

Syllabus

IN THE MATTER OF

JONAS SCHAINUCK & SON, INC.

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

Docket 2768. Complaint, May 12, 1936¹—Decision, July 23, 1936

Where a corporation engaged in the operation of a chain of clothing stores for sale at retail of men's clothing in various States and cities, and in purchasing at wholesale, in connection therewith, ready-made clothing which it shipped or reshipped to its various retail stores for resale to purchasing and consuming public—

- (a) Made such statements by radio broadcast in soliciting sale of and selling its clothing, as "Divide the saving—Buy direct from Schainuck's—Their Factory-to-You Policy Saves You Money," and affixed to its garments and containers thereof labels containing legend "Maker to Wearer" and "Direct from our Factory to You," facts being it neither owned nor operated a clothing factory and did not make clothing sold by it; with effect of leading the purchasing public to believe that it was the manufacturer thereof, and thereby permitted them to receive better prices and better workmanship from it than from other retailers who do not misrepresent themselves as manufacturers;
- (b) Advertised in newspapers of wide and general circulation that it sold "All Wool Suits—Silk Lined for \$6.85," facts being chemical analysis thereof by a textile expert showed that they contained a large percentage of cotton and rayon and lining thereof contained no silk whatever;
- (c) Made such statements, in advertising, through newspapers of wide circulation and through circulars and handbills and over the radio, as "2 SUITS, 2 COATS, or 1 SUIT and 1 COAT for 1 Low PRICE," "We're Doubling the value of your clothing dollar to double the number of our clothing friends—and customers!" "2 garments for 1 low price," "It's the two-for-one low price which we originated," "Schainuck's is the shop famous for the two garments for one low price," etc., and set forth on its salesmen's cards "Schainuck's Clothes—2 for 1 Price"; facts being average price to public for any two of its garments was approximately double that at which one garment of similar quality and workmanship was offered and sold to public by other retail clothing dealers; with result of leading purchasing and consuming public to believe, and with tendency to create impression, that by patronizing its stores they would obtain two suits or two coats or one of each for price which they would ordinarily pay at other stores for only one garment of similar grade and workmanship, and thus double value of customer's clothing dollar, or obtain an extra suit or overcoat without additional cost;

With a capacity and tendency to deceive and possibility of deceiving and misleading ultimate purchasers into buying suits, overcoats or other garments from it in belief that they were dealing with the manufacturer and thus obtaining better value and workmanship for price paid than they would

¹ Amended.

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from dealers who do not falsely make such representations or that it was a much larger organization than it actually was, and with effect of misleading and deceiving the public into buying certain of its suits as and for all wool and silk lined, and of misleading and deceiving public, or with possibility of so misleading and deceiving it, into belief that they were doubling their clothing dollar by patronizing its stores, or obtaining a garment free or two garments at a price which they would ordinarily pay for one of similar grade and workmanship at other stores, and with effect of unfairly diverting trade to it from competitors who truthfully represent the maker or manufacturer of their products, and the nature, type, or quality of material from which made, and true retail value thereof, and do not falsely offer to double value of customer's clothing dollar or to give customer an additional garment free or without extra cost, or two garments for price customer ordinarily pays for one, or make promises or representations of similar or like import, and with capacity and tendency so to do; to the substantial injury of competition:

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.

Mr. James M. Hammond for the Commission.

AMENDED 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 Jonas Schainuck & Son, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Jonas Schainuck & Son, Inc., is a corporation engaged in the operation of a chain of retail clothing stores. It is organized and exists pursuant to the laws of the State of New York, having its office and principal place of business at 757 Broadway, in the city of New York, State of New York. It is now and has for many years last past been engaged in the business of purchasing men's clothing in the State of New York, and other States of the United States, at wholesale, and shipping, re-shipping, or causing the same to be shipped to various and sundry stores owned and operated by it in the several States of the United States and in the District of Columbia, for sale to the purchasing and consuming public; some of its said stores are located in Washington, D. C., Pittston, Pa., Wilkes-Barre, Pa., Scranton, Pa., Allentown, Pa., Harrisburg,

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Pa., Hazelton, Pa.; other stores so operated by it are located in the State of New York and in other States of the United States.

