

Complaint

23 F. T. C.

IN THE MATTER OF
JACK DIAMOND, TRADING AS DIAMOND KNITTING
MILLS

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

Docket 2645. Complaint, December 5, 1935—Decision, July 17, 1936

Where an individual engaged in sale and distribution of knitted garments, neckwear, and other wearing apparel, made for him in factories or mills owned by others, on a contract basis at a specified price per dozen, from yarn furnished by him, and under complete supervision and control of such others, and not to any extent under control of said individual, who neither owned, operated nor controlled any mill, plant, or factory making or knitting products thus dealt in by him—

Used, as a trade name, name including words "Knitting Mills" on letterheads, order blanks, and otherwise; with capacity and tendency to mislead and deceive many customers and prospective customers into belief that he owned, operated, or controlled a mill or mills making said products, and into erroneous belief that in purchasing same they were buying directly from manufacturer and were thereby eliminating profits of middlemen and obtaining various other advantages not to be had by buying goods from others than the manufacturer, and with tendency to divert business unfairly from, and otherwise injure and prejudice competitors, among whom there are those who make the garments sold by them and rightfully represent themselves as the manufacturers thereof, and others who purchase products dealt in and resell same without representing themselves as manufacturers thereof:

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. Astor Hogg for the Commission.

Mr. David M. Engelson, 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 Jack Diamond, trading as Diamond Knitting Mills, 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 the said Federal Trade Commission that a proceeding by it in respect thereof would be to the interest of the public, the said Federal

Trade Commission hereby issues its complaint against the respondent and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Jack Diamond, is an individual trading under the name and style of "Diamond Knitting Mills," with his principal place of business located in the city of New York, State of New York. That said respondent is and has been for about six years last past engaged in selling knitted garments, neckwear, and other apparel, to purchasers located in a State or States other than the State of New York, and pursuant to such sales and as a part thereof causes and has caused said knitted garments, neckwear, and other apparel so sold to be transported from his place of business in the State of New York into and through States other than the State of New York to said purchasers in the State or States in which they are located.

PAR. 2. That during all of said 6 years last past there have been and now are other persons, firms, and corporations engaged in the business of manufacturing and selling knitted garments, neckwear, and other apparel similar to those sold by respondent, and pursuant to such sales, and as a part thereof, have caused such commodities to be shipped to customers located in States other than the States of origin of such shipments, and with such other persons, firms, and corporations respondent has been and is in substantial competition.

PAR. 3. That the said respondent, Jack Diamond, in the course and conduct of his business as described in paragraph 1 hereof, adopted as and for his trade name the words "Diamond Knitting Mills," which trade name containing the words "Knitting Mills" the said respondent has used and now uses on his letterheads, order blanks, and otherwise in soliciting the sale of and selling his products in interstate commerce as aforesaid; that in truth and in fact the said respondent has not manufactured and does not manufacture the products so sold by him; and that the said respondent has not controlled and does not control the mill or mills or factory or factories in which the products sold by him are knitted or manufactured, but, on the contrary, fills his orders with products which are knitted or manufactured in a mill or factory or mills or factories which he neither owns, operates, nor controls.

PAR. 4. That the use by the respondent of the words "Knitting Mills" in his trade name as aforesaid has the capacity to mislead and deceive and does mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that respondent operates or controls a mill or mills in which the products sold by respondent as aforesaid are manufactured and that persons buying garments sold by respondent are buying said garments directly from

Findings

23 F. T. C.

the mills and from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various other advantages not to be obtained by persons purchasing goods from middlemen.

PAR. 5. That there are among the competitors of respondent referred to in paragraph 2 hereof many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof; that there are others of said competitors who purchase the garments in which they deal and resell same and who in nowise represent that they manufacture said garments; and that the aforesaid acts and practices of the respondent in representing that he owns or operates mills in which the products sold by him are manufactured tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. That the aforesaid acts and things done by the respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of the said Act of Congress hereinabove entitled.

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 the 5th day of December 1935, issued and served its complaint in this proceeding upon the respondent, Jack Diamond, an individual trading as Diamond Knitting Mills, 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 Astor Hogg, 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 David M. Engelson, attorney for the respondent; 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, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, 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, Jack Diamond, is an individual trading as Diamond Knitting Mills, with his principal place of business located in the city of New York, State of New York. He is now, and has been for several years last past, engaged in the sale and distribution of knitted garments, neckwear, and other wearing apparel to purchasers located throughout the various States of the United States. He has caused, and causes, his said products when sold by him to be transported from his place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York. He is now, and has been at all times hereinafter mentioned, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 2. Respondent has adopted, and at all times hereinafter mentioned has used and now uses, as and for his trade name the words "Diamond Knitting Mills" in connection with the offering for sale and sale of his products in commerce among and between the various States of the United States, and has caused his said trade name to be used on his letterheads, order blanks, and otherwise, in soliciting the sale of and selling his said products in interstate commerce. In and by his trade name, through the use of the word "Knitting" and of the word "Mills" respondent represents that he owns, operates, or controls a mill and that the products sold by him are manufactured by him.

