by reason of such disparaging and false statements and comparisons:

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

Before *Mr. Joseph A. Simpson*, trial examiner.
Mr. William L. Pencke for the Commission.

COMPLAINT

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