All of said stores, so located in various States of the United States and in the District of Columbia, with the personnel pertaining to the same, stocks of goods contained therein or in transit thereto, together with its buying and sales policies, advertising and advertising plans or policies, its merchandising, radio broadcasting, and all matters pertaining to the operation of said chain of retail clothing stores, are and have been controlled and directed by respondent's officers and agents from respondent's principal place of business in the city of New York, State of New York, at which place its general offices are located and from which office the entire chain of respondent's stores are controlled and directed by respondent's principal officers and agents there located. Respondent is now and has been maintaining a constant current of trade and commerce in the products purchased by it as hereinabove described, and sold by it to the consuming public in the various States of the United States and in the District of Columbia. In the course and conduct of its business, so controlled and so directed from its principal office in New York City, the respondent is now and has been engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling men's clothing in commerce among and between the various States of the United States and the District of Columbia, as commerce is defined in said act.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, and during a period of more than one year last past, respondent herein, Jonas Schainuck & Son, Inc., in soliciting the sale of and selling its merchandise in commerce, as defined by said act, causes and has caused broadcasts to be made over a radio station or stations in the District of Columbia and in other States and places, by means of which, statements are and have been made, such as the following:

"Divide the Saving—Buy Direct from Schainuck's—Their Factory-to-you Policy Saves you Money"

The said corporation also causes labels to be affixed to its garments and containers for the same, which labels and containers carry statements such as: "Maker to Wearer" and "Direct from our own factory to you," by means of which statements a substantial portion of the purchasing public is led to believe that they secure closer prices and superior quality in dealing direct with a manufacturer rather than a selling agency, retailer, or middleman. In truth and in fact, respondent herein, the said Jonas Schainuck & Son, Inc., does not make,

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manufacture or fabricate the clothing sold by it, or actually own and operate, or directly and absolutely control any factory in which the products sold by it are, or have been, made or fabricated, and is not a manufacturer, but the said corporation purchases its products ready-made from factories which it neither owns, operates, nor controls, and engages solely in distributing and selling clothing made, fabricated, or manufactured by others. The said Jonas Schainuck & Son, Inc., also causes or has caused advertisements and advertising matter to be inserted in newspapers located in various States of the United States and in the District of Columbia, having circulation into or through various other States of the United States or the District of Columbia. In such advertisements and advertising matter there appear, or have appeared, the following statements:

2 SUITS
2 COATS
OR
1 SUIT and
1 COAT for
1 LOW PRICE

We're doubling the value of your clothing dollar to double the number of our clothing friends—and customers!

Instead of just ONE garment you can get TWO for the price you'd usually pay for one

We've thrown every resource into making this the DOUBLE-VALUE event of the year! We want EVERY MAN IN THIS COMMUNITY to come to Schainuck's and get for ONE LOW PRICE—TWO FINE GARMENTS!

2 garments for 1 low price

You can have an extra suit, if you wish or an extra topcoat—both are included in the one price

It's the two-for-one low price which we originated

All wool suits—silk lined for \$6.85

In the radio broadcasts aforesaid the following statements are, or have been made:

Schainuck's is the shop famous for the two garments for one low price

Now Washington men rejoice over their two-for-one low price offer

You "Save as much as you spend" when you buy your clothes at Schainuck's, fellows! That's what Schainuck's two for one low price offer does for you

Buy your choice of any two suits, or a suit or overcoat at Schainuck's * * * both for \$23.50 or \$28.50 * * * That's Schainuck's "Two-for-one low price" offer

Schainuck's, the shop famous for two-garments-for-the-price-of-one

All wool suits—silk lined for \$6.85

These and similar statements, as referred to herein, are, or have been, made and promulgated by means of broadcasts from radio stations located in various States of the United States and in the District of Columbia, which said radio stations are and were of sufficient power

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and strength to convey the words spoken in said broadcasts over, through, and beyond the place from which said broadcasts emanate into other States, or from or into the District of Columbia.