Respondent did not and does not knit, make, or manufacture the products sold and distributed in interstate commerce by him; nor did he nor does he own, operate, or control any mill, plant, or factory in which said products are or were knitted, made, or manufactured. All of the products sold by him are and were manufactured in factories or mills owned by others and such products are made and were made from yarn furnished by respondent and were and are made on a contract basis at a specified price per dozen. Those making said products for respondent at a specified price per dozen have had and have complete supervision and control over their factories and respondent does not have and did not have any control of any nature over said factories.

PAR. 3. There is a preference on the part of certain retail merchants of knitted garments and other wearing apparel to deal directly with the mill owner and manufacturer thereof. There is an impression and belief existing among certain said retail merchants that

they can buy goods at a cheaper price and that they can eliminate middlemen's profits by dealing directly with the mill owner or manufacturer.

The use by the respondent of the words "Knitting" and "Mills" in his trade name as aforesaid has and has had the capacity and tendency to mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that respondent owns, operates, or controls a mill or factory, or mills or factories, in which the products sold by the respondent as aforesaid are manufactured, and into the erroneous belief that persons, firms, partnerships, and corporations buying said garments sold by respondent are buying said garments directly from the manufacturer thereof and are thereby eliminating profits of middlemen and obtaining various other advantages not to be obtained by purchasing goods from others than manufacturers.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the garments in which they deal and resell the same and who do not represent that they manufacture said garments.

The aforesaid acts and practices of the respondent, in which he represents that he owns, operates, or controls mills or factories in which the products sold by him are manufactured, tend to unfairly divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The aforesaid acts and practices of respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of competitors of respondent and constitute unfair methods of competition in commerce, and are in violation 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 before the Federal Trade Commission upon the complaint of the Commission, and the 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 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 respondent, Jack Diamond, an individual trading as Diamond Knitting Mills, his agents, representatives, and employees in connection with the offering for sale or sale of knitted goods in interstate commerce, cease and desist from:

Representing through his trade name by the use of the words "Knitting" or "Mills" alone or in connection or conjunction with any other word or words, or in any other manner whatsoever, that he owns, operates, or controls a mill or factory in which his said products are knitted or manufactured.

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

IN THE MATTER OF
GENERAL DISTILLERS, LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2402. Complaint, May 22, 1935—Decision, July 18, 1936

Where a corporation engaged as rectifier and wholesaler of liquors, and in making gin by redistillation of purchased alcohol over juniper berries and other aromatics, and neither owning, operating nor controlling any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, other than still for making of gin as aforesaid, nor distilling any beverage, but purchasing and bottling the whiskies, gins, and other spirituous beverages dealt in by it, and selling same in competition with genuine distillers, investment and expenses of which are, in general, greater than those of rectifiers, and with others engaged like itself, and who respectively truthfully used words "Distillery", "Distillers", "Distilleries", or "Distilling" as part of their corporate names and on stationery and labels, or did not thus use such words—

Displayed, on stationery and on labels attached to bottles in which it sold and shipped its said beverages, word "Distillers", as included in its corporate name, together with such words as "Distilled and bottled by", or "Bottled by", or "Made by", as case might be, and, on back labels on whiskey bottles, name of actual distiller thereof;

With effect of misleading and deceiving dealers and purchasing public into belief that whiskies, etc., sold by it were by it made and distilled from mash, wort, or wash, and of inducing dealers and purchasing public, among a substantial portion of which there is a preference for purchase of liquors bottled by actual distillers and manufacturers thereof, to buy said whiskies, etc., thus bottled and sold by it, and of thereby diverting trade to it from competitors who do not, by their corporate name or in any other manner, misrepresent themselves as manufacturers by distillation from mash, wort, or wash, of whiskies, gins and other spirituous beverages, and with capacity and tendency so to mislead, etc., and to induce dealers and purchasing public to buy its products in preference to those of truthful competitors; to the substantial injury of substantial competition in commerce:

Held, That such 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* and *Mr. John W. Addison*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. PGad B. Morehouse* for the Commission.

Mr. Clyde C. Sherwood, of San Francisco, Calif., for respondent.

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.