Cards used by salesmen of the said corporation read in part:

Schainuck's
Clothes
2 for 1
Price

In truth and in fact, respondent does not sell to the purchasing public two suits, or two overcoats, or one suit and one overcoat, for the price of one garment; nor does the purchasing public double the price of its clothing dollar when patronizing respondent; nor does a purchaser obtain two fine garments for one price from respondent; nor does a retail purchaser actually receive an additional garment free, or save the cost of an additional suit or overcoat, by or through the medium of such or any similar plan or plans promulgated by respondent, but pays the actual, usual and ordinary retail price of two garments when two garments are bought, or approximately so; neither are respondent's suits offered and sold to the public as "All wool—silk lined for \$6.85," composed of all wool or lined with silk.

PAR. 3. The practice of respondent in falsely marking or branding its products in such a manner as to indicate or represent that they were made, manufactured, or fabricated at its own factory, or a factory controlled, owned, or operated by it; and the practice of disseminating information or advertising, either in newspapers, circulars, cards, letterheads, or other commercial literature, or over the radio through the means of public broadcasts, that it sells "two garments for the price of one" or "two for the value of one," or any similar statement or statements or representations which assert, import, or imply, or have the tendency to import or imply, that the said corporation sells two garments for the price ordinarily charged for one of such garments, or that it sells all wool silk lined suits for \$6.85, are calculated to mislead and deceive, and have, and have had, the capacity, tendency, and effect of misleading and deceiving a substantial portion of the purchasing and consuming public as to the actual manufacturer or fabricator of the clothing so sold by it, and the true quality, value, grade, and price of such clothing, when sold at respondent's said store to the purchasing public, and have the further effect of creating the false impression that purchasers are saved sums of money equivalent to the value of the second of the two garments so sold pursuant to these representations.

Respondent has also placed in the hands of its store managers, agents, salesmen, or representatives, located in the several States in which it operates, and in the District of Columbia, the means of making such false and misleading representations, as above described, to the purchasing public, by which means or sales plans, or any of them, it has increased its own sales of said clothing so dishonestly advertised or represented, thereby lessening the market for similar goods sold by other merchants, the true retail value of which is honestly stated.

PAR. 4. Clothing of sundry competitors of respondent likewise engaged in commerce, as herein set out, is and has been sold and distributed to the consuming public in the various States of the United States and in the District of Columbia, in competition with respondent's clothing but without such false and fictitious representations as to its regular or usual value or retail price or quality, or without offering an additional garment free, or practically free, with each garment sold, or without claiming to be the manufacturers thereof, when such is not the case.

PAR. 5. As a direct consequence of the mistaken and erroneous belief induced by the acts, practices, advertisements, radio broadcasts, and misrepresentations of respondent, as hereinabove detailed, a substantial number of the purchasing public are and have been purchasing a substantial volume of respondent's clothing with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling men's clothing in commerce as defined by said act, who truthfully advertise, represent, and sell their products at the true quality and value thereof to the purchasing public and who do not falsely offer a garment free, or practically free, with each garment sold, or who do not offer two garments for the price or value of one. or two garments for one price, or who do not claim to be the manufacturers thereof, or also do not offer all wool and silk lined garments, when such is not the case. The entire scheme and policy of respondent's method and manner of merchandising as practiced by it, so operated, directed, and controlled at or from its principal place of business in the State of New York, has been and is an unfair method of competition, as defined by said act, with the clothing industry as a whole, and has the further effect of injuring and disturbing fair methods of competition and the course of trade and commerce in that industry. As a result thereof substantial injury has been and is now being done by respondent to the purchasing public and to other clothing merchants in substantial competition in commerce

among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

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 May 14, 1936, issued and served its amended complaint in this proceeding upon the respondent, Jonas Schainuck & Son, 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, respondent filed its answer herein, admitting all the material allegations of the amended complaint to be true; waiving all further procedure; and stating that the Commission might, without trial, and without further evidence, make and enter its findings as to the facts and its conclusion based thereon, and issue and serve upon respondent an order to cease and desist from the methods of competition alleged in said amended complaint; and the Commission having duly considered 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

Respondent, Jonas Schainuck & Son, Inc., a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, has been engaged in the operation of a chain of clothing stores for the sale of men's clothing at retail to the purchasing public for more than one year previous to this date. Some of its stores are located in the State of New York and others are located in other States of the United States and in the District of Columbia. Its executive offices and principal place of business are located at 757 Broadway, in the city of New York, State of New York, from which point the affairs of the entire chain are controlled and directed, including its personnel, advertising, radio broadcasting, sales plans and policies.

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Respondent purchases its clothing already made up into finished garments at wholesale in the State of New York, and in other States. It has caused, and still causes, the said clothing to be shipped or re-shipped to its various retail stores for resale to the purchasing and consuming public. Some of its said stores are located in Washington, D. C., Pittston, Pa., Wilkes-Barre, Pa., Scranton, Pa., Allentown, Pa., Harrisburg, Pa., Hazelton, Pa., and New York City.

In the course and conduct of its business, so controlled and so directed from its principal office in New York City, the respondent is now and has been engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling men's clothing in commerce among and between the various States of the United States and the District of Columbia.

In soliciting the sale of and selling its clothing, respondent has caused broadcasts to be made over radio stations located in the District of Columbia and elsewhere, by means of which statements are made such as:

Divide the saving—Buy direct from Schainuck's—
Their Factory-to-You Policy Saves you Money

Respondent also causes labels such as "Maker to Wearer" and "Direct from our Factory to You" to be affixed to its garments and the containers in which the same are sold.

The respondent corporation does not own or operate a clothing factory and does not manufacture or fabricate the clothing which it sells, and representations to that effect are calculated to, and do, lead the purchasing public to believe respondent does so manufacture the clothing sold by it, thereby permitting them to receive better prices and better workmanship from respondent than from other retailers who do not represent themselves as manufacturers.

The respondent has also advertised in newspapers of wide and general circulation that it sells "All Wool Suits—Silk Lined for \$6.85." These suits have been subjected to chemical analysis by a textile expert and have been found to contain a large percentage of cotton and rayon, and the lining described as "silk" contained no silk whatever.

The respondent also advertises through the medium of newspapers of wide circulation, by circulars and hand bills, and over the radio, by means of which representations are made to the consuming public such as:

2 SUITS
2 COATS
or
1 SUIT and
1 COAT for
1 LOW PRICE

We're doubling the value of your clothing dollar to double the number of our clothing friends—and customers!

Instead of just ONE garment you can get TWO for the price you'd usually pay for one

We've thrown every resource into making this the DOUBLE-VALUE event of the year! We want EVERY MAN IN THIS COMMUNITY to come to Schainuck's and get for ONE LOW PRICE—

TWO FINE GARMENTS!!!

2 garments for 1 low price

You can have an extra suit, if you wish or an extra topcoat—both are included in the one price

It's the two-for-one low price which we originated

In the radio broadcasts aforesaid the following statements are, or have been, made:

Schainuck's is the shop famous for the two garments for one low price

Now Washington men rejoice over their two-for-one low price offer

You "Save as much as you spend" when you buy your clothes at Schainuck's, fellows! That's what Schainuck's two-for-one low price offer does for you

Buy your choice of any two suits, or a suit or overcoat at Schainuck's * * * both for \$23.50 or \$28.50 * * * That's Schainuck's "Two-for-one low price" offer

Schainuck's, the shop famous for two-garments-for-the-price-of-one

Cards used by salesmen of the said corporation read in part:

Schainuck's
Clothes
2 For 1
Price

The use by the respondent of these representations leads the purchasing and consuming public to believe, and has a tendency to create the impression, that by patronizing respondent's stores they will obtain two suits, or two overcoats or one of each of those garments, for the price they would ordinarily pay at other retail stores for only one garment of similar grade and workmanship, thus doubling the value of the customer's clothing dollar, or obtain an extra suit or overcoat without additional cost, a conclusion which is entirely erroneous. Respondent's average price to the public for any two of its garments is approximately double the price at which one garment of similar quality and workmanship is offered for sale and sold to the public by other retail stores dealing in clothing.

The use by respondent of the aforesaid acts and practices, as herein related, are false and misleading and have the capacity and tendency to deceive and may deceive and mislead ultimate purchasers into buying suits, overcoats, or other garments from respondent in the belief that they are dealing direct with the manufacturer thereof, and are thus obtaining better value and workmanship for

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the price paid than they would from dealers who do not falsely make such representations, or that respondent is a much larger organization than it actually is. These representations also mislead and deceive the public into buying certain of respondent's suits in the belief that they are "all wool and silk lined" when the same are not made of these materials. The public is also misled and deceived, or may be so misled and deceived, that they are doubling their clothing dollar by patronizing respondent's stores, or obtaining a garment free or obtaining two garments for which it would ordinarily pay for one garment of similar grade and workmanship at other retail stores.

The use by respondent of the aforesaid practices have the tendency and capacity to, and do, unfairly divert trade from competitors engaged in selling men's clothing in commerce between and among the various States of the United States who truthfully represent the maker or manufacturer thereof, and who truthfully represent the nature, type, or quality of the material from which their garments are made, and who truthfully represent the true retail value thereof and who do not falsely offer to double the value of the customer's clothing dollar; or to give the customer an additional garment free, or without extra cost, or two garments for the price the customer ordinarily pays for one, or makes promises or representations of similar and like import; and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and 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 amended complaint filed herein on May 12, 1936, and answer thereto filed June 3, 1936, by Jonas Schainuck & Son, Inc., admitting all the material allegations of the said amended complaint to be true; waiving all further procedure and stating that the Commission without trial and without further evidence might make, enter, issue and serve upon the said respondent its findings as to the facts and conclu-

sion based thereon, and an order to cease and desist from the unfair methods of competition charged in the amended complaint; and the Commission having duly considered the said amended complaint and answer, and now being fully advised in the premises.

It is ordered, That the respondent, Jonas Schainuck & Son, Inc., its officers, servants, representatives and employees, in connection with the sale or offering for sale by it in interstate commerce of articles of clothing, or similar merchandise, forthwith cease and desist from:

Representing, directly or by inference, through any means whatsoever:

(1) That said articles of clothing or similar merchandise are all wool or all silk, when such are not the facts.

(2) That it is the maker, manufacturer or fabricator of said clothing unless and until it actually owns, operates or controls the factory or factories in which such clothing is manufactured.

(3) That the price at which two suits or other garments are offered for sale or sold is the regular and customary price of one of said suits or garments.

(4) That the price at which two of such suits or garments are sold or offered for sale is the same or an approximate equivalent price at which other retail stores regularly and customarily sell one suit or garment of similar grade, workmanship and quality.

(5) That upon the purchase of one suit or garment, it gives a suit or garment free, or approximately free.

It is hereby further ordered, That the respondent shall within 60 days from the date of the service upon it of this order file with this Commission its report in writing, stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF

A. C. HYND CORPORATION

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

Docket 2781. Complaint, Apr. 23, 1936—Decision, July 23, 1936

Where a corporation, engaged in the manufacture of a germicide for eczema and other skin ailments, and in sale and distribution thereof to purchasers in various States—

Falsely represented through advertisements in periodicals and publications and other forms of printed matter, and by radio broadcast, that said preparation was a competent remedy for eczema, athlete's foot, and various other skin ailments, and that use thereof would prevent infections from hiding, and kill twenty-seven different kinds of disease germs, or destroy the responsible parasite causing skin eruptions and ailments, and instantly stop itching and soreness, and start rapid healing, and banish every trace of red or cracked skin, and make it healthfully clear and smooth again, through such statements as "The quick, safe way to end sore, raw, scaly skin of Eczema", "* * * instantly stops the maddening itch and terrible soreness—rapid healing starts and just a few days' faithful use banishes every trace of red, cracked skin, making it healthfully clear and smooth again", "Tests at a leading University proved KU-RILL kills 27 different kinds of germs," "Infections have no chance to hide from KU-RILL", "FOR ATHLETE'S FOOT * * * KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin", etc.;

With result that purchasers and prospective purchasers were induced to buy said alleged remedy in preference to similar medicated preparations and treatments for relief of eczema and other skin ailments, sold and offered by competitors who do not misrepresent the same and falsely claim that they have merits and capacity to achieve results, as claimed by it for its said product, and with effect of diverting to it trade from its competitors who do not misrepresent efficacy of their products; to the substantial injury of 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.

Mr. Joseph C. Fehr for the Commission.

Mr. Harold L. Bodamer, of Buffalo, N. Y., 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 A. C. Hynd Corporation, a corporation, hereinafter referred to as respond-